

**ORDINANCE NO. 828**

**AN ORDINANCE GRANTING CALIFORNIA OREGON BROADCASTING INC. DBA CRESTVIEW CABLE COMMUNICATIONS, AN OREGON CORPORATION, A NONEXCLUSIVE FRANCHISE TO CONSTRUCT AND OPERATE A CABLE SYSTEM IN, ALONG, UPON, ACROSS, ABOVE, OVER, UNDER, OR IN ANY MANNER CONNECTED WITH PUBLIC WAYS AND EASEMENTS WITHIN THE CITY OF MADRAS; REPEALING ORDINANCE NO. 479 476 EFFECTIVE AUGUST 1, 2010, AND DECLARING AN EMERGENCY.**

**THE CITY OF MADRAS ORDAINS AS FOLLOWS:**

**SECTION 1: DEFINITIONS**

For the purposes of this Franchise, capitalized terms, phrases, words and abbreviations shall have the meanings ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. ss 521, et. seq. (the "Cable Act"), unless otherwise defined herein.

1.1. "Customer" means a Person or user of the Cable System who lawfully receives Cable Service therefrom with Grantee's expression permission.

1.2. "Effective Date" means the date on which all persons necessary to sign this Agreement in order for it to be binding on both parties have executed this Agreement as indicated on the signature page(s), unless a specific date is otherwise provided in the "Term" section herein.

1.3. "FCC" means the Federal Communications Commission or the successor governmental entity thereto.

1.4. "Franchise" means the initial authorization, or renewal thereof, issued by Franchising Authority, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the Cable System.

1.5. "Franchise Agreement" or "Agreement" means this Agreement and any amendments or modifications hereto.

1.6. "Franchise Area" means the present legal boundaries of the City as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means.

1.7. "Franchising Authority" means the City of Madras, Oregon or the lawful successor, transferee, designee, or assignee thereof.

1.8. "Grantee" means California Oregon Broadcasting, Inc. dba Crestview Cable Communications.

1.9. "Gross Revenue" means any and all compensation received directly by Grantee from Customers within the Franchise Area in accordance with Generally Accepted Accounting Principles (GAAP). Gross Revenue shall not include any taxes, on services furnished by Grantee, imposed directly on any Customer or user by any city, state or other governmental unit and collected by Grantee for such governmental unit (nor shall it include revenue from auxiliary services which include but are not limited to, advertising and leased channels). Gross Revenue shall also not include advertising sales commissions, launch fees and marketing reimbursements or, refundable deposits, bad debt, late fees, revenue from cable modem Internet service or telephony unless those services are determined to be Cable Services under federal law or regulation, nor any taxes, fees or assessments imposed or assessed by any governmental authority.

1.10. "Person" means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean Franchising Authority.

1.11. "Public Way" means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by Franchising Authority in the Franchise Area, which shall entitle Franchising Authority and Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by Franchising Authority within the Franchise Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as

shall within their proper use and meaning entitle Franchising Authority and Grantee to the use thereof for the purposes of installing, operating, and maintaining Grantee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

## **SECTION 2: GRANT OF AUTHORITY**

2.1. **Grant of Authority.** Franchising Authority hereby grants to Grantee under the Cable Act a nonexclusive Franchise authorizing Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways and easements within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System, provided such construction does not unreasonably interfere with existing uses of Public Ways. Nothing in this Franchise shall be construed to prohibit Grantee from offering any service over its Cable System that is not prohibited by federal or state law.

2.2. **Term.** The term of the Franchise granted hereunder shall be five (5) years, commencing on **August 1, 2010** and remaining in full force and effect through July 31, 2015, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and the Cable Act.

2.3. **Renewal.** Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended (11 U.S.C. s 546).

2.4. **Reservation of Authority.** Nothing in this Franchise Agreement shall (A) abrogate the right of Franchising Authority to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by Franchising Authority, or (C) be construed as a waiver or release of the rights of Franchising Authority in and to the Public Ways.

**SECTION 3: CONSTRUCTION AND MAINTENANCE OF THE CABLE SYSTEM**

3.1. Permits and General Obligations. Grantee shall be responsible for obtaining, at its own cost and expense, all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the Cable System, or any part thereof, prior to the commencement of any such activity. Construction, installation, and maintenance of the Cable System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. All transmission and distribution structures, poles, other lines, and equipment installed by Grantee for use in the Cable System in accordance with the terms and conditions of this Franchise Agreement shall be located so as to minimize the interference with the proper use of the Public Ways and the rights and reasonable convenience of property owners who own property that adjoins any such Public Way.

3.2. Conditions on Street Occupancy.

3.2.1. New Grades or Lines. If the grades or lines of any Public Way within the Franchise Area are lawfully changed or affected (including water and sewer lines) at any time during the term of this Franchise Agreement, then Grantee shall, upon reasonable advance written notice from Franchising Authority (which shall not be less than thirty (30) business days or ten (10) days in the event of an emergency) and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any Person using such street or public right-of-way for the purpose of defraying the cost of any of the foregoing, Franchising Authority shall upon written request of Grantee make application for such funds on behalf of Grantee.

3.2.2. Relocation at request of Third Party. Grantee shall, upon not less than thirty (30) business days' advance written notice of any Person holding a permit issued by Franchising Authority to move any structure, temporarily move (or arrange for such movement of) its wires to permit the moving of such structure. In the event of an emergency, Grantee shall, upon not less than ten (10) business days' advance written notice of any Person holding a permit issued by Franchising Authority to move any structure, temporarily move (or arrange for such movement of) its wires to permit the moving of such structure. Grantee may impose a reasonable charge on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires.

3.2.3. Restoration of Public Ways. If in connection with the construction, operation, maintenance, or repair of the Cable System, Grantee disturbs, alters, or damages any Public Way, Grantee agrees that it shall at its own cost and expense replace and restore any such Public Way to a condition that complies with then existing and applicable engineering or public work standards without unreasonable delay. If, in Franchising Authority's reasonable discretion, Grantee fails to commence such replacement or restoration in a timely fashion, Franchising Authority has the right (but not the obligation) to cause the restoration to be made at the expense of Grantee and Grantee hereby agrees to pay Franchising Authority any and all costs and expenses incurred by Franchising Authority to restore the Public Way(s) within thirty (30) days of Franchising Authority's demand.

3.2.4. Safety Requirements. Grantee shall, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries or nuisances. All work undertaken on the Cable System shall be performed in substantial accordance with applicable FCC or other federal and state regulations. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Franchise Area.

3.2.5. Trimming of Trees and Shrubbery. Grantee shall have the authority to trim trees or other natural growth overhanging any portion of its Cable System in the Franchise Area so as to prevent contact with the Cable System's wires, cables, or other equipment. All such trimming shall be done at Grantee's sole cost and expense. Grantee shall be responsible for any damage caused by such trimming.

3.2.6. Aerial and Underground Construction. If all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, Grantee shall place its Cable Systems' transmission and distribution facilities underground; provided that such underground locations are actually capable of accommodating Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground.

**SECTION 4: SERVICE OBLIGATIONS**

4.1. General Service Obligation. Grantee shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per mile and is within one (1) mile of the existing Cable System. Subject to the density requirement, Grantee shall offer Cable Service to all new homes or previously unserved homes located within 125 feet of Grantee's distribution cable. Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop in or line extension in excess of the above standards. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds the standards set forth above.

4.2. New Developments. Franchising Authority in accordance with applicable code requirements shall use its best efforts to provide Grantee with written notice of the issuance of building or development permits for planned developments within the Franchise Area requiring undergrounding of its Cable System's transmission and distribution facilities. Franchising Authority agrees to require the developer, as a condition of issuing the permit, to give Grantee access to open trenches for deployment of such cable facilities and at least ten (10) business days' written notice of the date of availability of open trenches. Developer shall be responsible for the digging and backfilling of all trenches. Grantee shall be responsible for engineering and deployment of labor applicable to such cable facilities.

4.3. Programming. Grantee shall offer to all Customers a diversity of video programming services.

4.4. No Discrimination. Neither Grantee nor any of its employees, agents, representatives, contractors, subcontractors, or consultants, nor any other Person, shall discriminate or permit discrimination between or among any Persons in the availability of Cable Services provided in connection with the Cable System in the Franchise Area. It shall be the right of all Persons to receive all available services provided on the Cable System so long as such Person's financial or other obligations to Grantee are satisfied. Nothing contained herein shall prohibit Grantee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its business practice.

4.5. Prohibition against Reselling Service. No Person shall resell, without the express prior written consent of Franchising Authority, any Cable Service, program or signal transmitted over the Cable System by Grantee.

#### **SECTION 5: FEES AND CHARGES TO CUSTOMERS**

All rates, fees, charges, deposits and associated terms and conditions to be imposed by Grantee for any Cable Service as of the Effective Date shall be in accordance with applicable FCC's rate regulations. Before any new or modified rate, fee, or charge is imposed, Grantee shall follow the applicable FCC notice requirements and rules and notify affected Customers, which notice may be by any means permitted under applicable law.

#### **SECTION 6: CUSTOMER SERVICE STANDARDS; CUSTOMER BILLS; AND PRIVACY PROTECTION**

6.1. Customer Service Standards. Franchising Authority hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended. Grantee shall comply in all respects with the customer service requirements established by the FCC.

6.2. Customer Bills. Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (A) is not misleading and (B) does not omit material information. Notwithstanding anything to the contrary in Section 6.1 above, Grantee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. s 542(c)), as may be amended from time to time.

6.3. Privacy Protection. Grantee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act (47 U.S.C. s 551), as may be amended from time to time, and regulations adopted pursuant thereto.

#### **SECTION 7: OVERSIGHT AND REGULATION BY FRANCHISING AUTHORITY**

7.1. Franchise Fees. Grantee shall pay to Franchising Authority a franchise fee in an amount equal to five percent (5%) of annual Gross Revenues received from the

operation of the Cable System to provide Cable Service in the Franchise Area. The payment of franchise fees shall be made on a monthly basis and shall be due twenty (20) days after the last day of the immediately preceding month. Each franchise fee payment shall be accompanied by a report prepared by a representative of Grantee showing the basis for the computation of the Franchise Fees paid during that period. In the event federal law applicable to this Franchise limits franchise fees below the five percent (5%) of Gross Revenues required herein, Grantee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then Grantee shall pay the higher amount up to the maximum allowable by law, and Grantee may pass through to customers such decrease or increase in franchise fees required to be paid to Franchising Authority pursuant to such law.

7.2. Franchise Fees Subject to Audit.

7.2.1. Upon reasonable prior written notice, during normal business hours, at Grantee's principal business office, Franchising Authority shall have the right to inspect Grantee's financial records used to calculate Franchising Authority's franchise fees. Any such inspection shall take place within three (3) years from the date Franchising Authority receives such payment, after which period any such payment shall be considered final.

7.2.2. Upon the completion of any such audit by Franchising Authority, Franchising Authority shall provide to Grantee a final report setting forth Franchising Authority's findings in detail, including any and all substantiating documentation. In the event it is determined that franchise fees for the audit period has been underpaid, Franchising Authority shall notify Grantee in writing of its determination. Upon receipt, Grantee shall have thirty (30) days to notify Franchising Authority if it agrees or disagrees with Franchising Authority's determination. If Grantee agrees with Franchising Authority's determination, Grantee shall pay to Franchising Authority the undisputed amount due. Franchising Authority and Grantee shall discuss all disputed amounts. In the event the parties are not able to reach an agreement on mutually acceptable terms and conditions, either party may pursue their legal remedies. The cost of such audit shall be borne by Grantee if the review results in an underpayment of three percent (3%) or more for the period under review.

7.3. Oversight of Franchise. In accordance with applicable law, Franchising Authority shall have the right to oversee, regulate and, on reasonable prior written notice and in the presence of Grantee's employee, periodically inspect the construction, operation and maintenance of the Cable System in the Franchise Area, and all parts thereof, as necessary to monitor Grantee's compliance with the provisions of this Franchise Agreement.

7.4. Technical Standards. Grantee shall comply with all applicable technical standards of the FCC as published in subpart K of 47 C.F.R. § 76. To the extent those standards are altered, modified, or amended during the term of this Franchise, Grantee shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective. Franchising Authority shall have, upon written request, the right to obtain a copy of tests and records required to be performed pursuant to the FCC's rules.

7.5. Maintenance of Books, Records, and Files.

7.5.1. Books and Records. Throughout the term of this Franchise Agreement, Grantee agrees that Franchising Authority, upon reasonable prior written notice to Grantee, may review such of Grantee's books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor Grantee's compliance with the provisions of this Franchise Agreement at Grantee's business office, during normal business hours, and without unreasonably interfering with Grantee's business operations. Such books and records shall include any records required to be kept in a public file by Grantee pursuant to the rules and regulations of the FCC. All such documents pertaining to financial matters that may be the subject of an inspection by Franchising Authority shall be retained by Grantee for a minimum period of three (3) years.

7.5.2. File for Public Inspection. Throughout the term of this Franchise Agreement, Grantee shall maintain at its business office, in a file available for public inspection during normal business hours, those documents required pursuant to the FCC's rules and regulations.

7.5.3. Proprietary Information. Notwithstanding anything to the contrary set forth in this Section, Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. Franchising Authority agrees to treat

any information disclosed by Grantee as confidential and only to disclose it to those employees, representatives, and agents of Franchising Authority that have a need to know in order to enforce this Franchise Agreement and who agree to maintain the confidentiality of all such information. Grantee shall not be required to provide Customer information in violation of Section 631 of the Cable Act (47 U.S.C. s 551), as may be amended from time to time, or any other applicable federal or state privacy law. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by Grantee to competitively sensitive. In the event that Franchising Authority receives a request under a state "sunshine," public records or similar law for the disclosure of information Grantee has designated as confidential, trade secret or proprietary, Franchising Authority shall notify Grantee of such request, and cooperate with Grantee in opposing such request provided that such cooperation is at no cost to Franchising Authority.

**SECTION 8:      TRANSFER OR CHANGE OF CONTROL OF CABLE  
SYSTEM OR FRANCHISE**

Neither Grantee nor any other Person may transfer the Cable System or the Franchise without the prior written consent of Franchising Authority, which consent shall not be unreasonably withheld or delayed. No change in control of Grantee, defined as an acquisition of 50% or greater ownership interest in Grantee, shall take place without the prior written consent of Franchising Authority, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Grantee. Within thirty (30) days of receiving a request for consent, Franchising Authority shall, in accordance with FCC rules and regulations, notify Grantee in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party.

**SECTION 9: INSURANCE AND INDEMNITY****9.1. Insurance.**

9.1.1. **Comprehensive General Liability Insurance.** Throughout the term of this Franchise Agreement, Grantee shall, at its own cost and expense, maintain Comprehensive General Liability Insurance and provide Franchising Authority certificates of insurance designating Franchising Authority and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person, Three Million Dollars (\$3,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and Three Million Dollars (\$3,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days' prior written notice to Franchising Authority.

9.1.2. **Automobile Liability Insurance.** Grantee shall, at its sole cost and expense, maintain Automobile Liability Insurance for all owned, non-owned, hired and leased vehicles that are, or may be, used by Grantee, its employees, representatives or assigns in connection with this Franchise Agreement. Such policy shall be for a minimum combined single limit of One Million Dollars (\$1,000,000.00) for bodily injury and property damage per accident and Three Million Dollars (\$3,000,000.00) in aggregate.

9.1.3. **Workers' Compensation.** Grantee shall provide workers' compensation coverage in accordance with applicable law. Grantee shall indemnify and hold harmless Franchising Authority from any workers' compensation claims to which Grantee may become subject during the term of this Franchise Agreement.

9.2. **Indemnification.** Grantee shall indemnify, defend and hold harmless Franchising Authority, its officers, employees, and agents from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of Grantee's construction, operation, maintenance or removal of the Cable System, including, but not limited to, reasonable attorneys' fees and costs. Franchising Authority shall give Grantee written notice of its obligation to indemnify and defend

Franchising Authority within ten (10) business days of receipt of a claim or action described in this Section.

#### **SECTION 10: SYSTEM DESCRIPTION AND SERVICE**

10.1. System Capacity. During the term of this Agreement Grantee's Cable System shall be capable of providing a minimum of 85 channels of video programming (analog and digital) with satisfactory reception available to its customers in the Franchise Area.

10.2. Service to Qualified School Buildings. As a voluntary initiative for the term of this Agreement, Grantee will provide at no cost one (1) "Basic" and Expanded Basic service or its equivalent in a digital tier if necessary and installation at one (1) outlet to each public school and public library, not including "home schools," located in the Franchise Area within 125 feet of Grantee's distribution cable. For purposes of this subsection, "Expanded Basic" shall mean that tier of cable service just above the most basic level of service offered by Grantee. Franchising Authority shall provide to Grantee a list of all school building addresses from time to time as necessary.

10.3. Service to Governmental and Institutional Facilities. As a voluntary initiative for the term of this Agreement, Grantee will provide at no cost one (1) "Basic" and Expanded Basic service or its equivalent in a digital tier if necessary and installation at one (1) outlet to each qualified municipal building, city police and fire station located in the Franchise Area within 125 feet of Grantee's distribution cable. "Qualified municipal buildings" are those buildings owned or leased by Franchising Authority for government administrative purposes, and shall not include buildings owned by Franchising Authority but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed and buildings used to house jail populations. For purposes of this subsection, "Expanded Basic" shall mean that tier of cable service just above the most basic level of service offered by Grantee. Franchising Authority shall provide to Grantee a list of all Qualified Municipal Building addresses from time to time as necessary.

#### **SECTION 11: ENFORCEMENT AND TERMINATION OF FRANCHISE**

11.1. Notice of Violation or Default. In the event Franchising Authority believes that Grantee has not complied with the material terms of the Franchise, it shall notify

Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.

11.2. Grantee's Right to Cure or Respond. Grantee shall have thirty (30) business days from the receipt of Franchising Authority's written notice: (A) to respond to Franchising Authority, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within said thirty (30) business day period, initiate reasonable steps to remedy such default and notify Franchising Authority of the steps being taken and the projected date that they will be completed.

11.3. Public Hearings. In the event Grantee fails to respond to Franchising Authority's notice or in the event that the alleged default is not remedied within thirty (30) business days or the date projected by Grantee, Franchising Authority shall schedule a public hearing to investigate the default. Such public hearing shall be held at a scheduled meeting of Franchising Authority and shall notify Grantee in writing at least forty-five (45) days in advance of the date, time and place of such meeting and provide Grantee with a reasonable opportunity to be heard.

11.4. Enforcement. Subject to applicable federal and state law, in the event Franchising Authority, after such public hearing, determines that Grantee is in default of any provision of the Franchise, Franchising Authority may:

11.4.1. seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief; or

11.4.2. in the case of a substantial default of a material provision of the Franchise, declare the Franchise Agreement to be revoked in accordance with the following: (i) Franchising Authority shall give written notice to Grantee of its intent to revoke the Franchise on the basis of a substantial violation of any material provision of this Franchise or a pattern of noncompliance of unsubstantial or nonmaterial provisions of this Franchise. The notice shall set forth with specificity the exact nature of the noncompliance. Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event Franchising Authority has not received a response from Grantee or upon receipt of the response does not agree with Grantee's proposed remedy, it may then seek termination of the Franchise at a public hearing. Franchising Authority shall cause to be served upon

Grantee, at least ten (10) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request termination of the Franchise. (ii) At the designated hearing, Franchising Authority shall give Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to Grantee within ten (10) business days. The decision of Franchising Authority shall be in writing and shall be delivered to Grantee by certified mail. Grantee may appeal such determination to a court of competent jurisdiction within Jefferson County, Oregon, which shall have the power to review the decision of Franchising Authority "de novo" and to modify or reverse such decision as justice may require. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of Franchising Authority.

11.5. Technical Violation. Franchising Authority agrees that it is not its intention to subject Grantee to penalties, fines, forfeitures or revocation of the Franchise for so-called "technical" breach(es) or violation(s) of the Franchise, which shall include, but not be limited, to the following:

11.5.1. in instances or for matters where a violation or a breach of the Franchise by Grantee was a good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or

11.5.2. where there existed circumstances reasonably beyond the control of Grantee and which precipitated a violation by Grantee of the Franchise, or which were deemed to have prevented Grantee from complying with a term or condition of the Franchise.

## **SECTION 12: MISCELLANEOUS PROVISIONS**

12.1. Force Majeure. Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or

snow, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary.

12.2. Notice. All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To Franchising Authority:

To Grantee:

City of Madras  
71 SE "D" Street  
Madras, Oregon 97741  
Attn: Mike Morgan  
Facsimile #: 541-475-7061

Crestview Cable Communications  
350 N Dunham  
Prineville, Oregon 97754  
Attn: Government Affairs  
Facsimile #: \_\_\_\_\_

12.3. Franchise Non-Exclusive. Grantee acknowledges and agrees that Franchising Authority reserves the right to grant one or more additional franchises to provide Cable Service within the Franchise Area.

12.4. Entire Agreement. This Franchise Agreement embodies the entire understanding and agreement of Franchising Authority and Grantee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral. All ordinances or parts of ordinances that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

12.5. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion.

Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

12.6. Governing Law; Venue. This Franchise Agreement shall be deemed to be executed in the State of Oregon, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Oregon, as applicable to contracts entered into and performed entirely within the State. Any action or proceeding arising out of or concerning this Franchise Agreement will be litigated in courts located in Jefferson County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Jefferson County, Oregon.

12.7. Attorney Fees. If any arbitration or litigation is instituted to interpret, enforce, or rescind this Franchise Agreement, including but not limited to any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney fees and other fees, costs, and expenses of every kind, incurred in connection with the arbitration, the litigation, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.

12.8. Modification. No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by Franchising Authority and Grantee, which amendment shall be authorized on behalf of Franchising Authority through the adoption of an appropriate resolution or order by Franchising Authority, as required by applicable law.

12.9. No Third-Party Beneficiaries. Nothing in this Franchise Agreement is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise Agreement.

12.10. Repeal. Ordinance No. 479 476, the current franchise agreement with Grantee, shall be repealed as of the Effective Date and replaced in its entirety by this Franchise Agreement.

12.11 Emergency Clause. It is hereby determined and declared that existing conditions are such that it is necessary for the immediate preservation of the peace,

health, general welfare, and safety of the citizens of the City of Madras that an emergency be declared to exist and this ordinance shall be in full force and effect immediately upon and after its passage by the Council and signing by the Mayor of the City of Madras, Oregon.

PASSED by the Council and approved by the Mayor July 27, 2010.