UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE CIVIC ASSOCIATION OF THE DEAF OF NEW YORK CITY, INC. (also known as the New York City Civic Association of the Deaf) and STEVEN G. YOUNGER II, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

RUDOLPH GIULIANI, as Mayor of the City of New York, HOWARD SAFIR, as Commissioner of the Fire Department of the City of New York, CARLOS CUEVAS, as City Clerk and Clerk of The New York City Council, PETER VALLONE, as Speaker and Majority Leader of the New York City Council, THOMAS OGNIBENE, as minority Leader of the New York City Council, and the CITY OF NEW YORK,

Defendants.

95 Civ. 8591 (RWS)

CORRECTED DECLARATION OF ROBERT B. STULBERG IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO VACATE OR MODIFY INJUNCTION

EXHIBIT 21 Part Two

daily rate which, had it been the daily rate payable during the Fifth Year Rate Review, would have resulted in a Fifth Year Rate Percentage equal to the Initial Rate Percentage.

(ii) Tenth Year Rate Review. If the Tenth Year Rate Review (defined below) is conducted and shows that the Tenth Year Rate Percentage (defined below) differs from the Initial Rate Percentage (defined below), then the daily rate per Location Level-Two PPT payable during the year beginning with the tenth anniversary of the Effective Date shall be reset, up or down, at an amount equal to the sum of two and one-half cents ($0.025) plus the daily rate which, had it been the daily rate payable during the Tenth Year Rate Review, would have resulted in a Tenth Year Rate Percentage equal to the Initial Rate Percentage.

(iii) Fifth Year Rate Review Process. During the year preceding the fifth anniversary of the Effective Date, the City at its option may conduct (or arrange for the conduct of) an audit (the "Fifth Year Rate Review") of all or a representative sample of Franchisees to determine a reasonable estimate of the then-current average daily revenue for Location Level-Two PPTs operated by Franchisees. The percentage resulting from dividing fifty cents ($0.50) by said reasonably estimated average daily revenue shall be the Fifth Year Rate Percentage. The Company shall, in connection with the Fifth Year Rate Review, make available to the City and its auditors all relevant records, materials and documents and respond (including, as requested by the City or its auditors, in writing) truthfully to all relevant inquiries from the City and its auditors.

(iv) Tenth Year Rate Review Process. During the year preceding the tenth anniversary of the Effective Date, the City at its option may conduct (or arrange for the conduct of) an audit of all or a representative sample of Franchisees to determine a reasonable estimate of the then-current average daily revenue for Location Level-Two PPTs operated by Franchisees. The percentage resulting from dividing (x) the daily rate payable during such year for such PPTs (as provided in Section 8.2.1(a)(ii)(J)), by (y) said reasonably estimated average daily revenue, shall be the Tenth Year Rate Percentage. The Company shall, in connection with the Tenth Year Rate Review, make available to the City and its auditors all relevant records, materials and documents and respond (including, as requested by the City of its auditors, in writing) truthfully to all relevant inquires from the City and its auditors.

(v) Initial Rate Percentage. "Initial Rate Percentage" shall mean the percentage resulting from dividing forty cents ($0.40) by the average daily revenue for Location Level-Two PPTs in the City as indicated by the audits submitted to the City in response to the Revised Request for Proposals referred to in the second "Whereas" clause of this Agreement.

(vi) Rounding. All per day per PPT rates used to calculate payments pursuant to this Section 8.2.1 shall be rounded up or down to the nearest tenth of a cent.

(c) Services to City. (i) Upon the direction of the Commissioner, the Company shall provide for the installation, operation, and maintenance of one or more PPTs, and the provision of PPT Services therefrom, where applications for the installation of PPT(s) have

not been received by DoITT and the Commissioner has determined that the lack of PPT(s) in such location(s) may pose a risk to the public health, safety, and/or welfare. Such location(s) may be in: (a) residential (or other areas) underserved with respect to household telephone penetration or available PPT services, as determined by the Commissioner; and (b) areas with significant emergency demands such as along arterial highways and at entrances to bridges and tunnels.

(ii) The cost to the Company of providing such PPT Services to the City per year shall in no event exceed five percent (5%) of the total annual compensation fee last paid by the Company to the City pursuant to this Agreement (or if the first annual fee has not yet been paid, then of a reasonable projection of what such fee will be based on the best information then available). When determining which Franchisee shall provide such PPT Services to the City at a particular location, the Commissioner shall consider : (1) the total number of a Franchisee's PPTs; and (2) the geographical location of a Franchisee's PPTs. In the event the Commissioner directs the Company to provide such Services to the City, such PPTs shall not be subject to any franchise fees pursuant to Section 8.2.1 (a) herein.

(iii) The Company expressly acknowledges and agrees that neither the provision of PPT Services to the City nor the satisfaction of other obligations specified in this Agreement shall be chargeable against the franchise fees to be paid to the City by the Company pursuant to Section 8.2.1(a) hereof.

8.2.2 <u>Timing</u>. (a) All payments made pursuant to Section 8.2.1(a) hereof shall be made on a quarterly basis within thirty (30) days of the close of each calendar quarter.

8.2.3 <u>Records and Audits</u>. The Company shall make available to the City, at its principal executive office or such other location of its choosing (provided that such other location does not adversely affect the City's inspection and oversight rights), comprehensive itemized records of all revenues received and of all Services provided, in sufficient detail to enable the City to determine whether all compensation owed to the City pursuant to Section 8 is being paid to the City.

8.2.4 <u>Reservation of Rights</u>. No acceptance of any compensation payment by the City shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount, nor shall such acceptance of any payment be construed as a release of any claim that the City may have for further or additional sums payable under the provisions of this Agreement. All amounts paid shall be subject to audit and recomputation by the City.

8.2.5 <u>Ordinary Business Expense</u>. Nothing contained in this Section 8 or elsewhere in this Agreement is intended to prevent the Company from treating the compensation and other payments that it may pay pursuant to this Agreement as an ordinary expense of doing business and accordingly, from deducting said payments from gross income in any City, state, or federal income tax return.

8.2.6 <u>Long Distance Presubscription</u>. With respect to all Location Level-One PPTs, the City shall, unless the Commissioner specifically determines otherwise in writing, exercise its right to select the provider or providers of Long Distance presubscription service,

and the City shall retain any commissions or any other amounts payable by such provider or providers as consideration for such selection. With respect to Location Level-Two PPTs, the Company shall have the right to select the provider or providers of Long Distance presubscription service, and to retain any commissions or any amounts payable by such provider as consideration for such selection Notwithstanding the preceding sentence however, the Company shall have the right, at its option, to at any time participate in the City's Long Distance presubscription program (if any) by selecting a presubscription provider (if any) selected by the City for Location Level-One PPTs and participating Location Level-Two PPTs, in which event the Company shall be entitled to receive a commission from such presubscription provider as provided in the City's agreement with such presubscription provider. If the Company opts to participate in the City's presubscription program by selecting the City's selected presubscription provider, the Company shall agree to maintain such participation continuously from the commencement of such participation throughout the remaining term of the City's then-current presubscription agreement.

8.3 Other Payments.

8.3.1 Future Costs. When the Company is found to be in default of this Agreement, the Company shall pay to the City or to third parties, at the direction of the Commissioner, an amount equal to the reasonable costs and expenses which the City incurs for the services of third parties (including, but not limited to, attorneys and other consultants) in connection with any renewal or transfer, amendment or other modification of this Agreement or the franchise or enforcement of remedies including termination for an Event of Default. Before any reimbursable work is performed, the City will advise the Company that the City will be incurring the services of third parties pursuant to the preceding sentence. However, in the event the City brings any action for termination or for other enforcement of this Agreement against the Company and the Company finally prevails, then the Company shall have no obligation to reimburse the City or pay any sums directly to third parties, at the direction of the City, pursuant to this Section with respect to such termination or enforcement. In the event the Company contests the charges, it shall pay any uncontested amounts. The Commissioner shall review the contested charges and the services rendered and shall reasonably determine whether such charges are reasonable for the services rendered. The Company expressly agrees that the payments made pursuant to this Section 8.3 are in addition to and not in lieu of, and shall not be offset against, the compensation to be paid to the City by the Company pursuant to any other provision of this Section 8.

8.3.2 Other Amounts. The City reserves the right to impose an additional compensation requirement pursuant to, and under the conditions described in, Section 2.6.6.1(b) hereof.

8.3.3 Equalization Compensation. If the Effective Date of this Agreement occurs after the Effective Date of public pay telephone franchise agreements approved by the FCRC on August 11, 1999 ("Previously Approved Franchises"), then in addition to all other compensation due hereunder, the Company shall pay additional compensation ("Equalization Compensation") equal to the amount which would have been payable pursuant to Section 8.2.1(a) if the Effective Date of this Agreement had been the Effective Date of the Previously

Approved Franchises. The Equalization Compensation shall be due and payable to the City along with the first payment of compensation due hereunder pursuant to Section 8.2.2.

8.4 Limitations on Credits or Deductions.

(a) The Company expressly acknowledges and agrees that:

(i) The compensation and other payments to be made or Services to be provided pursuant to this Section 8 shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes or other fees or charges which the Company or any Affiliated Person shall be required to pay to the City or to any state or federal agency or authority, all of which shall be separate and distinct obligations of the Company; and

(ii) The Company expressly relinquishes and waives its rights and the rights of any Affiliated Person to a deduction or other credit pursuant to Section 626 of the New York State Real Property Tax Law and any successor or amendment thereto, and to any subsequent law, rule, regulation, or order which would purport to permit any of the acts prohibited by this Section 8.4, and shall not cooperate with, encourage or otherwise support any attempt by an Affiliated Person to make any such deduction or other credit; and

(iii) Except as may be expressly permitted under this Agreement, the Company shall not, and shall not cooperate with, encourage or otherwise support any attempt by an Affiliated Person to make any claim for any deduction or other credit of all or any part of the amount of the compensation or other payments to be made or Services to be provided pursuant to this Agreement from or against any City or other governmental taxes of general applicability or other fees or charges which the Company or any Affiliated Person is required to pay to the City or other governmental agency; and

(iv) Except as expressly permitted by Section 8.2.5, the Company shall not, and shall not cooperate with, encourage or otherwise support any attempt by an Affiliated Person to apply or seek to apply all or any part of the amount of compensation or other payments to be made or Services to be provided pursuant to this Agreement as a deduction or other credit from or against any City or other government taxes of general applicability (other than income taxes) or other fees or charges, each of which shall be deemed to be separate and distinct obligations of the Company and the Affiliated Persons; and

(v) Except as may be expressly permitted by this Agreement, the Company shall not, and shall not cooperate with, encourage or otherwise support any attempt by an Affiliated Person to apply all or any part of the amount of any City or other governmental taxes or other fees or charges of general applicability as a deduction or other credit from or against any of the compensation or other payments to be made or Services to be provided pursuant to this Agreement, each of which shall be deemed to be separate and distinct obligations of the Company and the Affiliated Persons.

8.5 Interest on Late Payments. In the event that any payment required by this Agreement is not actually received by the City on or before the applicable date fixed in this

Agreement, interest thereon shall accrue from such date until received at a rate equal to the rate of interest then in effect charged by the City for late payments of real estate taxes.

8.6 Method of Payment. Except as provided elsewhere in this Agreement, all payments made by the Company to the City pursuant to this Agreement shall be made to the City's Department of Finance, with a copy of such payment to DoITT.

8.7 Compensation Reports. The Company shall submit to the Department of Finance and to DoITT, with each quarterly compensation payment as set forth in Section 8.2.2, a report, in a format acceptable to the Commissioner, setting forth by borough the following information for each PPT operated by the Company during the applicable quarter:

(a) permit number;

(b) medallion number;

(c) exact location by street address and cross streets;

(d) Location Level-One or Location Level-Two status;

(e) whether such PPT is entitled to a credit deduction as set forth in Appendix F herein;

(f) if such PPT was newly installed during the quarter, or moved to a new location during the quarter (i.e., changed from a Location Level-One PPT to a Local Level-Two PPT or vice versa), or removed during the quarter, the report must set forth the dates that such changes occurred, including the date that any newly installed or newly located PPT first became operable (i.e., received dialtone);

(g) total Gross Rvenue (for Location Level-One PPTs);

(h) total amount of compensation paid to the City for such calendar quarter.

In addition, each report must also contain a summary page listing the total number of PPTs Level-Two PPTs in the System and the total quarterly compensation being paid to the City with respect thereto, total Gross Revenues from all Location Level-One PPTs in the System, and the total quarterly compensation being paid to the City with respect thereto, and the total amount of compensation paid to the City for all PPT(s).

8.7.1 Report Certification. All compensation reports furnished by the Company or its agent or designee in accordance with this Section shall be certified by an officer of the Company to be correct and in accordance with the books of account and records of the Company or its agent or designee. Any false entry in the books of account of the Company or false statement in the reports submitted to the City as to a material fact, intentionally or negligently made by the Company, shall constitute an Event of Default.

8.8 Continuing Obligation and Holdover. In the event the Company continues to operate all or any part of the System after the term of this Agreement, then the Company shall continue to comply with all applicable provisions of this Agreement, including, without limitation, all compensation and other payment provisions of this Agreement, throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of this Agreement or the franchise granted pursuant to this Agreement, nor as a limitation on the remedies, if any, available to the City as a result of such continued operation after the term of this Agreement, including, but not limited to, damages and restitution.

8.9 Energy Costs. The Company shall be responsible for any and all electrical closets, or other costs for energy or power, used for, by or in connection with any and all of the Company's PPTs.

8.10 Accrual of Compensation.

(a) With respect to the compensation due for Location Level-Two PPTs pursuant to Section 8.2 hereof, such compensation shall begin to accrue:

(i) for all PPTs on the Inalienable Property of the City as of the Effective Date, on the Effective Date; and

(ii) for any PPT installed after the Effective Date, on the first date such PPT has dial tone service (or calls from such PPT are similarly enabled).

Such compensation shall cease accruing with respect to any Location Level-Two PPT on the date that such PPT is actually removed from the Inalienable Property of the City in accordance with the provisions of this Agreement.

(b) With respect to the compensation due for Location Level-One PPTs pursuant to Section 8.2 hereof, such compensation shall accrue whenever Gross Revenues are generated from such PPTs, commencing on the Effective Date.

SECTION 9 – OVERSIGHT AND REGULATION

9.1 Confidentiality. It is not expected that information supplied by the Company to the City will be confidential. In the event that the Company believes that specific information it must submit to the City pursuant to this Agreement should be treated confidentially by the City, the Company should so advise DoITT in writing. DoITT will attempt to treat as confidential proprietary information of any Company, consistent with legal requirements. Any allegedly proprietary information submitted to the City pursuant to this Agreement must be clearly designated as such, and should be clearly labeled with the words "Proprietary Information." Such notification and labeling shall be the sole responsibility of the Company.

The Company should be aware, however, that DoITT may be required, pursuant to the New York State Freedom of Information Law ("FOIL") (New York Public Officers Law Section 84 et seq.), to disclose information, or any portion thereof, submitted to the City. In the event that disclosure is requested by a third party of materials labeled as "Proprietary Information," DoITT will provide notice to the Company as set forth in Section 14.2, herein, as far in advance as practicable of any deadline for response and shall consult with the Company to evaluate the extent to which such information may be withheld from disclosure under the provisions of FOIL. Consistent with the requirements of FOIL, the final determination regarding disclosure shall be made by DoITT. In the event that DoITT determines that information may not be withheld, DoITT will attempt to provide the Company with timely notice, as set forth in Section 14.2, herein, of intent to disclose in order that the Company may invoke any rights or remedies to prevent disclosure to which it believes it may be entitled under the law.

The Company expressly acknowledges and agrees that neither DoITT nor the City of New York will have any obligation or liability to the Company in the event of disclosure of materials, including materials designated by the Company as "Proprietary Information."

9.2 Oversight. DoITT shall have the right to oversee, regulate and inspect periodically the construction, maintenance, operation and upgrade of the System, and any part thereof, in accordance with the provisions of this Agreement and applicable law. The Company shall establish and maintain managerial and operational records, standards, procedures and controls to enable the Company to prove, in reasonable detail, to the satisfaction of the City at all times throughout the Term, that the Company is in compliance with this Agreement. The Company shall retain such records for not less than four (4) years following their creation, and for such additional period as the Commissioner may direct, provided, however, that if the Company intends to seek renewal at the end of the initial Term, such Company must retain such records throughout the Term.

9.3 Company Required to Upgrade System. In the event that the Commissioner determines, in his or her reasonable sole discretion, that the Company's System, or any part thereof, is operating with technology that does not meet the industry standard and that failure to meet the industry standard is having an adverse impact on customer service, the Commissioner may order the upgrade of such System or any part thereof to meet such industry standard. In determining what constitutes an industry standard, the Commissioner shall consider, among other things, the consumer/service impact of a particular technology or mechanism, the distribution, availability, and cost effectiveness of a particular technology or mechanism, and the level of technical service performance and capability that has been developed and demonstrated in the PPT industry in the District and elsewhere to be feasible, workable, and economically practicable. Prior to issuing any order to upgrade pursuant to this Section 9.3, the Commissioner shall provide a notice to the Company that such an order is being considered. The Company shall have thirty (30) days from the date of such notice to provide to the Commissioner a written response to the proposed order, which response may agree with, oppose, or seek modifications to, such proposed order and describe the reasons and arguments supporting such position. Not earlier than the expiration of such thirty (30) day period, the Commissioner may issue a final upgrade order or notify the Company that no final upgrade order will be issued.

9.4 Regulation by City. To the full extent permitted by applicable law either now or in the future, the City reserves the right to adopt or issue such rules, regulations, orders, or other directives governing PPT Services that it finds necessary or appropriate in the lawful exercise of its powers, including, but not limited to, its police powers, and the Company expressly agrees to comply with all such lawful rules, regulations, orders, or other directives.

9.5 Reports.

9.5.1 Financial Reports. (a) In the event the City has reason to believe that the Company's fiscal condition may be such that it may become unable to comply with its obligations under this Agreement, the Company shall submit to DoITT, upon its request, not later than four (4) months after the end of a specified annual fiscal period, a complete set of general purpose financial statements for a specified past fiscal period prepared in accordance with generally accepted accounting principles, accompanied by a report from an independent Certified Public Accountant ("CPA") who performed a review of the statements in accordance with the American Institute of Certified Public Accountants' ("AICPA") Professional Standards, provided, however, that DoITT, in its sole discretion, may also require such statements to be audited and certified by an independent CPA in accordance with generally accepted auditing standards. All such statements and returns shall be accurate and complete. In the event the City reviews such financial reports and determines that the Company's fiscal condition may be such that it may become unable to comply with its obligations under this Agreement, the City may require the Company to submit, and obtain the Commissioner's approval of, a plan setting the steps the Company will take to ensure its continuing ability to comply with this Agreement.

(b) The Company shall submit to DoITT, within thirty (30) days of the end of the initial Term and prior to any renewal, a complete set of audited general purpose financial statements, including income statements, balance sheets, statements of cash flow, and statements of changes in owners' equity, for the most recent past fiscal year or calendar year of the Company. These financial statements must be prepared in accordance with generally accepted accounting principles and must be audited by an independent certified public accountant in accordance with generally accepted auditing standards.

9.5.2 Other Reports. Upon the request of the Commissioner, the Company shall promptly submit to DoITT or the City, any information or report reasonably related to the Company's obligations under this Agreement, its business and operations, or those of any Affiliated Person, with respect to the System or its operations, or any Service distributed over the System, in such form and containing such information as the Commissioner shall specify. Such information or report shall be accurate and complete. The Commissioner or the City may inform the Company in writing, as set forth in Section 14.2 herein with regard to the adequacy or inadequacy of such reports pursuant to the requirements of this Section 9.5.2.

9.6 Books and Reports/Audits.

9.6.1 Books and Records. Throughout the Term, the Company shall maintain complete and accurate books of account and records of the business, ownership, and operations

of the Company with respect to the System in a manner that allows the City at all times to determine whether the Company is in compliance with the Agreement. Should the City reasonably determine that the records are not being maintained in such a manner, the Company shall alter the manner in which the books and/or records are maintained so that the Company comes into compliance with this Section. All financial books and records which are maintained in accordance with generally accepted accounting principles shall be deemed to be acceptable under this Section. The Company shall also maintain and provide such additional books and records as the Comptroller or the Commissioner deem reasonably necessary to ensure proper accounting of all payments due the City.

9.6.2 Right of Inspection. The Commissioner and the Comptroller, or their designated representatives, shall have the right to inspect, examine or audit during normal business hours and upon reasonable notice to the Company under the circumstances, all documents, records or other information which pertain to the Company or any Affiliated Person with respect to the System, its operation, its employment and purchasing practices, Services distributed over the System, and with respect to the Company's obligations pursuant to this Agreement. All such documents shall be made available, as required by Section 7 on page five (5) of Authorizing Resolution No. 2248 of March 25, 1997, a copy of which is attached to this Agreement as Appendix B. If such documents are located outside of the City, then the Company shall pay the reasonable expenses incurred by the Commissioner, the Comptroller or their designated representatives in traveling to such location. All of such documents shall be retained by the Company for a minimum of six (6) years following termination of this Agreement. Access by the City to any of the documents covered by this Section 9.6.2 shall not be denied by the Company on grounds that such documents are alleged by the Company to contain confidential, proprietary or privileged information, provided that this requirement shall not be deemed to constitute a waiver of the Company's right to assert that confidential, proprietary or privileged information contained in such documents should not be disclosed to a third party pursuant to Section 9.1 hereof. In order to determine the validity of such assertion by the Company, the City agrees to review the alleged proprietary information, and/or a log of the documents believed by the Company to be privileged reflecting sufficient information to establish the privilege claimed, at the Company's premises and, in connection with such review, to limit access to the alleged proprietary information, to those individuals who require the information in the exercise of the City's rights under this Agreement. If the Corporation Counsel of the City concurs with the Company's assertion regarding the proprietary nature of such information, the City will hold such information in confidence to the extent authorized by and in accordance with applicable law and will not remove from the Company's premises the proprietary portion of any document or other intangible thing that contains such proprietary information. If the Corporation Counsel of the City concurs with the Company's assertion regarding the privileged nature of such information, then the Company will not be required to disclose such information. If the Corporation Counsel of the City does not concur with such assertions, then the Company shall promptly provide such documents, including the alleged proprietary or privileged portion thereof, to the City, provided that the Company shall not be required to provide the proprietary or privileged portion thereof during the pendency of any court challenge to the disclosure of such portion.

9.7 Compliance with "Investigations Clause". The Company agrees to comply in all respects with the City's "Investigations Clause," a copy of which is attached at Appendix H hereto.

9.8 Rate Change Notification. (a) The Company must notify DoITT in writing of a change in the Per Local Call Compensation Rate ("PLCCR") (defined in paragraph (b) of this Section) as follows: (a) If as of the Effective Date, the PLCCR is greater than or less than 25 cents, the Company must notify DoITT within 30 days of the Effective Date, and (b) If at any time during the Term there is a change in the PLCCR, the Company must notify DoITT no later than seven (7) business days after implementation of such change and in no event after the close of the calendar quarter in which such change has occurred. Notification under this Section 9.8 shall include the PLCCR, total amount of increase or decrease (if applicable), the permit number and the exact location for each such PPT, including street address and cross streets.

(b) "Per Local Call Compensation Rate" or "PLCCR" means that with respect to coin sent-paid calls: (i) that amount which a Company charges as compensation from the user of a PPT for the initial three (3) minutes of a local PPT call or (ii) that amount which a user of a PPT is required to remit to receive an initial three (3) minutes of PPT Service even if such required expenditure may permit the user an amount of time greater than three (3) minutes.

SECTION 10 – RESTRICTION AGAINST ASSIGNMENT AND OTHER TRANSFERS

10.1 Transfer of Interest. Except as provided in Sections 10.3.1 and 10.5 hereof, neither the franchise granted herein nor any rights or obligations of the Company in the System or pursuant to this Agreement shall be encumbered, assigned, sold, transferred, pledged, leased, sublet, or mortgaged in any manner, in whole or in part, to any Person, nor shall title therein, either legal or equitable, or any right or interest therein, pass to or vest in any Person, either by act of the Company, by act of any Person holding Control of or any interest in the Company or the System or the franchise granted herein, by operation of law, or otherwise, without the prior written consent of the City, such consent not to be unreasonably withheld, pursuant to Section 10.3 hereof.

10.2 Transfer of Control or Ownership. Notwithstanding any other provision of this Agreement, except as provided in Section 10.5 hereof or as set forth in Appendix E, no change in Control of the Company, the System or the franchise granted herein shall occur after the Effective Date, by act of the Company, by act of any Person holding Control of the Company, the System or the franchise granted herein, by operation of law, or otherwise, without the prior written consent of the City, such consent not to be unreasonably withheld. The requirements of Section 10.3 hereof shall also apply whenever any change is proposed of ten percent (10%) or more of the direct or indirect ownership of the Company, the System, or the franchise granted herein (but nothing herein shall be construed as suggesting that a proposed change of less than ten percent (10%) does not require consent of the City acting pursuant to Section 10.3 if it would in fact result in a change in Control of the Company, the System or the franchise granted herein), and any other event which could result in a change in Control of the Company. In the event any

change in Control which requires consent of the City takes place without such consent, the City may exercise any rights the City may have under this Agreement.

10.3 Petition. The Company shall promptly notify the Commissioner of any proposed action requiring the consent of the City pursuant to Section 10.1 or 10.2 hereof or to which this Section 10.3 applies by submitting to the City, pursuant to Section 14.2 hereof, a petition requesting the submission by the Commissioner of a petition to the FCRC and approval thereof by the FCRC or requesting a determination that no such submission and approval is required and its argument why such submission and approval is not required. Each petition shall fully describe the proposed action and shall be accompanied by a justification for the action and, if applicable, the Company's argument as to why such action would not involve a change in Control of the Company, the System or the franchise, and such additional supporting information as the Commissioner and/or the FCRC may reasonably require in order to review and evaluate the proposed action. The Commissioner shall expeditiously review the petition and shall (a) notify the Company in writing if the Commissioner determines that the submission by the Commissioner and the approval of the FCRC is not required or (b) if the Commissioner determines that such submission and approval is required, either (i) notify the Company that the Commissioner does not approve the proposed action and therefore will not submit the petition to the FCRC, or (ii) submit the petition to the FCRC for its approval. The Commissioner reserves the right to determine that a change in interest or ownership not otherwise subject to this Section 10.3 must be the subject of a petition pursuant to this section 10.3.

10.3.1 PPT Transfers. Transfers of individual PPTs shall be subject to review and approval by DoITT pursuant to procedures established with respect to DoITT permits for individual PPTs.

10.4 Consideration of the Petition. The Commissioner and the FCRC, as the case may be, may take such actions as it deems appropriate in considering the petition and determining whether consent is needed or should be granted. In considering the petition, the Commissioner and the FCRC, as the case may be, may inquire into: (i) the qualifications of each Person involved in the proposed action; (ii) all matters relevant to whether the relevant Person(s) will adhere to all applicable provisions of this Agreement; (iii) the effect of the proposed action on competition; and (iv) all other matters it deems relevant in evaluating the petition, including whether the Company executed this Agreement under a good faith belief that it would itself carry out the obligations of the Company hereunder. After receipt of a petition, the FCRC may, as it deems necessary or appropriate, schedule a public hearing on the petition. Further, the Commissioner and the FCRC may review the Company's performance under the terms and conditions of this Agreement. The Company shall provide all requested assistance to the Commissioner and the FCRC in connection with any such inquiry and, as appropriate, shall secure the cooperation and assistance of all Persons involved in said action.

10.5 Permitted Encumbrances. Nothing in this Section 10 shall be deemed to prohibit any assignment, pledge, lease, sublease, mortgage, or other transfer of all or any part of the System, or any right or interest therein, for financing purposes, provided that each such assignment, pledge, lease, sublease, mortgage, or other transfer shall be subject to the rights of the City pursuant to this Agreement and applicable law. The consent of the City shall not be

required with respect to any transfer to, or taking of possession by, any banking or lending institution which is a secured creditor of the Company of all or any part of the System pursuant to the rights of such secured creditor under Article 9 of the Uniform Commercial Code, as in effect in the State of New York, and, to the extent that the collateral consists of real property, under the New York Real Property Law; provided, further that, the City's rights are in no way adversely affected or diminished. However, any transfer by such banking or lending institution shall require approval of the City pursuant to this Section 10.

10.6 Consent Not a Waiver. The grant or waiver of any one or more consents under this Section 10 shall not render unnecessary any subsequent consent, nor shall the grant of any such consent constitute a waiver of any other rights of the City, as required in this Section 10.

SECTION 11 -- LIABILITY AND INSURANCE

11.1 Liability and Indemnity.

11.1.1 Company. The Company shall be liable for, and the Company shall indemnify, defend and hold the City, its officers, agents, servants, employees, attorneys, consultants and independent contractors (the "Indemnitees") harmless from any and all liabilities, suits, obligations, fines, damages, penalties, claims, charges and expenses (including, without limitation, attorneys' fees and disbursements) that may be imposed upon or incurred by or asserted against any of the Indemnitees arising out of the construction, operation, maintenance, use, abandonment, relocation, upgrade, deactivation or removal of the System or otherwise arising out of or related to this Agreement; provided, however, that the foregoing liability and indemnity obligation of the Company pursuant to this section 11.1 shall not apply to any liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses arising out of any willful misconduct or gross negligence of the City, its officers, employees, servants, agents, attorneys, consultants or independent contractors. Further, it is a condition of this Agreement that the City assumes no liability for liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses (including, without limitation, reasonable attorneys' fees and disbursements) to either Persons or property on account of the same, except as expressly provided herein.

11.1.2 No Liability for Public Work, etc. None of the City, its officers, agents, servants, employees, attorneys, consultants or independent contractors shall have any liability to the Company for any damage as a result of or in connection with the protection, breaking through, movement, removal, upgrade, alteration, or relocation of any part of the System by or on behalf of the Company or the City in connection with any emergency, public work, public improvement, alteration of any municipal structure, any change in the grade or line of any Inalienable Property of the City, or the elimination, discontinuation, closing or demapping of any Inalienable Property of the City. To the extent practicable under the circumstances, the Company shall be consulted prior to any such activity and shall be given the opportunity to perform such work itself, but the City shall have no liability to the Company in the event it does not so consult the Company. All costs to repair, replace or upgrade the System or parts thereof, damaged or removed as a result of such activity, shall be borne by the Company; provided,

however, that the foregoing obligation of the Company pursuant to this Section 11.1.2 shall not apply to any liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses arising out of any willful misconduct or gross negligence of the City, its officers, employees, servants, agents, attorneys, consultants or independent contractors.

11.1.3 No Liability for Damages. None of the City, its officers, agents, servants, employees, attorneys, consultants and independent contractors shall have any liability to the Company for any damages as a result of the proper and lawful exercise of any right of the City pursuant to this Agreement or applicable law; provided, however, that the foregoing limitation on liability pursuant to this Section 11.1.3 shall not apply to any liabilities, suits, obligations, fines, damages (other than special, incidental, consequential or punitive damages), penalties, claims, costs, charges and expenses arising out of any willful misconduct or gross negligence of the City, its officers, employees, servants, agents, attorneys, consultants or independent contractors.

11.1.4 Defense of Claim, etc. If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event to which reference is made in Section 11.1.1 hereof, then upon demand by the City, the Company shall either resist, defend or satisfy such claim, action or proceeding in such Indemnitee's name, by the attorneys for or approved by, the Company's insurance carrier (if such claim, action or proceeding is covered by insurance) or by the Company's attorneys. The foregoing notwithstanding, upon a showing that the Indemnitee reasonably requires additional representation, such Indemnitee may engage its own attorneys to defend such Indemnitee, or to assist such Indemnitee's defense of such claim, action or proceeding, as the case may be, and the Company shall pay the reasonable fees and disbursements of such attorneys of such Indemnitee.

11.2 Insurance.

11.2.1 Specifications. Prior to the execution of this Agreement, the Company shall, at its own cost and expense, furnish to DoITT, with a copy to the Comptroller, an insurance certificate indicating that the Company has obtained a Commercial General Liability insurance policy taking effect no later than the Effective Date, issued by a company duly licensed to do business in the State of New York, insuring the Company and the City, its officers, agents, servants, employees, attorneys, consultants and independent contractors, protecting the Company and the City for any injuries and damages occurring on, or in proximity to, the System, or arising out of or as a result of the construction, operation, maintenance, use, abandonment, relocation, upgrade, deactivation or removal thereof, in the following minimum amounts: (1) for bodily injury, including death, (a) One-million dollars ($1,000,000.00) for any one person and (b) One-million dollars ($1,000,000.00) for any one accident, and (2) for property damage in the minimum amount of one-hundred-thousand dollars ($100,000.00). Such policy or policies shall be issued by companies reasonably acceptable to Comptroller, carrying a rating by Best's of not less than "A." The foregoing minimum coverage shall not prohibit the Company from obtaining a liability insurance policy or policies with coverage in excess of such minimum, provided that the City shall be named as an additional insured to the full extent of any limitation contained in such policy or policies obtained by the Company.

11.2.2 Maintenance. (a) The Company shall continuously maintain one or more liability insurance policies meeting the requirements in Section 11.2.1 hereof throughout the Term and thereafter until completion of removal of the System on, over, or under the Inalienable Property of the City to the extent such removal is required pursuant to this Agreement.

(b) Each such liability insurance policy shall contain the following endorsement: "It is hereby understood and agreed that this policy may not be canceled, terminated or modified, nor may the insurer's intention not to renew be stated, until thirty (30) days after receipt by the City, by registered mail, of such intent to so cancel, terminate, modify or not to renew." Within sixty (60) days after receipt by the City of any said notice, and in no event later than thirty (30) days prior to any said cancellation, the Company shall obtain and furnish to DoITT, with a copy to the Comptroller, replacement insurance policies in a form acceptable to DoITT and the Comptroller together with evidence demonstrating that the premiums for such insurance have been paid. Failure to maintain insurance coverage as set forth in this Section 11.2 shall be an Event of Default under this Agreement.

11.2.3 Adjusted Insurance Coverage. The Company agrees to adjust the minimum coverage of the liability insurance policy or policies required by Section 11.2.1 within three (3) months of notice from the City that the City has reasonably determined that additional amounts or types of insurance are being commonly carried with respect to systems of a size and nature similar to the System or other circumstances have arisen which make it reasonably prudent to obtain such additional amounts or types of insurance.

11.2.4 Liability Not Limited. The liability of the Company and any Affiliated Person (not including a limited partner or an individual shareholder) to the City or any Person for any of the matters which are the subject of the liability insurance policy or policies required by this Section 11.2 shall not be limited by said insurance policy or policies nor by the recovery of any amounts thereunder; provided, however, that the City shall in no case be entitled to duplicative recoveries from different sources.

11.2.5 Alternative Procedure. If the Company has at least two-hundred-fifty-million dollars ($250,000,000.00) in assets, the Company may apply to the Commissioner and the Comptroller for approval of an alternative method for protection of the City's interests which are otherwise protected by insurance coverage described in Sections 11.2.1 through 11.2.3. Under such alternative method(s), the Company would submit to the City an agreement pursuant to which the Company agrees to provide to the City all of the protections described in Sections 11.2.1 through 11.2.3 as if the Company were an insurer thereunder. Any application submitted pursuant to this Section 11.2.5 shall be subject to approval of both the Commissioner and the Comptroller, each acting in its sole discretion. Among the factors which the Comptroller and the Commissioner may consider in their review of any such application may be (i) the financial strength of the Company, and (ii) the previous insurance and self-insurance record of the Company. Any approval granted hereunder may be revoked at any time by notice from the Commissioner or the Comptroller, in which event the Company will obtain insurance as required under this Section 11.2.5 as soon as possible but in no event more than sixty (60) days after such notice of revocation.

SECTION 12 -- SPECIFIC RIGHTS AND REMEDIES

12.1 Not Exclusive. The Company agrees that the City shall have the specific rights and remedies set forth in this Section 12. These rights and remedies are in addition to and cumulative of any and all other rights or remedies, existing or implied, now or hereafter available to the City at law or in equity in order to enforce the provisions of this Agreement. Such rights and remedies shall not be exclusive, but each and every right and remedy specifically provided or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed appropriate by the City, except as provided herein. The exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy nor shall any such delay or omission be construed to be a waiver of or acquiescence to any default. The exercise of any such right or remedy by the City shall not release the Company from its obligations or any liability under this Agreement.

12.2 Default.

12.2.1 Events of Default. (a) Each of the following events shall be an "Event of Default" hereunder:

(i) if the Company installs, operates, or maintains any PPT on, over or under the Inalienable Property of the City without complying with the permitting requirements of this Agreement, or applicable law, and such installation, operation or maintenance is not terminated and the Inalienable Property of the City and other property where such PPT was installed is not fully restored to its original condition within ten (10) days after notice from the City to the Company;

(ii) if, prior to the installation of a PPT within the City at an outdoor location that the Company believes is not located on, over or under the Inalienable Property of the City, the Company does not demonstrate, in a manner and form acceptable to the Commissioner, that such PPT is not located on, over or under the Inalienable Property of the City and that a user could not stand on the Inalienable Property of the City when using such PPT, and such failure is not cured within ten (10) days after notice from the City;

(iii) if, twelve (12) months after the Effective Date and at any time during the Term thereafter, the Company fails to operate and maintain a minimum of twenty-five (25) PPTs subject to the exceptions set forth in Section 2.5.3;

(iv) if the Company sells or leases advertising space, or otherwise places advertising, on a PPT, without utilizing a Media Representative in the manner set forth in Section 4 hereof, or otherwise in a manner that fails to comply with this Agreement, and such failure to comply with this Agreement is not cured within thirty (30) days after notice from the City to the Company;

(v) if the Company fails to propose recordkeeping procedures, or to adopt modifications of such procedures at the direction of DoITT pursuant to Section 3.1.3(a), or fails to implement such recordkeeping procedures;

(vi) if the Company is required to adopt a modification to its inspection, maintenance, repair or cleaning procedures as set forth in Section 3.1.4 (a)(1) hereof, or to enter into a service agreement as set forth in Section 3.1.4 (a)(2) hereof, and the Company fails to adopt such modification or enter into such service agreement, and such failure continues for thirty (30) days after notice from the City to the Company;

(vii) if within a four (4) year period from an adoption of modifications to the Company's inspection, maintenance, repair or cleaning procedures pursuant to Section 3.1.4 (a) hereof, the Commissioner determines that any of the conditions described in Section 3.1.4 (a)(i), (ii) or (iii) hereof has occurred, or the failure described in Section 3.1.4 (a)(iv) hereof occurs, and the Commissioner declares such failure(s) to constitute an Event of Default;

(viii) if the Company uses a counterfeit identification medallion and/or accompanying raised number strip, or engages in the unauthorized removal of an identification medallion and/or raised number strip, or engages in the defacement of an identification medallion and/or raised number strip;

(ix) if the Company fails to deliver to DoITT, within thirty (30) calendar days of the Effective Date, evidence that it has deposited with DoITT and/or the Comptroller the Security Fund required pursuant to Section 6 hereof;

(x) if the Company fails to pay any amount due to the City hereunder when such payment is due, and such failure continues for thirty (30) days after notice from the City to the Company;

(xi) if the Company fails to maintain insurance coverage pursuant to Section 11.2 hereof;

(xii) if the Company fails to observe or perform one or more of any other term, condition, covenant or agreement set forth in this Agreement and such failure continues for a period of thirty (30) days after notice thereof from the City to the Company specifying such failure;

(xiii) if the Company engages in a pattern of repeated breaches, defaults or failures to observe or perform one or more of the terms, conditions, covenants or agreements set forth in this Agreement, including, without limitation, failure on repeated occasions to comply with the minimum operating service procedures set forth in Section 3.1.2 hereof;

(xiv) if the Company engages in a pattern of repeated non-compliance with Local Law 68 of 1995 or the PPT Rules;

(xv) if the Company engages in a course of conduct, as determined by the Commissioner, intentionally designed to practice any fraud or deceit upon the City, or any other user of the System;

(xvi) if the Company engages or has engaged in any material misrepresentation, either oral or written, intentionally or as a result of gross negligence in connection with the award of this franchise or the negotiation of this Agreement (or any amendment or modification of this Agreement), or in connection with any representation or warranty contained herein;

(xvii) any false entry intentionally or negligently made in the books of account or records of the Company, or any false statement intentionally or negligently made in any permit, report, document or other filing to the City or otherwise by the Company, any director, officer, or person occupying a similar position, or other Person holding a Controlling Interest in the Company, any Affiliated Person, or any employee or agent of the Company acting under the direction or with the consent of any of the foregoing;

(xviii) the occurrence of any event relating to the financial status of the Company which may reasonably lead to the foreclosure or other similar judicial or non-judicial sale of all or any material part of the System, and the Company fails to demonstrate to the reasonable satisfaction of the Commissioner within thirty (30) days after notice that such event will not lead to such foreclosure or other judicial or non-judicial sale. Such an event may include, without limitation: (a) default under any loan or any financing arrangement material to the System or the obligations of the Company under this Agreement; (b) default under any contract material to the System or the obligations of the Company under this Agreement; or (c) termination of any lease or mortgage covering all or any material part of the System;

(xix) if, at any time during the Term, it is finally determined by a court of competent jurisdiction (not subject to further appeal or the time to appeal such judgment has passed) that the distribution or provision of any Service by the Company or any Affiliated Person, or any other action in connection with the operation of the System, has tended to create or has created a monopoly or a restraint of trade in violation of law;

(xx) if: (a) the Company shall make an assignment of the Company or the System for the benefit of creditors, shall become and be adjudicated insolvent, shall petition or apply to any tribunal for, or consent to, the appointment of, or taking possession by, a receiver, custodian, liquidator or trustee or similar official pursuant to state or local laws, ordinances or regulations of or for it or any substantial part of its property or assets, including all or any part of the System; (b) a writ or warranty of attachment, execution, distraint, levy, possession or any similar process shall be issued by any tribunal against all or any material part of the Company's property or assets; (c) any creditor of the Company petitions or applies to any tribunal for the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official for the Company or of any material parts of the property or assets of the Company under the law of any jurisdiction, whether now or hereinafter in effect, and a final order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceedings; or (d) any final order, judgment or decree is entered in any proceedings against the Company decreeing the voluntary or involuntary dissolution of the Company;

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(xxi) (a) if there shall occur any denial, forfeiture or revocation by any federal, state or local governmental authority having regulatory jurisdiction over the Company of any authorization required by law or the expiration without renewal of any such authorization, and such events, either individually or in the aggregate, materially jeopardize the System or its operation, and the Company fails to take steps to obtain or restore such authorization within thirty (30) days after notice;

(b) Notwithstanding the preceding, no Event of Default shall exist if a breach is curable, and a cure period is provided therefor in this Section 12.2, but work to be performed, acts to be done, or conditions to be removed to effect such cure cannot, by their nature, reasonably be performed, done or removed within the cure period provided, so long as the Company shall have commenced curing the same within the specified cure period and shall diligently and continuously prosecute the same promptly to completion.

12.2.2 Remedies of the City. (a) If an Event of Default occurs, the City may:

(i) cause a withdrawal, pursuant to the provisions of Section 6 of this Agreement, from the Security Fund for any specified amount due the City under this Agreement;

(ii) seek and/or pursue money damages from the Company as compensation for such Event of Default;

(iii) restrain by injunction the continuation of the Event of Default;

(iv) terminate this Agreement and the franchise granted hereunder, as set forth in Section 12.3 of this Agreement; and/or

(v) pursue any other remedy permitted by law.

(b) The City shall have the right to pursue any one or more of the above remedies, simultaneously or consequently, for any Event of Default. Any remedies set forth in this Agreement shall be in addition to and not in lieu of any and all rights or remedies available to the City at law or in equity with respect to penalties imposed pursuant to Local Law Number 68 for the Year 1995 and the PPT Rules.

(c) In the event of any breach or default, or threatened breach or default of any term, condition or obligation of the Company, the City shall be entitled to enjoin such actual or threatened breach or default, notwithstanding other remedies that may be available as expressly set forth in this Agreement or by law.

12.3 Termination. (a) If any Event of Default occurs, then and in any such event the City at any time thereafter may, at its option, give to the Company a notice, as set forth in Section 14.2, herein, (regardless of whether the City prior to the giving of such notice shall have accepted payment of any compensation due under this agreement) stating that this Agreement

and the franchise granted hereunder shall terminate on the date specified in such notice (which date shall not be less than five (5) days from the giving of the notice), and this Agreement and the franchise granted hereunder shall terminate and expire on the date set forth in such notice as if such date were the date provided in this Agreement for the scheduled expiration of this Agreement and the franchise granted herein.

(b) In the event of the condemnation by public authority, other than the City, or sale or dedication under threat or in lieu of condemnation, of all or substantially all of the System, the effect of which would materially frustrate or impede the ability of the Company to carry out its obligations and the purposes of this Agreement and the Company fails to demonstrate to the reasonable satisfaction of the Commissioner, within thirty (30) days after notice that such condemnation, sale or dedication would not materially frustrate or impede such ability of the Company, then and in such event the City may, at its option, to the extent permitted by law, terminate this Agreement at anytime by written notice as set forth in Section 14.2 herein.

12.4 Disposition of System Upon Termination.

12.4.1 Standard Disposition of PPTs Upon Termination.

(a) In the event of any termination of this Agreement, whether by expiration of the Term or pursuant to Section 12.3, the Company may elect to remove any or all of its PPTs from the Inalienable Property of the City (except as set forth in Sections 12.4.2 and 12.4.3 below) by notifying the City, not later than ten (10) days prior to such termination, of its intention to so remove such PPTs. In the event of such election, the Company shall remove such PPTs as provided in Section 12.7 hereof.

(b) If in the event of any termination of this Agreement, whether by expiration of the Term or pursuant to this Section 12, the Company does not elect to remove all its PPTs from the Inalienable Property of the City by notifying the City of its intention to so remove, as set forth in subsection (a) above, then at the City's option either (i) the City may direct the Company to remove any or all of those PPTs the Company did not elect to remove, such removal to be at the Company's sole cost and expense (which removal the Company shall perform as provided in Section 12.7 hereof), or (ii) the PPTs the Company did not remove shall become property of the City without any payment by or cost to the City.

(c) Nothing in this Section 12.4.1 is intended to preclude the Company from, prior to any termination of its franchise, transferring any or all of its PPTs to a Franchisee whose franchise is not terminating, provided all requirements for a transfer of the permits for such PPTs have been met.

12.4.2 Disposition of Underground Connection and Other ("UCO") Equipment.

(a) In the event of any termination of this Agreement, whether pursuant to Section 12.3 hereof or by the expiration of the Term, the Commissioner may (notwithstanding the provisions of Section 12.4.1 hereof): (i) require that all or any portion of the Company's System that is not readily movable, and/or that facilitates PPT connection to a switched

telephone network or other similar type conduit, including underground equipment, wiring, and/or cables ("UCO Equipment"), revert to the City immediately upon such termination at no cost to the City; and/or, (ii) remove or order the removal of all or any part of the UCO Equipment, at the Company's own cost and expense, pursuant to Section 12.7 hereof. In the event the Company is required to remove all or any part of the UCO Equipment, the Company must ensure that it does not damage any remaining portions of the System as described in Section 12.4.2(a)(i) above, including, but not limited to, any underground or conduit portions of the System or must pay to the City, within thirty (30) days of notice as set forth in section 14.2 herein, the fair value of such damaged portions including any costs incurred by the City for the repair and/or replacement of such damaged portion(s)of the System.

12.4.3 Special Disposition of PPTs. In the event the Commissioner determines at his or her reasonable discretion that at the termination of this Agreement, whether pursuant to Section 12.3 hereof or by expiration of the Term, continuing operation of any portions of the System (other than UCO Equipment, disposition of which shall be in accordance with Section 12.4.2 above), including any PPTs, is necessary to protect and promote the public safety and/or welfare, the Company, at the City's election, shall sell to the City or to the City's designee such portion of the System (including such PPTs) on, over or under the Inalienable Property of the City and all associated equipment necessary for the proper functioning of such portion of the System.

12.5 Price. (a) The price to be paid to the Company upon an acquisition pursuant to Section 12.4.3 herein shall be fair value (or, in case of termination by revocation, an equitable price, determined with due regard to the injury to the City and its residents), with no value allocable to the franchise itself, which price shall be the fair value as provided in Section 363(h)(5) of the City Charter, as may be amended, or under any successor provision. Subject to the limitations found in the next sentence, to the extent the City effects an acquisition pursuant to Section 12.4 hereof and subsequently sells that portion of the System acquired to a third party, and the amount received by the City from such sale exceeds the price paid by the City to the Company pursuant to this Section 12.5, the City shall pay such excess amount to the Company after deducting all reasonable expenses incurred by the City in connection with such acquisition and sale. The preceding sentence shall apply only in cases where the Agreement has terminated by reason of the expiration of the full Term or pursuant to Section 12.3(b) hereof, and shall not apply in any case where the Agreement has been terminated after an Event of Default or otherwise for cause. In cases where the Agreement has been terminated after an Event of Default or otherwise for cause and the City effects an acquisition or transfer of the System for any reason, and the party acquiring the System acquires it directly from the Company, then the City shall be entitled to receive from such party any amount in excess of the price which the City could have received if it had purchased the System from the Company and subsequently sold the System to such third party.

(b) The date of valuation for purposes of Section 12.4 hereof shall be the date of termination of the Agreement. For the purpose of such valuation, the parties shall select a mutually agreeable independent appraiser to compute the purchase price in accordance with industry practice and the aforementioned standards. If they cannot agree on an appraiser in ten (10) days, the parties will seek an appraiser from the American Arbitration Association. The

appraiser shall be instructed to make the appraisal as expeditiously as possible, but in no more than sixty (60) days and shall submit to both parties a written appraisal. The appraiser shall be afforded access to the Company's books and records, as necessary to make the appraisal. The parties shall share equally the costs and expenses of the appraiser.

(c) The City will notify the Company, within thirty (30) days after the receipt of the appraisal, of its electing of rights pursuant to Section 12.4 hereof. If it elects to make the purchase permitted under Section 12.4 hereof, it will purchase the same at a closing to occur within a reasonable time after its election.

(d) The Company agrees, at the request of the City, (i) to operate the System on behalf of the City pursuant to the provisions of this Agreement and such additional terms and conditions as are equitable to the City and the Company for a period of up to four (4) months after the termination of this Agreement, until the City either elects not to purchase any portion of the System, or closes on such a purchase; (ii) to authorize any other Person to operate the System on behalf of the City or otherwise upon such terms and conditions as are equitable to the City and the Company; or (iii) to cease all construction and operational activities in a prompt and workmanlike manner.

12.6 Procedures for Transfer After Termination. In the event of any acquisition of part or all of the System by the City or the City's designee pursuant to Section 12.4 hereof, the Company shall:

(a) cooperate with the City to effectuate an orderly transfer to the City (or the City's designee) of all records and information concerning the part of the System being transferred (such part of the System referred to hereafter as the "Post Term System");

(b) promptly execute all appropriate documents to transfer to the City (or the City's designee), subject to any liabilities, title to the Post Term System as well as all contracts, leases, licenses, permits, rights-of-way, and any other rights, contracts or understandings necessary to maintain and operate the Post Term System, as appropriate; provided, that such transfers shall be made subject to the rights, under Article 9 of the Uniform Commercial code as in effect in the State of New York and, to the extent that any collateral consists of real property, under the New York Real Property Law, of banking or any other lending institutions which are secured creditors or mortgagees of the Company at the time of such transfers; and provided, that, with respect to such creditors or mortgagees, the City shall have no obligations following said transfers to pay, pledge, or otherwise commit in any way any general or any other revenues or funds of the City, other than the gross operating revenues received by the City from its operation of the System, in order to repay any amounts outstanding on any debts secured by the Post Term System which remain owing to such creditors or mortgagees; and provided, finally, that the total of such payments by the City to such creditors and mortgagees, from the gross operating revenues received by the City from its operation of the Post Term System, shall in no event exceed the lesser of: (1) the fair market value of the system on the date of the transfer of title to the City or (2) the outstanding debt owed to such creditors and mortgagees on said date. Nothing in this Section 12.6 shall be construed to limit the rights of any such secured creditors to exercise

its or their rights as secured creditors or mortgagees at any time prior to the payment of all amounts due pursuant to the applicable debt instruments; and

(c) promptly supply the Commissioner with all necessary records (1) to reflect the City's ownership (or that of the City's designee) of the Post Term System; and (2) to operate and maintain the Post Term System.

12.7 Removal Upon Termination.

12.7.1 Removal Procedures. If, upon any termination of this Agreement, all or any part of the System is to be removed pursuant to this Section 12, the following procedures shall apply (in lieu of the provisions of Section 3.10 hereof):

(a) in removing the System, or part thereof, the Company shall restore all Inalienable Property of the City and other property, to its original condition and shall have received all applicable approvals from DOT and any other applicable City approvals;

(b) the City shall have the right to inspect and approve the condition of such Inalienable Property of the City after removal and, to the extent that the City determines that said Inalienable Property of the City and other property have not been restored to its original condition, the Company shall be liable to the City for the cost of restoring the Inalienable Property of the City and any other property to said condition;

(c) the Security Fund, liability insurance and indemnity provisions of this Agreement shall remain in full force and effect during the entire period of removal and associated repair of all Inalienable Property of the City and any other property, and for not less than one- hundred-twenty (120) days thereafter; and

(d) removal shall be commenced within the time specified by the Commissioner, which time shall be determined by the Commissioner on a case-by-case basis in consultation with the Company, taking into consideration the scope and nature of the facilities to be removed and other relevant factors. In no case shall removal be directed to commence within less than ten (10) days of the removal order by DoITT, nor shall removal be directed to be completed within less than thirty (30) days thereafter, including all reasonably associated repair of the Inalienable Property of the City and any other property.

12.7.2 Failure to Commence or Complete Removal. If, in the reasonable judgment of the Commissioner, the Company fails to commence removal or if the Company fails to substantially complete such removal, including all associated repair of the Inalienable Property of the City or any other property, the Commissioner may, at his or her sole discretion extend such period, then to the extent not inconsistent with applicable law, the City shall have the right to:

(a) declare that all rights, title and interest to the System belong to the City with all rights of ownership, including, but not limited to, the right to connect and use the System or to effect a transfer of all right, title and interest in the System to another Person for operation; or

(b) authorize removal of the System installed by the Company on, over, and under the Inalienable Property of the City at the Company's cost and expense, by another Person or remove such System, at the Company's cost and expense, itself; and

(c) to the extent consistent with applicable law, any portion of the Company's System on, over, and under the Inalienable Property of the City that is to be removed pursuant to this Section 12 and is not timely removed by the Company shall belong to and become the property of the City without payment to the Company and the Company shall execute and deliver such documents or instruments needed to operate the System and/or property (i.e., cash box key), as the Commissioner shall request, in form and substance acceptable to the Commissioner, to evidence such ownership by the City.

12.7.3 No Condemnation. None of the declaration, connection, use, transfer or other actions by the City or the Commissioner under Section 12.7.2 shall constitute a condemnation by the City or a sale or dedication under threat or in lieu of condemnation.

12.7.4 Other Provisions. The City and the Company shall negotiate in good faith all other terms and conditions of any such acquisition or transfer, except that the Company hereby waives its rights, if any, to relocation costs that may be provided by law and except that, in the event of any acquisition of the System by the City: (i) the City shall not be required to assume any of the obligations of any collective bargaining agreements or any other employment contracts held by the Company or any other obligations of the Company or its officers, employees, or agents, including, without limitation, any pension or other retirement, or any insurance obligations; and (ii) the City may lease, sell, operate, or otherwise dispose of all or any part of the System in any manner.

SECTION 13 – SUBSEQUENT ACTION

13.1 Procedure for Subsequent Invalidity. In the event that any court, agency, commission, legislative body, or other authority of competent jurisdiction as a result of a change in law or otherwise:

(a) declares this Agreement invalid, in whole or in part, or

(b) requires the City or the Company to: (i) perform an act which is inconsistent with any provision of this Agreement or (ii) cease performing any act required by this Agreement, then the Company or the City, as the case may be, shall promptly notify the other party in writing of such fact.

13.2 Continued Compliance. Upon the occurrence of any event described in 13.1 hereof, the Company and the City shall continue to comply with all provisions of this Agreement, including the affected provision, until the validity of the declaration or requirement has been finally adjudicated or a court orders the Company or the City to comply with such

declaration or order provided that either party may comply with any court order which is not stayed during the pendency of any appeal leading to said final adjudication.

SECTION 14 – MISCELLANEOUS

14.1 Appendices. The Appendices to this Agreement, attached hereto, and all portions thereof and exhibits thereto, are except as otherwise specified in said Appendices, incorporated herein by reference and expressly made a part of this Agreement. The procedures for approval of any subsequent amendment or modification to said Appendices shall be the same as those applicable to any amendment or modification hereof.

14.2 Notices. Unless otherwise expressly provided in this Agreement, every notice, order, petition, document, or other direction or communication to be served upon the City or the Company shall be in writing and shall be sufficiently given if sent by registered or certified mail, return receipt requested or by first class mail. Every such communication to the Company shall be sent to such address as the Company shall designate by letter delivered to the City simultaneous with the Company's execution of this Agreement, or to such other location as the Company may designate in writing, from time to time. Every communication from the Company shall be sent to the individual, agency or department designated in the applicable section of this Agreement, unless it is to "the City," in which case such communication shall be sent to the Commissioner of DoITT at 75 Park Place, 6th Floor, New York 10007. A required copy of each communication from the Company shall be sent to Corporation Counsel, New York City Law Department, 100 Church Street, New York, New York 10007, Attention: Chief, Economic Development Division. Except as otherwise provided herein, the mailing of such notice, direction, or order shall be equivalent to direct personal notice and shall be deemed to have been given when mailed. Any notice the Commissioner is required to give to the Company pursuant to Section 12.2 hereof for which a cure period is ten (10) days or less must be served by personal delivery, overnight mail service or facsimile transmission.

14.3 General Representations, Warranties and Covenants of the Company. In addition to the representations, warranties, and covenants of the Company to the City set forth elsewhere herein, the Company represents and warrants to the City and covenants and agrees (which representations, warranties, covenants and agreements shall not be affected or waived by any inspection or examination made by or on behalf of the City), that, as of the Effective Date:

14.3.1 Organization, Standing and Power. (a) The Company is an entity of the type described in Appendix E hereof, validly existing and in good standing under the laws of the State specified in Appendix E hereof and is duly authorized to do business in the State of New York and in the City. Appendix E represents a complete and accurate description of the organizational and ownership structure of the Company and a complete and accurate list of all Persons which hold, directly or indirectly, a ten percent (10%) interest in the Company, and all Persons in which the Company, directly or indirectly, holds a ten percent (10%) or greater interest. The Company has all requisite power and authority to own or lease its properties and assets, to conduct its business as currently conducted and to execute, deliver and perform this Agreement and all other agreements entered into or delivered in connection with or as

contemplated hereby. The Company is qualified to do business and is in good standing in the State of New York.

14.3.2 Authorization; Non-Contravention. The execution, delivery and performance of this Agreement and all other agreements, if any, entered into in connection with the transactions contemplated hereby have been duly, legally and validly authorized by all necessary action on the part of the Company and the certified copies of authorizations for the execution and delivery of this Agreement provided to the City pursuant to Section 2.3(b) hereof are true and correct. This Agreement and all other agreements, if any entered into in connection with the transactions contemplated hereby have been duly executed and delivered by the Company and constitute (or upon execution and delivery will constitute) the valid and binding obligations of the Company, and are enforceable (or upon execution and delivery will be enforceable) in accordance with their respective terms. The Company has obtained the requisite authority to authorize, execute and deliver this Agreement and to consummate the transactions contemplated hereby and no other proceedings or other actions are necessary on the part of the Company to authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. Neither the execution and delivery of this Agreement by the Company nor the performance of its obligations contemplated hereby will:

(a) conflict with, result in a material breach of or constitute a material default under (or with notice or lapse of time or both result in a material breach of or constitute a material default under) (i) any governing document of the Company or to the Company's knowledge, any agreement among the owners of the Company, or (ii) any statue, regulation, agreement, judgment, decree, court or administrative order or process or any commitment to which the Company is a party or by which it (or any of its properties or assets) is subject or bound;

(b) result in the creation of, or give any party the right to create, any material lien, charge, encumbrance, or security interest upon the property and assets of the Company; or

(c) terminate, modify or accelerate, or give any third party the right to terminate, modify or accelerate, any provision or term of any contract, arrangement, agreement, license agreement or commitments, except for any event specified in (a) or (b) above which individually or in the aggregate would not have a material adverse effect on the business, properties or financial condition of the Company or the System.

14.3.3 Fees. The Company has paid all franchise, permit, or other fees and charges which have become due pursuant to any franchise or permit.

14.3.4 (a) Criminal Acts Representation. Neither the Company nor, to the best of the Company's knowledge after reasonable investigation, any Affiliated Person or any employee or agent of the Company, has committed and/or been convicted (where such conviction is a final, non-appealable judgment or the time to appeal such judgment has passed) of any criminal offense, including without limitation bribery or fraud, arising out of or in connection with (i) this Agreement, (ii) the award of the franchise granted pursuant to this

Agreement, or (iii) any act to be taken pursuant to this Agreement by the City, its officers, employees or agents, or (iv) the business activities and services to be undertaken or provided pursuant to this Agreement.

14.3.4 (b) Criminal Acts Covenant. The Company shall promptly terminate its relationship with any Affiliated Person, or any employee or agent of the Company, who is convicted (where such conviction is a final, non-appealable judgment or the time to appeal such judgment has passed) of any criminal offense, including without limitation bribery or fraud, arising out of or in connection with: (i) this Agreement, (ii) the award of the franchise granted pursuant to this Agreement, (iii) any act to be taken pursuant to this Agreement by the City, its officers, employees or agents, or (iv) the business activities and services to be undertaken or provided by the Company pursuant to this Agreement.

14.3.5 Misrepresentation. No material misrepresentation has been made, either oral or written, intentionally or negligently, by or on behalf of the Company in this Agreement, in connection with any submission to DoITT or the Commissioner, including the Proposal, in connection with the negotiation of this Agreement. For purposes of this Section, Proposal means the Company's formal responses to the Request For Proposals For Franchises For Public Pay Telephones dated November 21, 1996 and all accompanying addenda thereto, and the Revised Request For Proposals For Franchises For Public Pay Telephones dated June 9, 1997 and all accompanying addenda thereto.

14.4 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted transferees and assigns. All of the provisions of this Agreement shall apply to the City and the Company and their successors and assigns.

14.5 No Waiver; Cumulative Remedies. No failure on the part of the City to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other right, except as provided herein, subject to the conditions and limitations established in this Agreement. The rights and remedies provided herein are cumulative and not exclusive of any remedies provided by law, and nothing contained in this Agreement shall impair any of the rights of the City under applicable law, subject in each case to the terms and conditions of this Agreement. A waiver of any right or remedy by the City at any one time shall not affect the exercise of such right or remedy or any other right or other remedy by the City at any other time. In order for any waiver of the City to be effective, it must be in writing. The failure of the City to take any action regarding a default or an Event of Default by the Company shall not be deemed or construed to constitute a waiver of or otherwise affect the right of the City to take any action permitted by this Agreement at any other time regarding such default or Event of Default which has not been cured, or with respect to any other default or Event of Default by the Company.

14.6 Partial Invalidity. The clauses and provisions of this Agreement are intended to be severable. If any clause or provision is declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such provision shall be deemed a separate, distinct, and independent portion. Except as provided in

Section 13 hereof, such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

14.7 Headings and Construction. The headings contained in this Agreement are to facilitate reference only, do not form a part of this Agreement, and shall not in any way affect the construction or interpretation hereof. Terms such as "hereby," "herein," "hereof," "hereinafter," "hereunder" and "hereto" refer to this Agreement as a whole and not to the particular sentence or paragraph where they appear, unless the context otherwise requires. The term "may" is permissive; the terms "shall," "must," and "will" are mandatory, not merely directive. All references to any gender shall be deemed to include both the male and the female, and any reference by number shall be deemed to include both the singular and the plural, as the context may require. Terms used in the plural include the singular, and vice versa, unless the context otherwise requires.

14.8 No Agency. The Company shall conduct the work to be performed pursuant to this Agreement as an independent contractor and not as an agent of the City.

14.9 Governing Law. This Agreement shall be deemed to be executed in the City of New York, State of New York, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with the laws of the State of New York, as applicable to contracts entered into and to be performed entirely within the State.

14.10 Survival of Representations and Warranties. All representations and warranties contained in this Agreement shall survive the Term.

14.11 Claims Under Agreement. The City and the Company agree that, except to the extent inconsistent with applicable law, any and all claims asserted by or against the City arising under this Agreement or related thereto shall be heard and determined either in a court of the United States located in New York City ("Federal Court") or in a court of the State of New York located in the City and County of New York ("New York State Court"). To effect this Agreement and intent, the Company agrees that:

(a) If the City initiates any action against the Company in Federal Court or in New York State Court, service of process may be made on the Company as provided in Section 14.13 hereof;

(b) With respect to any action between the City and the Company in New York State Court, the Company hereby expressly waives and relinquishes any rights it might otherwise have (i) to move or dismiss on grounds of forum non conveniens; (ii) to remove to Federal Court outside of the City of New York; and (iii) to move for a change of venue to a court of the State of New York outside New York County;

(c) With respect to any action between the City and the Company in Federal Court, the Company expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York; and

(d) If the Company commences any action against the City in a court located other than in the City and State of New York, then, upon request of the City, the Company shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Company shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in the City of New York.

14.12 Modification. Except as otherwise provided in this Agreement, any Appendix to this Agreement or applicable law, no provision of this Agreement nor any Appendix to this Agreement shall be amended or otherwise modified, in whole or in part, except by a written instrument, duly executed by the City and the Company, and approved as required by applicable law.

14.13 Service of Process. The Company agrees that service of process on the Company, with respect to all notices of violations, issued pursuant to either the PPT Rules or any other rules, regulations, orders or other directives of the City, and/or with respect to any and all proceedings relating to this Agreement or the Company's System (including, without limitation, judicial proceedings, proceedings before tribunals or other administrative bodies, including, but not limited to, administrative proceedings before the Environmental Control Board), may, at the City's option, either be delivered: (i) in person, wherever the Company may be found; or (ii) by registered mail or first class mail addressed to the Company at its office in the City; or (iii) by facsimile or telecopier transmission; or (iv) as set forth in Section 14.2 of this Agreement; or (v) to the designated agent for service in Appendix I to this Agreement by in-hand personal delivery, facsimile or telecopier transmission, or registered mail; or (vi) to the Secretary of State of the State of New York. The Company agrees to accept service of process when made by any of the methods stated in this Section 14.13 and shall not contest service of process when made pursuant to any such method.

14.14 Compliance With Certain City Requirements. The Company agrees to comply in all respects with the City's "MacBride Principles", a copy of which is attached at Appendix J hereto. The Company agrees to comply in all respects with the City's Vendor Information Exchange System, as the same may be amended from time to time.

14.15 Compliance With Law, Licenses.

(a) The Company shall comply with all applicable City, state and federal laws, regulations and policies.

(b) The Company shall obtain all licenses and permits that are necessary for the provision of the Services from, and comply with all rules and regulations of, the PSC, the FCC and any other governmental body having jurisdiction over the Company with respect to the Services.

(c) The Company shall ensure that emergency calling to the 911 emergency number, to the certified operator service provider and to any other appropriately authorized

emergency access number shall be in accordance with the rules and regulations promulgated by the PSC.

-- end of page --

[signatures appear on next page]

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IN WITNESS WHEREOF, the party of the first part, by its Deputy Mayor, duly authorized by the Charter of the City of New York, has caused the corporate name of said City to be hereunto signed and the corporate seal of said City to be hereunto affixed and the party of the second part, by it officers thereunto duly authorized, has caused its name to be hereunto signed and its seal to be hereunto affixed as of the date and year first above written.

THE CITY OF NEW YORK

By: ______________________
Deputy Mayor

____
Date

Approved as to form:

____
Corporation Counsel

By: ______________________
Name:
Title

(Seal)
Attest: ______________________

APPENDIX A

Executive Order No. 22

APPENDIX B

The Council of the City of New York
Authorizing Resolution No. 2248

APPENDIX C

Local Law 68 for the Year 1995

APPENDIX D

Gross Revenue Example

APPENDIX E

Ownership Structure

1. The Company is a [Corporation/General Partnership/Limited Partnership/Limited Liability Company/Other] validly existing and in good standing under the laws of the State of ________________.

2. [INSERT OWNERSHIP INFORMATION]

APPENDIX F

Public Interest PPTs

The computation of compensation payable pursuant to Section 8.2.1(a) and (b) shall be calculated as set forth in Section 8.2.1(a) and (b), but with the following adjustments, where applicable:

1. <u>Public Interest PPTs Generally</u>. The Company shall receive, as provided in Section 2 below of this Appendix F, partial credits against compensation payable pursuant to Section 8.2.1(a) and (b) of this Agreement with respect to Low Penetration Area PPTs (as defined below). In addition, the Commissioner may, in the Commissioner's sole discretion, grant full or partial credits against compensation payable with respect to all other Public Interest PPTs (defined as PPTs with respect to which full or partial compensation credits are granted pursuant to this Appendix F) pursuant to procedures established by the Commissioner; provided, however, that if the Commissioner directs the Company to install, operate and maintain a Public Interest PPT pursuant to Section 8.2.1(c) of this Agreement, then such PPT shall receive a full credit against the compensation otherwise due to the City under Section 8.2.1 (a) and (b) with respect to that PPT. In the event the Company operates a PPT that it believes should be treated as a Public Interest PPT, yet such PPT has not been so designated by the Commissioner, the Company may apply to the Commissioner for such designation and accompanying full or partial credit. The Commissioner shall take all such applications from franchisees under advisement and, upon a determination, in the Commissioner's sole discretion, may award Public Interest PPT designation and applicable full or partial credits to qualifying Franchisees.

2. <u>Low-Penetration Area PPTs</u>. (a) A Low Penetration Area PPT is a Location Level-Two PPT located in a community board district in which the household telephone penetration level falls below eighty percent (80%) according to the most recent United States Census Bureau's report on New York City household telephone penetration.

(b) Low Penetration Area PPTs shall receive a credit of five cents per PPT per day against the compensation due pursuant to Section 8.2.1 (a) and (b) of this Agreement. Community board districts in which such credit shall be available as of the Effective Date, pursuant to 1990 U.S. Census Report data, are listed in Schedule 1 to this Appendix F. However, the actual determination of applicable community board districts will be based on the most current information available from the U.S. Census Bureau at the time compensation pursuant to Section 8 is due, and classification of particular community board districts is thus subject to change as updated information on penetration rates may be released by the U.S. Census Bureau. Franchisees will be provided with any such updated information as it becomes available to DoITT.

3. <u>Underserved PPT Service Area</u>. (a) An Underserved PPT Service Area/PPT is a PPT that occupies a location which, pursuant to a determination by the Commissioner, is underserved in terms of available PPT Service.

(b) The Commissioner may, in the Commissioner's sole discretion, grant full or partial credits against franchise fees payable with respect to PPTs located in underserved PPT Service areas; provided, however, that if the Commissioner directs the Company to install, operate and maintain an Underserved PPT Service Area/PPT pursuant to Section 8.2.1(c) herein, then such PPT shall receive a full credit against the franchise fee otherwise due to the City with respect to that PPT.

4. Emergency Area. (a) An Emergency Area/PPT is a PPT that occupies a location which, pursuant to a determination by the Commissioner, is installed for reasons regarding public safety or emergency demands (such as along arterial highways and at entrances to bridges and tunnels).

(b) The Commissioner may, in the Commissioner's sole discretion, grant full or partial credits against franchise fees payable with respect to PPTs located in emergency areas; provided, however, that if the Commissioner directs the Company to install, operate and maintain an Emergency Area/PPT pursuant to Section 8.2.1(c) herein, then such PPT shall receive a full credit against the franchise fee otherwise due to the City with respect to that PPT.

5 Technologically Enhanced Public Interest PPTs. (a) Generally. Compensation credit awards for PPTs that provide for the installation, operation, and maintenance of Technologically Enhanced Public Interest/PPTs ("TEPI/PPTs") may be made available as provided hereinafter. These PPTs, in addition to complying with all other applicable local, state, and federal laws and regulations, must incorporate technology that enhances the public's access to, and use of, public pay telephone services, including members of the public with communication impairments such as hearing and speech impairments. TEPI/PPT characteristics may include, but are not limited to: features that enhance the public safety of the general population, features that serve and enhance the general public interest, and features that enhance access for people with disabilities. Some examples of such features include: the incorporation of TTYs/TTDs and/or a capacity to utilize portable TTYs/TTDs; independent ancillary emergency buttons on the phone pad that permit tactile or other accessible response capabilities to inform the user that the emergency message has been received; the capacity for periodic technological upgrade and the addition of new functions; a capacity to utilize debit cards; and a capacity to transmit and/or receive portable facsimile transmissions.

(b) Requirements: In accordance with this Appendix F, qualifying Franchisees may be eligible for a TEPI/PPT credit award as part of this Agreement via one, or both of, the following two methods (*Schedule 2 to Appendix F sets forth examples and guidelines for the application of these methods*):

(i) Commissioner Sanctioned Technological Enhancement ("CSTE").

(1) The Commissioner may, in the Commissioner's sole discretion and at any time, designate a particular technological enhancement as a technology that, if implemented by a Franchisee, would qualify that Franchisee for a TEPI/PPT credit award. In order to be eligible for such a credit, subsequent to the Commissioner's designation, a Franchisee must submit an application to the Commissioner notifying the Commissioner that the Franchisee has implemented the designated technology at a particular PPT stating the exact

location and street address of such PPT. In addition, the application must demonstrate that the implemented technology is in compliance with the Commissioner's specified criteria and particular technological requirements. The Commissioner shall take all TEPI/PPT applications under advisement and, upon a determination of full compliance and verification of implementation, will designate the Franchisee and its applicable PPT as qualifying for the credit award. Once the Commissioner has designated a Franchisee as qualifying for such an award, the Franchisees shall receive the appropriate credit. DoITT will maintain an available list of these Franchisee and all such designated TEPI features.

(2) A credit award period for a CSTE shall be allotted in twelve (12) month increments, beginning on a date specified by the Commissioner and extending for a full twelve (12) month duration. (*See Example No.1, Schedule 2 to Appendix F*). Franchisees are entitled to make an application for a deduction at anytime either: 1) after the Commissioner's designation of a technology as a TEPI/PPT but prior to the commencement of the twelve (12) month credit award period; or 2) at anytime subsequent to the actual commencement of the credit award period, yet prior to the conclusion of this twelve (12) month period. Accordingly, an individual grant may be awarded to a qualified Franchisee at anytime prior to the commencement of a credit award period or at anytime during the credit award period's allotted twelve (12) month duration. Each deduction period shall expire, however, at the end of the specified (12) month period, irrespective of when an individual credit is granted to a particular Franchisee. In addition, a credit award period shall automatically terminate if, for any reason, a PPT stops providing the approved technological enhancement during the deduction period. (*See Examples Nos. 2 & 3, Schedule 2 to Appendix F*).

(ii) Company Initiated Technological Enhancement ("CITE").

(1) A Franchisee may, at any time, submit an application to the Commissioner proposing that a technology be designated as a TEPI/PPT. The application must demonstrate both compliance with all criteria described in Section 1(d) of this Appendix F, as well as include any pertinent information justifying why a credit award would be warranted, including, but not limited to: a technical description of the proposed technology and how it functions; the benefit the proposed technology seeks to offer; the customer group that would most benefit from the technology; the estimated time it would take to install the technology onto a PPT; a proposed amount for the credit award; and the estimated cost of developing, installing, operating, and maintaining, for a fixed duration, the proposed technological enhancement.

(2) The Commissioner shall take all Company Initiated TEPI/PPT applications under advisement and, upon a determination, in the Commissioner's sole discretion, will award applicable credits to qualifying Franchisees for a specified amount. After a determination by the Commissioner that a Franchisee application meets the criteria the Commissioner has set forth, the Commissioner shall designate the Company as qualifying for the deduction. Upon qualification notification, the Company should implement the Company Initiated TEPI/PPT feature. Once the feature has been implemented and verified by DoITT, the Franchisee shall receive the appropriate credit award. DoITT will maintain an available list of these Franchisee and all such designated TEPI features.

(iii) A credit award period for an CITE shall be allotted in twelve (12) month increments, beginning on a date specified by the Commissioner. After a determination by the Commissioner that a particular technology warrants a credit award, the Commissioner shall notify the proposing Franchisees of their qualification. The Commissioner shall also dedicate a commencement date in which the credit award period shall begin. Accordingly, once the period commences, provided the Franchisee has implemented the technological enhancement feature in a manner consistent with its application proposal, that Franchisee shall receive the appropriate credit award.

Schedule 1 to APPENDIX F

Low-Penetration Area Classification / 1990 US Census Report Data

NYC Community District	Penetration % Based On Current Census Data
Manhattan Comm. Dist. #10	79.9%
Bronx Comm. Dist. #4	78.4%
Bronx Comm. Dist. #6	77.2%
Bronx Comm. Dist. #5	77.0%
Bronx Comm. Dist. #3	76.8%
Bronx Comm. Dist. #1	75.8%
Bronx Comm. Dist. #2	75.6%
Brooklyn Comm. Dist. #4	72.2%

Schedule 2 to APPENDIX F

Examples

Example No. 1

On January 1, 2000, the Commissioner, via written notice, designates PPTs that have "Technology Z" as TEPI/PPTs. The Commissioner also specifies that such designation shall enable a Company to receive a two percent (2%) credit award for one (1) full year on the particular enhanced PPT and that this credit award period shall begin on January 31, 2000. "Company A" receives this notification and, on January 20, 2000, submits an application to the Commissioner stating that it has installed a PPT with Technology Z and that such PPT is located in Manhattan on the northwest corner of Main Street and Center Avenue at 100 Main Street. In addition, Company A states in its application that this technology fully complies with all aspects of the Commissioner's specified criteria. The Commissioner receives this application on January 22, 2000, and after determining both full compliance and verification of implementation, notifies Company A on January 30, 2000 that it has qualified for the two percent (2%) credit award. Thus, beginning on January 31, 2000, and continuing for one (1) full year, Company A would receive a two percent (2%) credit on the compensation it pays per year for that particular enhanced PPT.

Example No. 2

On January 1, 2000, the Commissioner designates "Technology Y" as a technology that, if implemented according to the Commissioner's specific requirements, qualifies a PPT as a TEPI/PPT. The Commissioner also specifies that such designation shall enable a Company to receive a three percent (3%) compensation deduction on that particular enhanced PPT. The credit award period is scheduled to commence forty-five (45) days from the dedication date. During the immediate thirty (30) days thereafter, "Company B" applies for, and is designated as qualifying for, the Technology Y- TEPI deduction (designation date: January 30, 2000). Fifteen (15) days later (February 14, 2000), the credit award period commences. As of this date, Company B had the specified technology installed and operating on twenty (20) of its PPTs. Company B continued to offer the enhancement on its twenty (20) designated PPTs for at least the next twelve (12) months. As a result, Company B would receive the three percent (3%) deduction on each of these twenty (20) PPTs beginning on February 14, 2000, and continuing until February 14, 2001 (twelve (12) months after commencement of credit award period), provided each PPT retained Technology Y for the entire period.

Example No. 3

Applying the same facts as stated in example No. 3, assume on August 1, 2000, "Company C" applies for the same Technology Y credit for ten (10) of its PPTs. Subsequently, on August 15,

2000, Company C is designated as qualifying for the credit. Assuming Company C retained the enhancement for the entire remainder of the credit award period, it would receive the applicable three percent (3%) deduction for the next six (6) months, ending on February 14, 2001 (conclusion of original credit award period). It is important to note that irrespective of when Company C began to receive its credit award, the credit period would still end twelve (12) months from the initial commencement of the credit award period back in February 14, 1999. Thus, in this case, Company C would enjoy a six (6) month deduction period.

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APPENDIX G

[INTENTIONALLY OMITTED]

APPENDIX H

Investigations Clause

APPENDIX I

Designated Agent for
Service of Process

APPENDIX J

MacBride Principles