

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Les White, City Manager
Richard Doyle, City Attorney

SUBJECT: COMCAST FRANCHISE
ORDINANCE

DATE: November 17, 2006

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Adoption of Ordinance Number 27906 renewing, amending and extending the nonexclusive cable franchise with Comcast of California.

BACKGROUND

On November 14th the Council approved the first reading of ordinances to accept Comcast's 2002 Formal Offer to renew their cable franchise and an alternative ordinance amending the current expired franchise. At the meeting on the 14th it was explained that if an executed settlement agreement could be obtained with Comcast to settle all pending litigation, Staff would recommend that only the Amended Franchise Ordinance be adopted. The Council approved this staff recommendation.

This memo is to advise the City Council that the Settlement Agreement has been executed. In addition, in finalizing the Settlement we are recommending some clarifications in the Amended Franchise Ordinance and the moving of one of the funding elements from the Franchise to the Settlement Agreement. All terms and conditions as described to the Council of Amended Franchise and Settlement remain.

ANALYSIS

The Settlement requires Comcast to accept the Amended Franchise, the dismissal of all litigation between the parties, the payment to the City of \$1 million to be used for Public, Educational and Government access purposes (PEG) and an additional \$1 million payment that is unrestricted but which staff would propose be used to additionally supplement PEG access support in San Jose. The

HONORABLE MAYOR AND CITY COUNCIL

11/17/06

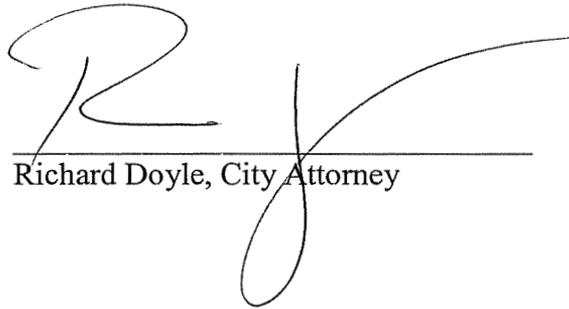
Subject: Supplemental-Cable Franchise Renewal

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Amended Franchise is as described in previous council memos with the exception of the movement of the \$1 million up front payment to be used for PEG purposes from the Franchise to the Settlement Agreement. The up front payment of \$1 million to be used for PEG capital remains in the Franchise. A copy of the Amended Franchise Ordinance redlined to show the changes is attached along with a copy of the Settlement.



Les White, City Manager



Richard Doyle, City Attorney

Attachment

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SAN JOSE
APPROVING AN AMENDMENT OF THE TERMS OF
ORDINANCE NO. 22128, GRANTING A NONEXCLUSIVE
CABLE TELEVISION FRANCHISE TO COMCAST OF
CALIFORNIA, SUCCESSOR TO GILL INDUSTRIES, INC.,
DBA GILLCABLE, RENEWING, AMENDING AND
EXTENDING THE FRANCHISE**

WHEREAS, the City of San Jose ("City") granted to Gill Industries, Inc., dba Gillcable, that certain nonexclusive cable television franchise under Ordinance No. 22128, adopted by the City Council on or about December 17, 1985 (the "Franchise"), which Franchise, by its own terms, was set to expire on December 31, 2000; and

WHEREAS, the City and Comcast of California II, LLC ("Comcast"), the successor-in-interest to Gill Industries, Inc. under the Franchise, have participated in negotiations pertaining to the renewal of a nonexclusive cable franchise; and

WHEREAS, the Digital Infrastructure and Video Competition Act of 2006 (the "State Franchise Act") is to go into effect on January 1, 2007, which will allow cable providers to obtain a state franchise to provide cable service in California; and

WHEREAS, the Franchise has been extended on several occasions but is now expired; and

WHEREAS, Comcast and City desire to have an existing cable franchise in place by December 31, 2006; and

WHEREAS, the City has determined that this Ordinance serves the public interest;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Part A

SECTION 1. The terms of the Franchise granted by the City under Ordinance No. 22128, are hereby amended and restated as provided herein and shall be in effect from the date of acceptance of this Franchise by Comcast until December 31, 2016, unless either Grantor or Grantee exercises its right to terminate this Ordinance earlier as permitted by the State Franchise Act .

Part B

SECTION 1. That, subject to the provisions of this Ordinance, the provisions of the San Jose Municipal Code, and the provisions of the Charter of the City of San Jose, the City of San Jose (hereinafter "Grantor") does hereby renew the nonexclusive franchise of Comcast of California II, LLC, successor to Gill Industries, Inc., (hereafter "Grantee") to operate and carry on within the City of San Jose the business of providing cable service over a cable system.

SECTION 2. Citation of Ordinance

This ordinance may be cited as the "Comcast Franchise Ordinance."

SECTION 3. Rules of Construction

This ordinance shall be construed liberally in order to effectuate its purposes. Unless otherwise specifically prescribed in this ordinance, the following provisions shall govern its interpretation and construction:

- A. Time is of the essence of this ordinance. Grantee shall not be relieved of its obligation to comply promptly with any provision of this ordinance by any failure of Grantor to enforce prompt compliance with any of its provisions.

- B. Any right or power conferred, or duty imposed upon any officer, employee, department or Commission of Grantor is subject to transfer by operation of law to any other officer, employee department or Commission of Grantor.

- C. This Ordinance shall not be construed to limit or restrict the otherwise lawful public safety right of way authority of the Grantor to enact generally applicable laws. In particular, this ordinance does not relieve Grantee of the obligation to comply with any lawful exercise of Grantor's power to enact generally applicable public safety requirements related to street work, street excavation permits, undergrounding of utility facilities, or the use, removal or relocation of property in the streets.

- D. Provisions of this ordinance shall be construed in accordance with Chapter 15.28 of the San Jose Municipal Code, hereafter "Chapter 15.28." To the extent that the provisions of this Ordinance and the provisions of Chapter 15.28 conflict, the terms and provisions of this granting Ordinance shall control.

SECTION 4. Purpose and Intent

It is the purpose and intent of this ordinance to approve the extension and renewal of Grantee's nonexclusive franchise to engage in the business of operating a Cable Communication System (hereafter "cable system") in the City upon terms and conditions of Chapter 15.28.

SECTION 5. Conditions Precedent

- A. Prior to consideration of this ordinance by the City Council, Grantee shall submit an application for extension and renewal of franchise according to the requirements of Section 15.28.210 of Chapter 15.28. Grantor acknowledges that the foregoing condition precedent has been satisfied.

- B. This ordinance shall become effective on the thirty-first (31st) day after the passage of this ordinance provided that, prior to such date, Grantee has 1) filed with the City Clerk a written instrument, in form satisfactory to the City Attorney, addressed to the Grantor accepting the extension and renewal of franchise as required by Section 15.28.310 of Chapter 15.28; 2) filed with the City Clerk a corporate surety bond or other mutually acceptable security in the principle sum of Fifty Thousand Dollars (\$50,000.00) as required by Section 15.28.320 of Chapter 15.28; and 3) presented evidence to the City Clerk, satisfactory to the City Attorney, of the insurance required under Section 15.28.330 of Chapter 15.28.
- C. Notwithstanding Section 5(B), this Ordinance shall not become effective prior to: 1) the date Grantor terminates the formal franchise renewal proceeding it commenced on or about January 31, 2003; and 2) the effective date of a settlement agreement between Grantor and Grantee that provides a final resolution of the liquidated damages claim Grantor filed against Grantee in the Superior Court of California, County of Santa Clara on January 26, 2005.

SECTION 6. System Expansion

- A. Grantee shall provide cable television service to all residential dwelling units located within the franchise area as provided in this franchise and the Settlement Agreement between the City and Grantee, as successor to Heritage Cablevision of California, Inc., dated December 18, 2000 (the "December 18, 2000 Settlement Agreement").
- B. Grantee shall complete construction and offer service to all dwelling units, including apartments, condominiums and mobile home parks in the City without regard to the number or percentage of potential subscribers in a particular apartment or condominium building, or mobile home park. Provided, however, that nothing in this section shall require Grantee to install service facilities or

otherwise make service available if:

1. An owner, manager, lessee, principal occupant, or other person or entity with apparent authority over a given dwelling unit (or group of dwelling units) refuses to allow access upon reasonable terms or otherwise indicates a desire not to be served;
 2. A dwelling unit (or group of dwelling units) is already served or under contract to be served by another multi-channel television service or other form of subscription television service; or
 3. The cost of installing service facilities for a given dwelling unit (or group of dwelling units) exceeds Four Hundred Dollars (\$400.00) per unit.
- C. In any case where Grantee is not required to install service facilities or provide service due to excessive cost as defined in subparagraph (3) above, service facilities shall nonetheless be provided by Grantee if the person or entity with apparent authority over the dwelling unit (or group of dwelling units) involved in a given case agrees in writing to pay all costs associated with installing service facilities which exceed Four Hundred Dollars (\$400.00) per dwelling unit.

SECTION 7. PEG Access and Institutional Network Obligations

A. PEG Channels

1. The Grantee shall provide the Grantor, if requested, with 5 public or educational or government ("PEG") access channels, although Grantee reserves the right to utilize for its own purposes any channels or portion of such channels not utilized for PEG purposes.

2. The Grantee shall provide the Grantor ~~an~~ one additional PEG channel (for a maximum of 6) when the nonduplicated locally produced video programming televised on a given channel exceeds 56 hours per week as measured on a quarterly basis. The additional channel shall not be used for any purpose other than to continue programming additional government, education, or public access television. For the purposes of this Section, "locally produced video programming" means programming produced or provided by any local resident, the Grantee, or any local public or private agency that provides services to residents of the franchise area; or any transmission of a meeting or proceeding of any local, state, or federal governmental entity.

3. No time shall be used on PEG channels to cablecast "commercial matter." The term "commercial matter" shall mean time used to sell a product or service. Also, neither the Grantor nor any entity designated by the Grantor ("Designated Entity") to manage PEG channels shall sell time to users in return for the right to cablecast programming, but fees may be charged to defray PEG costs. The foregoing shall not be interpreted to prohibit sponsorship announcements comparable to those that might be carried on a noncommercial broadcast station, or to prevent schools from charging course fees, and then delivering the course via the PEG channels, or to prohibit solicitation for financial support for the provision of PEG access by Grantor or a Designated Entity and for charitable, educational or governmental purposes.

B. Grant for PEG

C. _____

~~Within 30 days after the effective date of this Ordinance, the Grantor shall pay to the Grantee a grant of \$1 million (\$1,000,000), which Grantee may use for any PEG purposes.~~

C.B. Capital Grant for Access Facilities

1. The Grantee shall pay to Grantor an annual capital grant of one percent (1%) of gross revenues, as defined in Section 15(C), from the effective date of this amendment until the expiration of the term of this franchise. Such capital grant shall be subject to the offset set forth in Section 7(C)(2) below.

2. Within 30 days after the effective date of this amendment to the Ordinance, the Grantor may request a partial prepayment of the annual capital grant set forth in Section 7(C)(1) in an amount not to exceed \$1,250,000 (the "Prepaid Amount"). Grantee shall pay such Prepaid Amount within 60 days after Grantor's request. Thereafter, Grantee shall offset \$125,000 per year against the annual capital grant payable pursuant to Section 7(C)(1) (or, if applicable, pursuant to any federal or state certificate, franchise or other authority subsequently awarded or granted to Grantee with respect to the franchise area) until the Prepaid Amount is fully offset. Grantor and Grantee agree that this Section 7(C)(2) shall survive the termination of the franchise granted by this Ordinance and remain binding on the parties until such time as the Prepaid Amount is fully offset against any PEG grant obligation Grantee may have under this Ordinance or a State franchise.

3. Payments pursuant to this Section 7(C) shall be made payable to the Grantor or Designated Entities designated by the Grantor for such payments at such times as franchise fee payments are due pursuant to Section 15. The Grantor agrees that grants provided pursuant to this Section 7(C) shall be used solely for capital expenditures in support of PEG access facilities, unless otherwise permitted under applicable federal and state law.

D.C. Fiber Links

1. Grantee shall continue to provide and maintain all existing links and equipment provided as of November 1, 2006 by Grantee and utilized to transport PEG programming. The above will include a modulator at each origination point, transmission of signals to the headend, translation to cable channel, and transmission throughout Grantee's system on dedicated municipal access channel capacity, to the extent such equipment and services are provided by Grantee as of November 1, 2006.

2. Grantee shall provide Grantor with backbone fiber and fiber to individual sites designated by Grantor for its internal, non-commercial use, provided that Grantee's obligation pursuant to this Section 7(D)(2) shall not exceed \$500,000. The \$500,000 benefit provided in this Section 7(D) (2) shall be for new or additional work performed after the effective date of this Franchise by Grantee on an incremental cost basis. Grantor shall designate such individual sites within 1 year of the effective date of this Amendment. Parties shall cooperate for purposes of allowing Grantor's use of available excess fiber in the existing Cable System. Said fiber shall not be considered available for Grantor's use until reasonable terms for the use are approved by Grantor and Grantee. Such approval shall not be unreasonably withheld or delayed.

E. Reservation of Rights.

1. Notwithstanding any other provision in this Section 7, if a person provides the Grantor notice pursuant to the Digital Infrastructure and Video Competition Act of 2006 (the "State Franchise Act") that it seeks to provide video service in the franchise area pursuant to or applies for and is granted a state franchise, or if Grantor grants a person a franchise to provide video service, including, but not limited to, cable service, in the

City, Grantee shall not be required to provide PEG channels or support, or I-Net support, in excess of that which such person is required to provide pursuant to its state franchise (including any provisions grandfathering any rights or obligations of either party) or franchise granted by the Grantor as of the effective date of such franchise.

2. If Grantee exercises any right it may have pursuant to the State Franchise Act to terminate its franchise and written acceptance of the obligations under this Ordinance and provide video service in the franchise area pursuant to a state franchise (including any provisions grandfathering any rights or obligations of either party), or if the Grantor exercises any right it has to terminate this Ordinance and require Grantee to obtain a state franchise in order to continue to provide video service in the franchise area, nothing in this Ordinance shall be interpreted to require Grantee to provide PEG channels or support, or I-Net support, in excess of that Grantee would be required to provide pursuant to the State Franchise Act.

SECTION 8. Service Drops to Schools and Public Buildings

Grantee shall provide one drop and one outlet at no cost for installation, maintenance and basic service to all municipal buildings and public schools. Drops in excess of one hundred fifty (150) feet in length, or underground drops, may be charged at cost for time and materials. Any additional outlets and installation and maintenance of same shall be at the sole cost of the respective public entity. Some portions of basic service may be withheld if not allowed by copyright or contractual obligations of Grantee to its suppliers.

SECTION 9. Transitional Period for Community Access

- A. Grantee will continue to provide all existing local production facilities and equipment to individuals and groups for the purpose of producing programming

for the community access channel for a period of 18 months after the effective date of this amendment to the Ordinance.

- B. Grantee shall exercise no editorial control over the editorial content of any programming on the community, educational or municipal access channels, except that Grantee is not prohibited by the terms of this extension and renewal from refusing to transmit any obscene or otherwise illegal material, or any material the transmission of which would subject Grantee to civil or criminal liability.

SECTION 10. Mutual Release

Grantor and Grantee mutually release each other from any claims actually known as of the effective date of this Ordinance Amendment. This release expressly includes, but is not limited to, a mutual release of any claims the parties may have had against each other related to: (a) any transfer of the franchise or any change of control of the ultimate parent of the Grantee; (b) any breach of the December 18, 2000 Settlement Agreement between the Grantor and Grantee regarding Grantee's rebuild of its cable system; or (c) the Grantor's formal renewal administrative proceeding commenced on January 31, 2003, and any matters that have been or could have been the subject matter thereof.

SECTION 11. Maps of Installed Facilities

- A. Grantee shall maintain, on its premises, an accurate set of maps showing all cable television equipment installed in the streets, alleys and public places of the City. Such plans shall be made available for inspection by City officials on request to the Drafting/Design Department during normal business hours (8:30 AM through 4:40 PM, Monday through Friday).
- B. Grantee shall also furnish to Grantor copies of cable locator books as they are periodically revised. These documents will be accompanied by a disclaimer

recommending direct contact with Grantee for most current information on cable television equipment locations.

- C. Grantee and Grantor shall actively cooperate with other users of the public rights-of-way to prevent accidental damage from occurring as a result of subsequent construction.

SECTION 12. Provision of Reports

Grantee shall, upon request, prepare and furnish to the City Manager at the times and in the form and content prescribed by said officer, such reports with respect to its operation, affairs transactions or property, as may be reasonably necessary or appropriate to the performance of any of the rights, functions or duties of the City or any of its officers in connection with the franchise. Reports furnished to any other governmental agency shall be made available for inspection or review on request.

SECTION 13. System Outage and Subscriber Complaint Service; Notices to Subscribers

- A. Grantee will maintain a subscriber complaint service operated from Grantee's main office, and qualified technicians will be permanent members of Grantee's staff.
- B. Routine handling of customer service requests will be the responsibility of local staff as follows:
 - 1. A call involving loss of reception on all channels will be dispatched to the field within twenty-four (24) hours via two-way radio. If the loss of reception on all channels affects five (5) or more customers, at any time of the day or night, repairs will be commenced promptly and pursued diligently. Total loss of reception involving less than five (5) customers will

be corrected on the same day received, if so requested by subscriber, except if reported after 2:00 p.m., in which case correction may be postponed to the following day. The majority of all outages (total loss of reception on all channels) will be corrected in four (4) to eight (8) hours or less.

2. The majority of calls involving degraded reception or single outage will be handled on the same business day if received prior to 2:00 p.m. In all cases, such service calls will be handled no later than the following day.
3. Requests for repairs made after hours or on weekends shall be answered by an answering service or staff. Outage calls affecting five (5) or more subscribers will be referred promptly to the standby technician for resolution in accordance with subparagraph (B) (1) of this paragraph. Calls involving degraded service will be reported by the answering service the next day. The staff will call the customer to schedule service calls in accordance with subparagraph (2) above.
4. Customers shall be notified by Grantee of Service and Complaint policy at the time of initial installation and at least yearly thereafter. Such notification shall include: Grantee's telephone number for requesting service, hours and conditions of service, and procedure for registering complaints for unsatisfactory service. Grantee shall also annually notify subscribers of Grantee's policy regarding Senior Citizen discounts for basic service.

C. Grantee shall maintain a data base or "log", listing date of consumer complaints, identifying the subscriber and describing the nature of the complaint, and when and what action was taken by the Grantee in response thereto. This log shall be kept at Grantee's local office for the term of this extension and renewal, and shall

be available for inspection by the City Manager or any other duly authorized representative of the City during regular business hours without further notice.

- D. In the event of service interruption of more than twenty-four (24) consecutive hours, or unresolved service complaint not caused by the subscriber resulting in a degraded signal for more than twenty-four (24) consecutive hours, Grantee shall, at the request of the subscriber, credit the subscriber's account on a pro rata basis as an offset to the monthly billing charge. Grantee may, if the Grantee deems appropriate, credit the subscriber's account for the full period of outages of less than twenty-four (24) hours on a case-by-case basis. The subscriber must allow, within a reasonable time, the service technicians access to the problem if located on the subscriber's property, or forfeit any claim for refund due for service outage.
- E. Grantee will not be responsible for problems created by subscribers or for problems caused by subscriber-owned equipment.
- F. The service standards listed in this section are meant as guidelines and should be adhered to in at least eighty percent (80%) of cases under normal conditions. Neither isolated cases of non-conformance nor failure to meet these standards during extreme conditions shall constitute violations of the terms of this extension and renewal.

SECTION 14. Term

The term of this franchise extension and renewal shall be to December 31, 2016, unless either Grantor or Grantee exercises its right to terminate this Ordinance earlier as permitted by the State Act.

SECTION 15. Franchise Fees

Grantee shall pay to Grantor an annual franchise fee, in such amounts, at such times and in such manner specified by Chapter 15.28, Part 7 of the San Jose Municipal Code, according to the following schedule:

- A. Grantee shall pay a franchise of five percent (5%) of gross revenues.
- B. For the purpose of this Section, "gross revenues" shall have the meaning set forth in Section 5860 of the State Franchise Act (Public Utilities Code Section 5860).

SECTION 16. Reservation of Rights

Grantor and Grantee reserve all rights each possesses under applicable law that are not expressly waived herein, including, but not limited to, any rights the parties may have under the State Franchise Act to terminate the franchise granted pursuant to this Ordinance and any rights Grantee has to obtain a state franchise to continue to provide video service in the franchise area. Moreover, Grantor and Grantee reserve all rights each may possess pursuant to any General Order(s) and rules the California Public Utilities Commission may adopt implementing the State Act before or after the effective date of this amendment to the Ordinance. Notwithstanding any provisions to the contrary under local law, including Chapter 15.28 of the San Jose Municipal Code, nothing herein shall be interpreted to require Grantee to comply with any amendments to the Cable Ordinance or any other ordinances Grantor may adopt after the effective date of this Ordinance except to the extent expressly permitted in Section 3(C) of this Ordinance.

SECTION 17. Severability

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held illegal, invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof,

Grantor hereby declares that it would have passed this Ordinance irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid or unconstitutional. The invalidity of any portion of this Ordinance shall not abate, reduce or otherwise affect any consideration or other obligation required of Grantee by the franchise granted hereunder.

SECTION 18. Notices

Every direction, notice or order to be served upon Grantee shall be sent by certified mail to the local office. Every notice to be served upon Grantor shall be delivered, or sent by certified mail to the City Clerk.

SECTION 19. Effective Date

This ordinance shall be in force and take effect thirty-one (31) days from and after the date of its final adoption, providing the Grantee has complied with the provisions of Section 5(B) of this extension and renewal.

RD:WHH:ED
11/14/06

PASSED FOR PUBLICATION of title this _____ day of _____, 2006, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

RON GONZALES
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk

RD:WHH:ED
11/14/06

ACCEPTANCE OF EXTENSION OF FRANCHISE

Pursuant to Section 5(b) of the recently passed Ordinance Approving An Amendment Of The Terms Of Ordinance No. 22128, Granting A Nonexclusive Cable Television Franchise To Comcast Of California, Successor To Gill Industries, Inc., Dba Gillcable, Renewing, Amending And Extending The Franchise, Comcast of California hereby expressly accepts in writing the extension and renewal of the franchise upon the terms and conditions set forth in said granting Ordinance, including those incorporated by reference therein, and does hereby agree to be bound by and comply with, and do all things required of the grantee by, said granting Ordinance and Chapter 15.28 of the San Jose Municipal Code.

COMCAST OF CALIFORNIA, INC.

By: _____

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Agreement") is entered into between the City of San Jose ("City") and Comcast of California II, L.L.C. ("Comcast").

WHEREAS, on January 26, 2005, the City filed a breach of contract action against Comcast entitled *City of San Jose v. Comcast of California II, LLC, et al.* (Case No. 1-05-CV-034650), Santa Clara County Superior Court of the State of California, County of Santa Clara, in which the City alleges that it is entitled to damages arising from Comcast's delay in rebuilding a portion of the cable system (the "City Action");

WHEREAS, on September 20, 2004, Comcast filed an appeal entitled *Comcast of California II, L.L.C. v. City of San Jose, California* (No. 04-16968), United States Court of Appeals for the Ninth Circuit, appealing the Northern District of California's dismissal of Comcast's constitutional and statutory challenges to the City's formal renewal administrative proceeding (the "Comcast Action"); and

WHEREAS, there is now a desire to resolve the differences raised by the claims asserted in the City Action and Comcast Action, thereby bringing an end to the Actions and the issues raised in both;

THEREFORE, in consideration of the execution of this Agreement, the releases, satisfactions and promises made herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each party to this Agreement, it is hereby agreed as follows:

1. Payment by Comcast and Dismissal of City Action. In full settlement of the claims giving rise to the City Claim, Comcast shall pay \$1 million and an additional \$1 million for use for any Public, Educational or Government (PEG) purposes, for a total payment to the City of \$2 million, by checks to the City on or before December 21, 2006. This payment shall satisfy any claim by the City against Comcast for any damages the City alleges occurred as a result of Comcast's Phase 1 rebuild of its cable system, which damages are detailed in, and are the subject of, the City Action, and any claims for attorneys' fees or any other obligation related to the City Action. After Comcast makes the payment required by this Paragraph 1, the City shall execute and file a Notice of Dismissal that will dismiss, with prejudice, the City Action.

2. Withdrawal of Comcast Action. In full settlement of claims giving rise to the Comcast Action, the City agrees that it: (a) will bear its own costs, including attorneys' fees, related to the Comcast Action and waives any claims against Comcast for such costs; (b) will jointly file with Comcast a motion to withdraw the Comcast Action wherein the parties will stipulate that each shall bear its own costs related to the Comcast Action; and (c) will terminate the formal renewal administrative proceeding it commenced on January 31, 2003 and amend Ordinance No. 22128 pursuant to which the City granted a cable television franchise originally to Gill Industries, Inc. dba Gillcable, and under which Comcast now operates, by an ordinance in the form, and containing the terms and conditions, set forth in Exhibit A to this Agreement. Comcast will accept the Amended Franchise at the earliest possible time but not later than December 8, 2006.

3. Mutual Releases. The following releases shall be effective upon the completion of the actions required by Paragraphs 1 and 2.

(a) The City, on behalf of itself, its affiliates, departments, successors and assigns, for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby absolutely, fully, and forever release, relieve, remise, and discharge to the date of this release Comcast, its agents, employees,

officers, directors, attorneys, parents or affiliates, and successors and assigns, of and from the causes of action, claims, controversy, demand, damages, costs, interest, and penalties arising from the specific facts and circumstances alleged in the City Action the City filed against the Comcast.

(b) Comcast, on behalf of itself, its agents, employees, officers, directors, attorneys, parents or affiliates, and successors and assigns, for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby absolutely, fully, and forever release, relieve, remise, and discharge to the date of this release the City, its affiliates, departments, successors and assigns, of and from the causes of action, claims, controversy, demand, damages, costs, interest, and penalties arising from the specific facts and circumstances alleged in the Comcast Action that Comcast filed against the City.

The above-mentioned releases do not extend to any rights or remedies that the parties may have under this Agreement. The matters released herein, which consist of the City Action and the Comcast Action, are collectively referred to hereinafter as the "Released Matters."

4. Waiver of Section 1542. It is the intention of the parties that this Agreement shall be effective as a full and final accord and satisfaction, and release of each and every Released Matter. In furtherance of this intention, they acknowledge that they are familiar with Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The releasing parties hereby waive and relinquish every right or benefit which they have or may have under Section 1542 of the California Civil Code, or any similar statute of any state or jurisdiction, to the full extent that they may lawfully waive such right or benefit with regard to the subject matter of the Agreement, if Section 1542 applies. In connection with such waiver and relinquishment, the releasing parties acknowledge that they are aware that they may later discover facts in addition to or different from those which they now know or believe to be true with respect to the Released Matters, but that it is their intention hereby fully, finally, and forever to settle and release the Released Matters, whether or not other facts or legal rights are known or unknown, suspected or unsuspected, now exist, may exist in the future or previously existed between each releasing party and those persons granted releases in relation to the Released Matters. In furtherance of such intention, the releases given herein shall be, and shall remain, in effect as a full and complete release of the Released Matters, notwithstanding the discovery or existence of any such additional or different facts.

5. Successors in Interest. The parties hereto hereby agree that this Agreement shall be binding upon, and inure to the benefit of, the parties and each of them, and, as applicable, their heirs, executors, administrators, dependents, predecessors, successors, subsidiaries, divisions, alter egos, affiliates and related entities, and their past and present officers, board members, directors, partners, employees, attorneys, assigns, agents, representatives, and any or all of them.

6. No Assignment. Each party warrants and represents that it has not assigned or transferred to any other person any of the claims, causes of action, or other matters that are released by this Agreement.

7. Entire Agreement. This Agreement contains the entire agreement and understanding concerning the subject matter hereof, and supersedes and replaces all prior negotiations, proposed agreements and agreements, written or oral. Each of the parties to this Agreement acknowledges that no other party to this Agreement, nor any agent or attorney of any such party, has made any promise, representation or warranty whatever, express or implied, not contained in this Agreement, to induce it to

execute this Agreement. The parties further acknowledge that they are not executing this Agreement in reliance on any promise, representation or warranty not contained in this Agreement. It is expressly understood and agreed that this Agreement may not be altered, amended, modified or otherwise changed in any respect, except by a writing duly executed by the parties, their successors or assigns in interest, or their authorized representatives.

8. Advice of Counsel. The City and Comcast represent that they have been represented by independent legal counsel of their own choice, throughout all of the negotiations that preceded the execution of this Agreement and that they have executed this Agreement with the consent and upon the advice of such independent legal counsel, or that they have had the opportunity to seek such consent and advice. The City and Comcast acknowledge that they have read this Agreement and assent to all the terms and conditions contained herein without any reservation whatsoever and that they have had, or have had the opportunity to have had, the same explained to them by their own counsel, who have answered any and all questions which have been asked of them, or which could have been asked of them, with regard to the meaning of any of the provisions hereof.

9. Governing Law. This Agreement shall in all respects be interpreted, enforced, and governed by and under the internal laws of the State of California as applied to contracts fully executed and performed in California.

10. Counterparts/Fax Signatures. This Agreement may be executed and exchanged in one or more duplicate original or facsimile counterparts, but it is understood and agreed that there is only one Agreement, and the signing of this document in duplicate original or facsimile counterparts does not alter, nor shall be construed to alter, that fact. Photocopies of this Agreement may be used for all purposes as originals, except that in the event of any disparity between such a copy and an original, the original shall control.

11. Construction. The headings of the sections herein are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement. It is understood and acknowledged that this Agreement shall not be construed in favor of or against any party hereto by reason of the extent to which any party or its counsel has participated in the drafting of this Agreement.

12. Non-Admission of Liability. This Agreement shall not in any way be construed as an admission by any party, and all parties specifically disclaim any liability in the aforementioned Comcast Action or City Action. Further, it is understood and agreed that this Agreement constitutes a compromise of disputed claims, is made without regard to the merits or lack of merit of any of the claims asserted by any party against the other, whereas the parties expressly deny any liability from one to the other, and neither this Agreement nor any consideration given hereunder, concurrently herewith, or pursuant hereto is to be advocated or construed as an admission of any liability, express or implied, on the part of any of the parties hereto, and each party hereto specifically disclaims any liability to or for wrongful acts against the other party hereto.

13. Authorization to Execute Agreement. Each individual who executes this Agreement on behalf of any party hereby represents and warrants that he or she does so with the knowledge and express approval and authorization of the party or parties on whose behalf he or she executes the Agreement; that in the event of a breach of the warranty of authority contained in this paragraph, he or she will be personally liable; and he or she hereby submits to and accepts the jurisdiction of the Santa Clara Superior Court to adjudicate any claims for a breach of the warranties of authority contained in this paragraph.

14. Time is of the Essence. The parties agree and acknowledge that in connection with this Agreement and the obligations thereunder, time is of the essence.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

City of San Jose, California

Dated: November _____, 2006

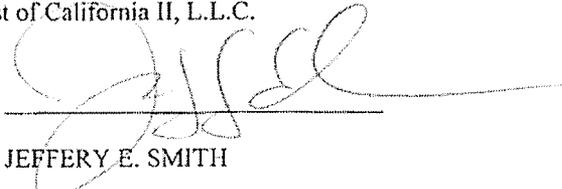
By: _____

Name: RICHARD DOYLE

Title: City Attorney

Comcast of California II, L.L.C.

Dated: November 17, 2006

By:  _____

Name: JEFFERY E. SMITH

Title: Vice President and Deputy General Counsel

Exhibit A

RD:WHH:ED
11/14/06

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAN JOSE
APPROVING AN AMENDMENT OF THE TERMS OF
ORDINANCE NO. 22128, GRANTING A NONEXCLUSIVE
CABLE TELEVISION FRANCHISE TO COMCAST OF
CALIFORNIA, SUCCESSOR TO GILL INDUSTRIES, INC.,
DBA GILLCABLE, RENEWING, AMENDING AND
EXTENDING THE FRANCHISE

WHEREAS, the City of San Jose ("City") granted to Gill Industries, Inc., dba Gillcable, that certain nonexclusive cable television franchise under Ordinance No. 22128, adopted by the City Council on or about December 17, 1985 (the "Franchise"), which Franchise, by its own terms, was set to expire on December 31, 2000; and

WHEREAS, the City and Comcast of California II, LLC ("Comcast"), the successor-in-interest to Gill Industries, Inc. under the Franchise, have participated in negotiations pertaining to the renewal of a nonexclusive cable franchise; and

WHEREAS, the Digital Infrastructure and Video Competition Act of 2006 (the "State Franchise Act") is to go into effect on January 1, 2007, which will allow cable providers to obtain a state franchise to provide cable service in California; and

WHEREAS, the Franchise has been extended on several occasions but is now expired; and

WHEREAS, Comcast and City desire to have an existing cable franchise in place by December 31, 2006; and

WHEREAS, the City has determined that this Ordinance serves the public interest;

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NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Part A

SECTION 1. The terms of the Franchise granted by the City under Ordinance No. 22128, are hereby amended and restated as provided herein and shall be in effect from the date of acceptance of this Franchise by Comcast until December 31, 2016, unless either Grantor or Grantee exercises its right to terminate this Ordinance earlier as permitted by the State Franchise Act .

Part B

SECTION 1. That, subject to the provisions of this Ordinance, the provisions of the San Jose Municipal Code, and the provisions of the Charter of the City of San Jose, the City of San Jose (hereinafter "Grantor") does hereby renew the nonexclusive franchise of Comcast of California II, LLC, successor to Gill Industries, Inc., (hereafter "Grantee") to operate and carry on within the City of San Jose the business of providing cable service over a cable system.

SECTION 2. Citation of Ordinance

This ordinance may be cited as the "Comcast Franchise Ordinance."

SECTION 3. Rules of Construction

This ordinance shall be construed liberally in order to effectuate its purposes. Unless otherwise specifically prescribed in this ordinance, the following provisions shall govern its interpretation and construction:

- A. Time is of the essence of this ordinance. Grantee shall not be relieved of its obligation to comply promptly with any provision of this ordinance by any failure of Grantor to enforce prompt compliance with any of its provisions.

- B. Any right or power conferred, or duty imposed upon any officer, employee, department or Commission of Grantor is subject to transfer by operation of law to any other officer, employee department or Commission of Grantor.

- C. This Ordinance shall not be construed to limit or restrict the otherwise lawful public safety right of way authority of the Grantor to enact generally applicable laws. In particular, this ordinance does not relieve Grantee of the obligation to comply with any lawful exercise of Grantor's power to enact generally applicable public safety requirements related to street work, street excavation permits, undergrounding of utility facilities, or the use, removal or relocation of property in the streets.

- D. Provisions of this ordinance shall be construed in accordance with Chapter 15.28 of the San Jose Municipal Code, hereafter "Chapter 15.28." To the extent that the provisions of this Ordinance and the provisions of Chapter 15.28 conflict, the terms and provisions of this granting Ordinance shall control.

SECTION 4. Purpose and Intent

It is the purpose and intent of this ordinance to approve the extension and renewal of Grantee's nonexclusive franchise to engage in the business of operating a Cable Communication System (hereafter "cable system") in the City upon terms and conditions of Chapter 15.28.

SECTION 5. Conditions Precedent

- A. Prior to consideration of this ordinance by the City Council, Grantee shall submit an application for extension and renewal of franchise according to the requirements of Section 15.28.210 of Chapter 15.28. Grantor acknowledges that the foregoing condition precedent has been satisfied.

- B. This ordinance shall become effective on the thirty-first (31st) day after the passage of this ordinance provided that, prior to such date, Grantee has 1) filed with the City Clerk a written instrument, in form satisfactory to the City Attorney, addressed to the Grantor accepting the extension and renewal of franchise as required by Section 15.28.310 of Chapter 15.28; 2) filed with the City Clerk a corporate surety bond or other mutually acceptable security in the principle sum of Fifty Thousand Dollars (\$50,000.00) as required by Section 15.28.320 of Chapter 15.28; and 3) presented evidence to the City Clerk, satisfactory to the City Attorney, of the insurance required under Section 15.28.330 of Chapter 15.28.
- C. Notwithstanding Section 5(B), this Ordinance shall not become effective prior to: 1) the date Grantor terminates the formal franchise renewal proceeding it commenced on or about January 31, 2003; and 2) the effective date of a settlement agreement between Grantor and Grantee that provides a final resolution of the liquidated damages claim Grantor filed against Grantee in the Superior Court of California, County of Santa Clara on January 26, 2005.

SECTION 6. System Expansion

- A. Grantee shall provide cable television service to all residential dwelling units located within the franchise area as provided in this franchise and the Settlement Agreement between the City and Grantee, as successor to Heritage Cablevision of California, Inc., dated December 18, 2000 (the "December 18, 2000 Settlement Agreement").
- B. Grantee shall complete construction and offer service to all dwelling units, including apartments, condominiums and mobile home parks in the City without regard to the number or percentage of potential subscribers in a particular apartment or condominium building, or mobile home park. Provided, however, that nothing in this section shall require Grantee to install service facilities or

otherwise make service available if:

1. An owner, manager, lessee, principal occupant, or other person or entity with apparent authority over a given dwelling unit (or group of dwelling units) refuses to allow access upon reasonable terms or otherwise indicates a desire not to be served;
 2. A dwelling unit (or group of dwelling units) is already served or under contract to be served by another multi-channel television service or other form of subscription television service; or
 3. The cost of installing service facilities for a given dwelling unit (or group of dwelling units) exceeds Four Hundred Dollars (\$400.00) per unit.
- C. In any case where Grantee is not required to install service facilities or provide service due to excessive cost as defined in subparagraph (3) above, service facilities shall nonetheless be provided by Grantee if the person or entity with apparent authority over the dwelling unit (or group of dwelling units) involved in a given case agrees in writing to pay all costs associated with installing service facilities which exceed Four Hundred Dollars (\$400.00) per dwelling unit.

SECTION 7. PEG Access and Institutional Network Obligations

A. PEG Channels

1. The Grantee shall provide the Grantor, if requested, with 5 public or educational or government ("PEG") access channels, although Grantee reserves the right to utilize for its own purposes any channels or portion of such channels not utilized for PEG purposes.

2. The Grantee shall provide the Grantor one additional PEG channel (for a maximum of 6) when the nonduplicated locally produced video programming televised on a given channel exceeds 56 hours per week as measured on a quarterly basis. The additional channel shall not be used for any purpose other than to continue programming additional government, education, or public access television. For the purposes of this Section, "locally produced video programming" means programming produced or provided by any local resident, the Grantee, or any local public or private agency that provides services to residents of the franchise area; or any transmission of a meeting or proceeding of any local, state, or federal governmental entity.

3. No time shall be used on PEG channels to cablecast "commercial matter." The term "commercial matter" shall mean time used to sell a product or service. Also, neither the Grantor nor any entity designated by the Grantor ("Designated Entity") to manage PEG channels shall sell time to users in return for the right to cablecast programming, but fees may be charged to defray PEG costs. The foregoing shall not be interpreted to prohibit sponsorship announcements comparable to those that might be carried on a noncommercial broadcast station, or to prevent schools from charging course fees, and then delivering the course via the PEG channels, or to prohibit solicitation for financial support for the provision of PEG access by Grantor or a Designated Entity and for charitable, educational or governmental purposes.

B. Capital Grant for Access Facilities

1. The Grantee shall pay to Grantor an annual capital grant of one percent (1%) of gross revenues, as defined in Section 15(C), from the effective

date of this amendment until the expiration of the term of this franchise. Such capital grant shall be subject to the offset set forth in Section 7(C)(2) below.

2. Within 30 days after the effective date of this amendment to the Ordinance, the Grantor may request a partial prepayment of the annual capital grant set forth in Section 7(C)(1) in an amount not to exceed \$1,250,000 (the "Prepaid Amount"). Grantee shall pay such Prepaid Amount within 60 days after Grantor's request. Thereafter, Grantee shall offset \$125,000 per year against the annual capital grant payable pursuant to Section 7(C)(1) (or, if applicable, pursuant to any federal or state certificate, franchise or other authority subsequently awarded or granted to Grantee with respect to the franchise area) until the Prepaid Amount is fully offset. Grantor and Grantee agree that this Section 7(C)(2) shall survive the termination of the franchise granted by this Ordinance and remain binding on the parties until such time as the Prepaid Amount is fully offset against any PEG grant obligation Grantee may have under this Ordinance or a State franchise.
3. Payments pursuant to this Section 7(C) shall be made payable to the Grantor or Designated Entities designated by the Grantor for such payments at such times as franchise fee payments are due pursuant to Section 15. The Grantor agrees that grants provided pursuant to this Section 7(C) shall be used solely for capital expenditures in support of PEG access facilities, unless otherwise permitted under applicable federal and state law.

C. Fiber Links

1. Grantee shall continue to provide and maintain all existing links and equipment provided as of November 1, 2006 by Grantee and utilized to

transport PEG programming. The above will include a modulator at each origination point, transmission of signals to the headend, translation to cable channel, and transmission throughout Grantee's system on dedicated municipal access channel capacity, to the extent such equipment and services are provided by Grantee as of November 1, 2006.

2. Grantee shall provide Grantor with backbone fiber and fiber to individual sites designated by Grantor for its internal, non-commercial use, provided that Grantee's obligation pursuant to this Section 7(D)(2) shall not exceed \$500,000. The \$500,000 benefit provided in this Section 7(D) (2) shall be for new or additional work performed after the effective date of this Franchise by Grantee on an incremental cost basis. Grantor shall designate such individual sites within 1 year of the effective date of this Amendment. Parties shall cooperate for purposes of allowing Grantor's use of available excess fiber in the existing Cable System. Said fiber shall not be considered available for Grantor's use until reasonable terms for the use are approved by Grantor and Grantee. Such approval shall not be unreasonably withheld or delayed.

E. Reservation of Rights.

1. Notwithstanding any other provision in this Section 7, if a person provides the Grantor notice pursuant to the Digital Infrastructure and Video Competition Act of 2006 (the "State Franchise Act") that it seeks to provide video service in the franchise area pursuant to or applies for and is granted a state franchise, or if Grantor grants a person a franchise to provide video service, including, but not limited to, cable service, in the City, Grantee shall not be required to provide PEG channels or support, or I-Net support, in excess of that which such person is required to provide pursuant to its state franchise (including any provisions grandfathering any

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rights or obligations of either party) or franchise granted by the Grantor as of the effective date of such franchise.

2. If Grantee exercises any right it may have pursuant to the State Franchise Act to terminate its franchise and written acceptance of the obligations under this Ordinance and provide video service in the franchise area pursuant to a state franchise (including any provisions grandfathering any rights or obligations of either party), or if the Grantor exercises any right it has to terminate this Ordinance and require Grantee to obtain a state franchise in order to continue to provide video service in the franchise area, *nothing in this Ordinance shall be interpreted to require Grantee to provide PEG channels or support, or I-Net support, in excess of that Grantee would be required to provide pursuant to the State Franchise Act.*

SECTION 8. Service Drops to Schools and Public Buildings

Grantee shall provide one drop and one outlet at no cost for installation, maintenance and basic service to all municipal buildings and public schools. Drops in excess of one hundred fifty (150) feet in length, or underground drops, may be charged at cost for time and materials. Any additional outlets and installation and maintenance of same shall be at the sole cost of the respective public entity. Some portions of basic service may be withheld if not allowed by copyright or contractual obligations of Grantee to its suppliers.

SECTION 9. Transitional Period for Community Access

- A. Grantee will continue to provide all existing local production facilities and equipment to individuals and groups for the purpose of producing programming for the community access channel for a period of 18 months after the effective date of this amendment to the Ordinance.

- B. Grantee shall exercise no editorial control over the editorial content of any programming on the community, educational or municipal access channels, except that Grantee is not prohibited by the terms of this extension and renewal from refusing to transmit any obscene or otherwise illegal material, or any material the transmission of which would subject Grantee to civil or criminal liability.

SECTION 10. Mutual Release

Grantor and Grantee mutually release each other from any claims actually known as of the effective date of this Ordinance Amendment. This release expressly includes, but is not limited to, a mutual release of any claims the parties may have had against each other related to: (a) any transfer of the franchise or any change of control of the ultimate parent of the Grantee; (b) any breach of the December 18, 2000 Settlement Agreement between the Grantor and Grantee regarding Grantee's rebuild of its cable system; or (c) the Grantor's formal renewal administrative proceeding commenced on January 31, 2003, and any matters that have been or could have been the subject matter thereof.

SECTION 11. Maps of Installed Facilities

- A. Grantee shall maintain, on its premises, an accurate set of maps showing all cable television equipment installed in the streets, alleys and public places of the City. Such plans shall be made available for inspection by City officials on request to the Drafting/Design Department during normal business hours (8:30 AM through 4:40 PM, Monday through Friday).
- B. Grantee shall also furnish to Grantor copies of cable locator books as they are periodically revised. These documents will be accompanied by a disclaimer recommending direct contact with Grantee for most current information on cable television equipment locations.

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- C. Grantee and Grantor shall actively cooperate with other users of the public rights-of-way to prevent accidental damage from occurring as a result of subsequent construction.

SECTION 12. Provision of Reports

Grantee shall, upon request, prepare and furnish to the City Manager at the times and in the form and content prescribed by said officer, such reports with respect to its operation, affairs transactions or property, as may be reasonably necessary or appropriate to the performance of any of the rights, functions or duties of the City or any of its officers in connection with the franchise. Reports furnished to any other governmental agency shall be made available for inspection or review on request.

SECTION 13. System Outage and Subscriber Complaint Service; Notices to Subscribers

- A. Grantee will maintain a subscriber complaint service operated from Grantee's main office, and qualified technicians will be permanent members of Grantee's staff.
- B. Routine handling of customer service requests will be the responsibility of local staff as follows:
 - 1. A call involving loss of reception on all channels will be dispatched to the field within twenty-four (24) hours via two-way radio. If the loss of reception on all channels affects five (5) or more customers, at any time of the day or night, repairs will be commenced promptly and pursued diligently. Total loss of reception involving less than five (5) customers will be corrected on the same day received, if so requested by subscriber, except if reported after 2:00 p.m., in which case correction may be postponed to the following day. The majority of all outages (total loss of

reception on all channels) will be corrected in four (4) to eight (8) hours or less.

2. The majority of calls involving degraded reception or single outage will be handled on the same business day if received prior to 2:00 p.m. In all cases, such service calls will be handled no later than the following day.
 3. Requests for repairs made after hours or on weekends shall be answered by an answering service or staff. Outage calls affecting five (5) or more subscribers will be referred promptly to the standby technician for resolution in accordance with subparagraph (B) (1) of this paragraph. Calls involving degraded service will be reported by the answering service the next day. The staff will call the customer to schedule service calls in accordance with subparagraph (2) above.
 4. Customers shall be notified by Grantee of Service and Complaint policy at the time of initial installation and at least yearly thereafter. Such notification shall include: Grantee's telephone number for requesting service, hours and conditions of service, and procedure for registering complaints for unsatisfactory service. Grantee shall also annually notify subscribers of Grantee's policy regarding Senior Citizen discounts for basic service.
- C. Grantee shall maintain a data base or "log", listing date of consumer complaints, identifying the subscriber and describing the nature of the complaint, and when and what action was taken by the Grantee in response thereto. This log shall be kept at Grantee's local office for the term of this extension and renewal, and shall be available for inspection by the City Manager or any other duly authorized representative of the City during regular business hours without further notice.

- D. In the event of service interruption of more than twenty-four (24) consecutive hours, or unresolved service complaint not caused by the subscriber resulting in a degraded signal for more than twenty-four (24) consecutive hours, Grantee shall, at the request of the subscriber, credit the subscriber's account on a pro rata basis as an offset to the monthly billing charge. Grantee may, if the Grantee deems appropriate, credit the subscriber's account for the full period of outages of less than twenty-four (24) hours on a case-by-case basis. The subscriber must allow, within a reasonable time, the service technicians access to the problem if located on the subscriber's property, or forfeit any claim for refund due for service outage.
- E. Grantee will not be responsible for problems created by subscribers or for problems caused by subscriber-owned equipment.
- F. The service standards listed in this section are meant as guidelines and should be adhered to in at least eighty percent (80%) of cases under normal conditions. Neither isolated cases of non-conformance nor failure to meet these standards during extreme conditions shall constitute violations of the terms of this extension and renewal.

SECTION 14. Term

The term of this franchise extension and renewal shall be to December 31, 2016, unless either Grantor or Grantee exercises its right to terminate this Ordinance earlier as permitted by the State Act.

SECTION 15. Franchise Fees

Grantee shall pay to Grantor an annual franchise fee, in such amounts, at such times and in such manner specified by Chapter 15.28, Part 7 of the San Jose Municipal Code, according to the following schedule:

- A. Grantee shall pay a franchise of five percent (5%) of gross revenues.
- B. For the purpose of this Section, "gross revenues" shall have the meaning set forth in Section 5860 of the State Franchise Act (Public Utilities Code Section 5860).

SECTION 16. Reservation of Rights

Grantor and Grantee reserve all rights each possesses under applicable law that are not expressly waived herein, including, but not limited to, any rights the parties may have under the State Franchise Act to terminate the franchise granted pursuant to this Ordinance and any rights Grantee has to obtain a state franchise to continue to provide video service in the franchise area. Moreover, Grantor and Grantee reserve all rights each may possess pursuant to any General Order(s) and rules the California Public Utilities Commission may adopt implementing the State Act before or after the effective date of this amendment to the Ordinance. Notwithstanding any provisions to the contrary under local law, including Chapter 15.28 of the San Jose Municipal Code, nothing herein shall be interpreted to require Grantee to comply with any amendments to the Cable Ordinance or any other ordinances Grantor may adopt after the effective date of this Ordinance except to the extent expressly permitted in Section 3(C) of this Ordinance.

SECTION 17. Severability

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held illegal, invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof, Grantor hereby declares that it would have passed this Ordinance irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid or unconstitutional. The invalidity of any portion of this

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Ordinance shall not abate, reduce or otherwise affect any consideration or other obligation required of Grantee by the franchise granted hereunder.

SECTION 18. Notices

Every direction, notice or order to be served upon Grantee shall be sent by certified mail to the local office. Every notice to be served upon Grantor shall be delivered, or sent by certified mail to the City Clerk.

SECTION 19. Effective Date

This ordinance shall be in force and take effect thirty-one (31) days from and after the date of its final adoption, providing the Grantee has complied with the provisions of Section 5(B) of this extension and renewal.

PASSED FOR PUBLICATION of title this _____ day of _____, 2006, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

RON GONZALES
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk

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11/14/06

ACCEPTANCE OF EXTENSION OF FRANCHISE

Pursuant to Section 5(b) of the recently passed Ordinance Approving An Amendment Of The Terms Of Ordinance No. 22128, Granting A Nonexclusive Cable Television Franchise To Comcast Of California, Successor To Gill Industries, Inc., Dba Gillcable, Renewing, Amending And Extending The Franchise, Comcast of California hereby expressly accepts in writing the extension and renewal of the franchise upon the terms and conditions set forth in said granting Ordinance, including those incorporated by reference therein, and does hereby agree to be bound by and comply with, and do all things required of the grantee by, said granting Ordinance and Chapter 15.28 of the San Jose Municipal Code.

COMCAST OF CALIFORNIA, INC.

By: _____