

ORDINANCE NO. 136

AN ORDINANCE AMENDING ORDINANCE NO. 136, AS AMENDED BY ORDINANCE NO. 150, 232, AND 299, GRANTING TO FALCON CABLE SYSTEMS, A FRANCHISE FOR THE USE OF STREETS, ALLEYS AND PUBLIC EASEMENTS WITHIN THE CITY OF COOS BAY FOR THE OPERATION OF A CABLE TELEVISION COMMUNICATIONS SYSTEM FOR A PERIOD ENDING JUNE 30, 2004.

The City of Coos Bay Ordains as follows:

Section 1. Franchise. The City of Coos Bay, herein called "City," grants Falcon Cable Systems Company II, L.P., herein called "Grantee," the right, privilege and franchise to erect, construct, operate and maintain in, under, upon and over the present and future streets, alleys and other public easements of the City, poles, wires, cable, underground conduits and all other necessary and convenient appurtenances, fixtures and equipment for the purposes of supplying television, radio and other cable communications services to the City and its inhabitants. [Section 1 amended by Ordinance No. 150, passed February 20, 1990; section 1 amended by Ordinance No. 232, passed July 2, 1996]

Section 2. Term. This franchise shall become effective thirty (30) days after its enactment if the Grantee shall, within said 30-day period, file with the City Recorder its unconditional written acceptance of all provisions contained in this franchise, but if the Grantee shall fail to file such unconditional written acceptance within said 30-day period, then this ordinance shall be of no further force or effect. If accepted by the Grantee as provided herein, the rights and privileges herein granted shall terminate at the end of the 30th day of June, 2004; unless this franchise shall be renewed in accordance with the procedures set forth herein, The existing franchise between the parties, scheduled to expire June 30, 1989, is hereby rescinded and repealed.

Section 3. Renewal. This franchise shall be subject to renewal according to applicable law.

Section 4. Regulation and Use of Public Easements. The relocation, installation, maintenance and improvement of poles, fixtures, cables and underground conduits, and the making of excavations and openings in public easements, shall be subject to the laws and regulations of the City as they exist or may hereafter be reasonably enacted or amended. All such poles, fixtures, cable and conduits shall be so installed as to interfere as little as possible with traffic and other public uses, and shall be maintained by the Grantee in a safe condition and in accordance with good engineering practice.

Section 5. Franchise Fee. For rights, privilege and franchise granted herein. Grantee shall pay franchise fees in the amount prescribed below. [Amended by Ordinance No. 299, passed November 7, 2000]

(1) Determination of Fee. During the term of this franchise, Grantee shall pay to the City an amount equal to five percent (5%) per year of the Grantee's annual Gross Revenues arising from or attributable to the operation of Grantee's cable communications system within the City.

(2) Payment of Fee. Said fees shall be paid quarterly not later than August 1, November 1, February 1, and May 1 for the preceding three (3) month period, ending respectively, June 30, September 30, December 31 and March 31. Not later than the date of each payment, the Grantee shall file with the City a written statement signed under penalty of perjury by an officer of the Grantee, which identifies in detail the sources and amounts of Gross Revenues received by the Grantee during the quarter for which payment is made. Such statement shall also contain a listing of beginning and ending basic service customers for the period.

(3) Acceptance by City. No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this Section.

(4) Delinquent Fees. Any franchise fees which remain unpaid after the dates specified in Section 5 (2) above shall be delinquent and shall thereafter accrue interest at an annual rate equal to the average rate of return on invested funds of the City during the period for which payment was due.

Section 6. City Use of Poles and Conduits. The City shall be permitted, without charge therefore, to attach its fire alarm, police signal wires and other wires used for municipal purposes (other than the provision of cable television services) to the poles of the Grantee in the City or to place and maintain such wires in underground conduits of the Grantee. All such wires shall be so placed that they will not interfere with the cable television service of the Grantee and they shall comply with the safety practices and shall be installed and maintained at the City's own risk and expense.

Section 7. Indemnity and Insurance. The Grantee shall indemnify and hold the City, its officers, agents and employees, harmless from all expense, damage or liability arising from any negligent act or omission or condition negligently created by the Grantee in the conduct of its operation under this franchise. The Grantee shall maintain public liability insurance naming the City as an additional insured in amounts of not less than \$1,000,000.00 for any one occurrence.

Section 8. Complaint Procedures. Procedures for the investigation and resolution of all complaints regarding the quality of service, equipment malfunctions, billing practices, procedures and problems and other similar matters shall be as follows:

(1) Local Office to Receive Complaints. Grantee shall maintain a local business office which shall be located within the corporate limits of the City of Coos Bay or the City of North Bend. The Grantee shall also maintain a listed telephone number by which complaints, requests for repairs or adjustments may be made at any time.

(2) Recordkeeping. Any customer having a complaint may contact the business office of the Grantee by telephone or in person and the Grantee shall cause the complaint to be documented in an electronic or written form; such documentation to contain the date, name, address and description of the complaint. Records of subscriber complaints shall be maintained for a period of at least one (1) year. Annually Grantee shall file with the City a summary of the complaints received during the previous 12-month period.

(3) Resolution by Grantee. After receiving a complaint, the Grantee shall proceed without delay to attempt the resolution of the complaint by supplying information, repairs or other adjustments which are reasonably called for by the complaint. In the event a person making a complaint is not satisfied with the explanation or service provided by the person assigned to handle such complaint, the Grantee shall provide the complaining party with the opportunity to discuss the problem with a person in a managerial or supervisory position who will have the duty to expedite the handling of such a problem.

(4) Referral to City. If a customer is unable to resolve the complaint or problem with the Grantee after following the foregoing procedure, such customer may then notify the City or such officer or employee of the City as may be designated by the Council. The City will then attempt to investigate and resolve such complaint or problem or take such other action as may be appropriate.

(5) Publication of Procedures. The Grantee shall have the obligation of publishing and advertising the procedures for resolving complaints provided for in this franchise at least annually in a manner likely to come to the attention of the Grantee's customers.

Section 9. Rates, Service Disconnections, and Refunds.

(1) Filing of Rates. The Grantee shall file with the City on December 31 of each year a full schedule of all customer and user rates and all other charges, including but not limited to pay TV, leased channels and discrete services, made in connection with the cable communications system.

(2) Change of Rates; Notification. Grantee shall provide the City forty five (45) days notice and its customers thirty (30) days notice prior to a change in Grantee's basic or pay TV rates and/or programming. All current rates shall be published and on file with the City.

(3) Uniform Rates. All rates must be applied fairly and uniformly within categories of similar subscribers in the franchise area.

(4) Nondiscrimination. The Grantee shall not discriminate in the assessment, levy, charge, imposition or collection of rates on the basis of age, race, creed, color, religion, national origin, sex or marital status.

(5) Disconnection for Nonpayment. In the event a customer fails to pay as properly due and owing a fee or charge, the Grantee may disconnect the customer's service outlet (s), upon giving ten (10) days notice thereof.

(6) Refunds. The Grantee shall establish and conform to the following policy regarding refunds to customers and users:

(a) If the Grantee collects a deposit, or advance charge on any service or equipment requested by a customer or user, the Grantee shall provide such service or equipment within thirty (30) days of the collection of the deposit or charge, or it shall refund such deposit or charge within five (5) days after the expiration of the 30-day period.

(b) Nothing in this Section shall be construed to relieve the Grantee of any responsibility to customers or users under any contractual agreements into which it enters with them.

(c) Nothing in this Section shall be construed to limit the Grantee's liability for damages because of its failure to provide the service for which a deposit or charge was made.

(d) In the event a customer via proper notice to the system business office terminates basic service prior to the end of a pre-paid period, the prorata portion of any pre-paid fee which represents payment for services which are no longer to be rendered shall be refunded promptly, but in no case more than thirty (30) days after the termination of the service.

(e) The Grantee shall not charge a converter security deposit greater than such converter's fair market value. Any converter security deposit collected by the Grantee shall be returned to the customer either: (a) twenty-four (24) continuous months after the installation of such converter, or (b) upon termination of service by the customer and return of such converter in an undamaged condition, with allowances for reasonable wear and tear and payment of any outstanding balance due and payable, whichever occurs first.

(f) Grantee shall upon customer request refund a prorata portion of the monthly service fee when total service to the customer's home is interrupted for a period of 24 or more consecutive hours, provided that the customer has notified the Grantee of the service interruption when it occurred.

(7) **Regulation of Rates.** The City expressly reserves the right to approve the rates which Grantee charges its customers as the City may hereafter be permitted to regulate by law.

Section 10. System Design and Construction.

(1) **Upgrade.** Grantee shall upgrade its existing cable communications system to a capacity of 450 MHZ, or 60 video channels, following the rebuild, and the system shall be designed and constructed to current performance standards and shall utilize one-way addressable technology or an operationally equivalent technology to secure services.

(2) **Specifications.** The new system will be designed and will meet general design specifications as set forth in Grantee's proposal to the City.

(3) **Services: Number of Channels.** Following the upgrade of the system, Grantee shall initially offer a twenty-seven (27) channel basic service and five (5) premium services.

(4) **Programming.** Grantee shall initially offer the following broad categories of programming services: local and distant broadcast television signals, including network affiliate and independent stations; news and public affairs; sports; children's programming; music, cultural and documentary programming; public, educational and governmental access; movies; and general entertainment programming. In addition, Grantee shall make available to customers, on an optional basis, pay-per-view (pay-per-event) programming.

(5) **Timetable for Upgrade.** Grantee shall complete the upgrade of its cable television system and make available the upgraded cable television services to all customers within thirty (30) months of the effective date of the franchise ordinance.

(6) **Emergency Alert Capability.** Grantee's cable television system shall include an Emergency Alert Capability which will permit the City, in times of emergency, to override, via means of a touch tone phone, the audio of all channels simultaneously.

(7) **Color.** Grantee's system shall distribute in color all television signals which it receives in color.

(8) Failure to Upgrade. If Grantee fails to perform as stipulated in this Section 10, this franchise shall be subject to termination on June 30, 1994 by the City, consistent with the provisions of Section 18 herein.

Section 11. Service and Technical Standards.

(1) Continuous Service. Grantee shall provide, to the extent within its control, continuous and efficient service, make repairs promptly and interrupt service only for good cause and for the shortest possible time. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the system.

(2) Signal Levels. The Grantee shall provide its customers with not less than the minimum visual signal level and other signal quality requirements as are required by applicable federal law or as may be established by the Federal Communications Commission (FCC). At least once each year during the term of this franchise, the Grantee shall conduct tests of the performance of Grantee's system to determine whether such system is delivering to customers the minimum visual signal levels and other signal quality requirements established by the FCC, and the Grantee shall provide the City with a copy - of the test results as soon as they are available, The City reserves the right to conduct its own tests and Grantee's facilities; and for such purpose, City or its designated representatives shall have the right to access such facilities for reasonable periods and at reasonable times.

(3) Availability of Service. Grantee shall provide service to any residential property within the City at standard installation rates if such property is situated within 150 feet of the Grantee's active distribution system, Provision and installation of service to residential properties which are situated greater than 150 feet from the Grantee's cable shall be completed at the customer's expense on a time and materials basis within six (6) months of the execution of a written agreement between the Grantee and the owner of such property.

(4) Compliance with Codes. Grantee shall construct, install and maintain its cable television system in a manner consistent with the National Electrical Safety Code (National Bureau of Standards); National Electrical Code (National Bureau of Fire Underwriters); applicable FCC and other federal, state and local regulations; and applicable codes and other ordinances of the City.

(5) Safety of Persons and Property. In any event, Grantee's cable television system shall not endanger or interfere with the safety of persons or property within the City where Grantee may have equipment located.

(6) Compliance with Safety Standards. All working facilities, conditions and procedures used or occurring during construction of the Grantee's cable television

system shall comply with the standards of the Occupational Safety and Health Administration.

(7) Coordination. Construction, installation and maintenance of Grantee's cable television system shall be performed in an orderly and workmanlike manner, and in close coordination with public and private utilities serving the City following accepted construction procedures and practices and working through existing committees and organizations.

(8) Parallel Installation. All cable and wires shall be installed, where possible, parallel with electrical and telephone lines, and multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

(9) Antennas. Any antenna structure used in Grantee's cable television system shall comply with construction, marking and lighting regulations and antenna structures, as required by the Federal Communications Commission or other applicable agencies.

(10) Noninterference. RF leakage shall be checked at reception locations for emergency radio services to prove no interference signal combinations exist. Radiation shall be measured adjacent to any proposed aeronautical navigation or communication radio sites to prove no interference to air navigational reception.

(11) Lockout Devices. Grantee shall make available, upon request by any customers receiving channels showing premium services and pay-per-view events, a lockout device which prevents the unauthorized viewing of such channels.

Section 12. Public Service Installation. Grantee shall, without charge for either installation or basic service, provide installation of one (1) outlet of its cable communications system for each public and educational building within the City, if requested by the public body or educational institution and if Grantee's distribution system is within 300 feet of the building. If the building in question is located more than 300 feet from Grantee's distribution system, the building owner shall assume all costs for Grantee's extension of its distribution system in excess of 300 feet. Such installations shall be made at reasonable locations designated by the respective units of government or educational institutions, and any charge for the relocation of such installations or any additional installations to the same building may be made on a time and materials basis.

Section 13. Public, Educational and Governmental Access.

(1) Channel Availability. Grantee shall initially provide one (1) 6-MHZ video/audio channel each for public, educational and governmental (PEG) access. Grantee shall make available additional channels, but in no case shall, more than eight

percent (8%) of the system's total activated channel capacity be made available for PEG access use, in accordance with the following criteria and procedures:

(a) When a specific access channel is utilized eighty-five percent (85%) or more of its total available time for the cablecasting of non-character generated, non-duplicated, locally-produced public, governmental or educational access programming, Grantee shall make available a second channel for that specific access use within ninety (90) days of a written request from the City and final documentation on the usage of the original channel.

(b) Notwithstanding anything herein to the contrary, Grantee shall be able to utilize any access channel which is not then being utilized for the presentation of access programming. Such usage shall continue until the City notifies the Grantee in writing of its intent to initiate the presentation of access programming on the channel; and Grantee shall have a minimum of ninety (90) days to remove its programming from the specific channel

(2) Coordination of Usage. Grantee and City shall jointly establish reasonable rules and procedures to promote the utilization of the public, educational and governmental access channels.

(3) PEG Access Grant. Grantee shall provide support for use of public, educational and governmental (PEG) access channel(s) required under this section by providing the City with a one-time grant of \$10,000.00, to be used in conjunction with a similar one-time PEG access grant to the City of North Bend. Prior to the issuance of the grant by the Grantee, the cities of Coos Bay and North Bend shall develop and approve a joint operating plan for the use of the PEG access grant and the development of PEG access activities in those cities and shall submit the plan to Grantee along with their individual commitments to provide ongoing support for the PEG access strategy set forth in their plan for at least three years after-the grant from Grantee has been tendered to the cities. The grant shall be made to the City within 60 days of receipt of the approved plan. Failure of the cities to develop and approve the joint operating plan prior to December 31, 1992 shall relieve Grantee of its obligation to provide the PEG access grant.

Section 14. Annual Performance Review.

(1) Public Hearing. At the City's option, within ninety (90) days of the first anniversary of the effective date of this franchise, and each year thereafter throughout the term of the franchise, the City may hold a public hearing at which the Grantee shall be present and shall participate, to review the performance and quality of service of the cable television communications system. The reports required in Section 8 regarding subscriber complaints, and the records of performance tests required in Section 11 shall be utilized as the basis for review. In addition, any subscriber may

submit comments or complaints during the review meetings, either orally or in writing, and these shall be considered.

(2) Report by City to Grantee. Within thirty (30) days after the conclusion of the public hearing, the City shall issue a report with respect to the system performance and quality of service. If material violations are found, and it is determined to be under the reasonable control of the Grantee to correct them, the City may direct Grantee to correct the material violations within a reasonable period of time.

(3) Failure to Correct. Failure of Grantee, after due notice, to correct or to commence to correct the material violation shall be considered a breach of the franchise, and the franchise shall be subject to termination, consistent with the provisions of Section 18 herein.

Section 15. System and Services Review.

(1) Purpose for Review. To review technological, economic, and regulatory changes in the state-of-the-art of cable communications, to facilitate renewal procedures to promote the maximum degree of flexibility in the cable system, and to achieve a continuing, advanced modern system, a periodic system and services review is hereby established.

(2) Public Hearing. A public hearing shall be held on or about the fifth anniversary date of the enactment of this ordinance at which the Grantee shall be present and shall participate, to review the cable communications system and services. Subsequent system and services review hearings may be scheduled by the City no sooner than each three (3) years thereafter.

(3) Notification to Grantee. Ninety (90) days prior to the scheduled systems and services review hearing date the City shall forward to the Grantee a listing of issues to be discussed at the hearing. Such listing may include, but not be limited to:

(a) Technological changes which may affect the Coos Bay cable television system;

(b) Basic and premium programming services which may or may not yet be carried on the cable television system.

(4) Survey of Customers. After receipt of the written request from the City, the Grantee shall cause to be completed a survey of a significant sample of its customer base at Grantee's expense. Such survey shall seek to ascertain customers opinions and satisfaction levels as to the quality of customer service, the quality of the technical performance of the system and programming satisfaction and preferences. The results of the survey shall be presented to the City during the review process.

(5) Submission of Report to City. Sixty (60) days prior to the scheduled system and services review hearing, Grantee shall submit a report to the City indicating the following:

(a) All cable system services reported in cable industry trade journals that are being commonly provided on an operational basis, excluding tests and demonstrations, that are not provided to the City.

(b) Any specific plans for provision of such new services by the Grantee, or an explanation why Grantee believes that such services are not feasible for the franchise area.

(6) Hearing Agenda. Topics for discussion and review at the system and services review hearing shall include but shall not be limited to, services provided, feasibility of providing new services, application of new technologies, system performance, programming, subscriber complaints, user complaints, rights or privacy, amendments to the franchise, undergrounding processes, developments in the law, and regulatory constraints. Either City or Grantee may select additional topics for discussion at any review hearing which are consistent with applicable law.

(7) Report by City. Not later than sixty (60) days after the conclusion of each system and service review hearing, City shall issue a report, including specifically a listing of any cable services not then being provided, by Grantee that are considered technically and economically feasible. The City may request Grantee to provide such services within a reasonable time, under reasonable rates and conditions, but Grantee is not obligated to provide such services.

(8) Amendments to Ordinance. If, at the end of the hearing, the City and Grantee agree amendments to the franchise ordinance are necessary to enable the implementation of the desired items, such amendments will be drafted, agreed to by both parties and incorporated into the franchise ordinance per applicable amendment proceedings.

Section 16. Auditing and Financial Records.

(1) Annual certification. Not less than annually, the Grantee shall provide the City Council with an unqualified certification of a financial officer of Grantee certifying accuracy of the franchise fee payments paid within the preceding twelve (12) months pursuant to Section 5. Said certification shall be prepared in accordance with generally accepted accounting standards as established by the Financial Accounting Standards Board (FASB).

(2) Audit by City. During the term of this franchise, the City may, not more frequently than once each year, on a confidential bases conduct an audit of the books, records and accounts of the Grantee strictly for the purpose of determining whether the Grantee has paid franchise fees in the amounts prescribed by this franchise or

applicable ordinance, The audit may be conducted by the Auditor of the City or by an independent certified public accounting firm retained by the City, and shall be conducted at the sole expense of the City. The party conducting the audit shall prepare a written report containing its findings, and the report shall be filed with the City, and mailed to the City and the Grantee, If such audit indicates a franchise fee underpayment of five percent (5%) or more,, the Grantee shall assume and pay all reasonable costs of such an audit.

Section 17. Assignment, Transfer or Change of Control. The franchise hereby granted shall not be assigned or transferred without the consent of the City, evidenced by an ordinance duly passed and approved. Any consent hereunder shall not, be unreasonably withheld so long as transferee agrees to the terms of this franchise and has the financial technical and operational capabilities to operate the system. This section shall not be so construed as to prohibit the Grantee from affecting such reorganization as may be necessary for the procuring of capital to meet increased demands due to the growth of the City, or increased business of the Grantee in the City, or elsewhere, or assignment or transfer to any corporation formed by Grantee or a parent company, If there shall be any intracorporate assignments or transfers, the City shall be immediately notified in writing of the nature of this transfer and the identity of the transferee. Violation of this section shall terminate the rights, privileges and franchise granted by this ordinance.

Section 18. Termination of the Franchise. This franchise may be terminated by the City prior to its expiration as follows:

(1) Notice of Violation. The City may terminate this franchise in the event that a violation or a failure to comply with the material terms of this franchise shall continue and persist thirty (30) days after the City has mailed or delivered a written notice to the Grantee describing the violation. For purposes of this provision, a violation shall not include a condition which is not the fault of the Grantee, or one arising out of Grantee's excusable neglect or any condition so long as Grantee uses its best efforts to correct any such conditions. If after receiving written notice of a violation from the City, Grantee determines it is unable to correct a violation within the thirty (30) day period due to the nonavailability of labor or materials or other service or item required to correct violation or the occurrence of any situation beyond its ability to control, Grantee shall notify the City in writing, document the non-availability of such item(s) or the occurrence of any situation beyond its ability to control and request it be provided a reasonable period of time beyond the thirty (30) days to obtain the item and correct the violation. Such request shall not be unreasonably denied by the City.

(2) Bankruptcy. The City may terminate this franchise in the event Grantee becomes insolvent or upon listing of an order for relief in favor of Grantee in a bankruptcy proceeding.

(3) Termination After Hearing. Termination and cancellation of this franchise shall become effective under the provisions of a resolution of the City Council, adopted after

holding a public hearing upon not less than thirty (30) days written notice mailed or delivered to the Grantee and published in a newspaper of general circulation in the City. The Grantee shall be given the opportunity to present evidence and be heard at such hearing.

Section 19. Reimbursement of Franchise Renewal Costs. Grantee agrees to reimburse the City for documented and actual costs incurred directly for the process which has resulted in this franchise, in an amount up to a maximum of Five Thousand Dollars (\$5,000.00). Such reimbursement will be payable to the City within sixty (60) days after the City has provided the Grantee with written documentation of the costs incurred.

Section 20. Publication Costs. Grantee shall assume the cost of publication of this franchisees such publication is required by law and such is payable upon the Grantee's filing of the acceptance of this franchise.

Section 21. Federal Communications Commission Modifications. Any modifications of the provisions of Section 76.31 of the rules of the Federal Communications Commission resulting from amendment by the Federal Communications Commission shall be incorporated into this franchise within one (1) year of the adoption of the modification, or at the time of renewal of the grant, whichever comes first; unless the City and the Grantee shall agree not to incorporate such modifications.

Section 22. Non-Enforcement. Grantee shall not be relieved of any obligation to comply with any of the provisions of this franchise or any rule, regulation, requirement promulgated thereunder by reason of any failure of the City or its officers, agents or employees to enforce prompt compliance.

Section 23. Communications With Regulatory Agencies. At the City's request and no more frequently than annually, Grantee shall make available for the City's inspection copies of all correspondence for the preceding 12-month period, including petitions, applications, communications and reports concerned specifically with Grantee's system within the City and submitted by Grantee to the FCC or any other Federal or State regulatory commission or agency having jurisdiction in respect to any matters affecting the construction or operation of Grantee's cable communications system in Coos Bay or the services provided through such system. Copies of responses to such petitions, applications, communications or reports from the regulatory agencies to the Grantee shall also be made available for the City's inspection annually upon request of the City, Grantee shall make copies of all documents requested as part of City's review. All such documents will be available at Grantee's local business office.

Section 24. Force Majeure. If for any reason of force majeure, either party is unable in whole or in part to carry out its obligations, said party shall not be deemed in violation or default during the continuance of such inability. The term "force majeure" as used herein shall have the following meaning: strikes; acts of God; acts of public enemies; orders of any kind of the government of the United States of America or the State of Oregon or any of their departments, agencies, political subdivisions, riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; arrests;

civil disturbances; explosions; partial or entire failure of utilities; or any other cause of events not reasonably within the control of the disabled party.

Section 25. Alternative Remedies. No provision of this ordinance shall be deemed to bar the right of the City or Grantee to seek or obtain judicial relief from a violation of any provision of the franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in said ordinance nor the exercise thereof shall be deemed to bar or otherwise limit the right of either party to recover damages for such violation, or judicial enforcement of either party's obligations by means of specific performance, injunctive relief or mandate, or any other judicial remedy at law or in equity.

Section 26. Severability. If any section, subsection, section, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

Section 27. Repeal. Ordinance No. 2605 of the City of Coos Bay, enacted July 8, 1974, Ordinance No. 2606 of the City of Coos Bay, enacted July 8, 1974, as amended by Ordinance No. 2759, Ordinance No. 627 of the City of Eastside, enacted August 14, 1974 and Ordinance No. 673 of the City of Eastside, enacted February 13, 1979 are hereby repealed.

Section 28. Reimbursement of Franchise Transfer Costs. Grantee agrees to reimburse the City for documented and actual costs incurred directly for the process which has resulted in this franchise transfer, in an amount up to a maximum of Five Thousand Dollars (\$5,000.00). Such reimbursement will be payable to the City within sixty (60) days after the City has provided the Grantee with written documentation of the costs incurred. [Section 28 amended by Ordinance No. 150, section 2, passed February 20, 1990.]

Passed by the Council and approved by the Mayor March 7, 1989.