

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
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, :

95 Civ. 8591 (RWS)

V. :

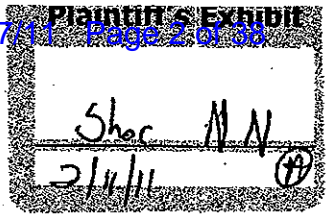
RUDOLPH GIULIANI, as Mayor of the :
City of New York, HOWARD SAFIR, as :

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. :

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

-----X
EXHIBIT 21



AGREEMENT

THIS AGREEMENT, executed as of the ____ day of ____, 1999 (as defined in Section 1 hereof, the "Effective Date"), by and between **THE CITY OF NEW YORK** (as defined in Section 1 hereof, the "City") and (fill in payphone company name), having its principal place of business at (fill in company address here) (as defined in Section 1 hereof, the "Company").

WITNESSETH:

WHEREAS, the New York City Department of Information Technology and Telecommunications (as defined in Section 1 hereof, "DoITT"), on behalf of the City, has the authority to grant non-exclusive franchises for the occupation or use of the Inalienable Property of the City (as defined in this Section 1, the "Inalienable Property of the City") in connection with the provision of Public Pay Telephone Service (as defined in Section 1 hereof, "Service"), including renewals thereof; and

WHEREAS, the Company has submitted to DoITT its proposal in response to a Revised Request for Proposals issued by DoITT pursuant to Authorizing Resolution No. 2248 (passed by the New York City Council on March 25, 1997), a copy of which is attached as Appendix B hereto; and

WHEREAS, on August 9, 1999, the New York City Franchise and Concession Review Committee (as defined in Section 1 hereof, the "FCRC") held a public hearing on the Company's proposal for a franchise to install, operate, and maintain Public Pay Telephones, and associated equipment (as defined in Section 1 hereof, "PPTs") on, over, and under the Inalienable Property of the City to be used in providing PPT Service, which was a full public proceeding affording due process in compliance with the requirements of Chapter 14 of the New York City Charter (the "Charter"); and

WHEREAS the FCRC, at its duly constituted meeting held on August 11, 1999, and acting in accordance with its customary procedures, voted on and approved the grant to the Company of a franchise as contemplated by the Revised RFP; and

WHEREAS, the action to be taken hereunder has been reviewed for its potential environmental impacts and a negative declaration has been issued finding that such proposed action will not result in any significant adverse environmental impacts, all in accordance with the New York State Environmental Quality Act ("SEQRA") (Section 8-0101 *et seq.* of the New York State Environmental Conservation Law), the SEQRA regulations set forth at Part 617 of Title 6 of the New York Code of Rules and Regulations, and the City Environmental Quality Review Process (Chapter 5 of Title 62 and Chapter 6 of Title 43 of the Rules of the City of New York); and

WHEREAS, The New York City Department of City Planning determined, as evidenced in its letter dated October 17, 1996, that the proposed franchise would have no land use impacts and that review pursuant to Section 197-c of the Charter would not be necessary; and

WHEREAS, the City intends to exercise the full scope of its municipal powers, including both its police power and contracting authority, to promote the public interest, to enhance the health, welfare and safety of the public, and to stimulate commerce by assuring the widespread availability of Public Pay Telephone Services of the highest caliber.

NOW, THEREFORE, in consideration of the foregoing clauses, which clauses are hereby made a part of this Agreement, the mutual covenants and agreements herein contained, and other good and valuable consideration, the parties hereby covenant and agree as follows:

SECTION 1 -- DEFINED TERMS

For purposes of this Agreement, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended.

1.1 "Affiliated Person" means each Person who falls into one or more of the following categories: (i) each Person having, directly or indirectly, a Controlling Interest in the Company; (ii) each Person in which the Company has directly or indirectly, a Controlling Interest; (iii) each officer, director, general partner, limited partner holding an interest of ten percent (10%) or more in the Company, or joint venturer or joint venture partner of the Company; and (iv) each Person directly or indirectly, controlling, controlled by or under common Control with the Company; provided that "Affiliated Person" shall in no event mean the City, any limited partner holding an interest of less than ten percent (10%) of the Company or any creditor of the Company solely by virtue of its status as a creditor and which is not otherwise an Affiliated Person.

1.2 "Agreement" means this agreement, together with the Appendices and Schedules attached hereto and all amendments, modifications, or renewals hereof or thereof.

1.3 "City" means the City of New York or, as appropriate in the case of specific provisions of this Agreement, any board, bureau, authority, agency, commission, department or any other entity of the City of New York, or any authorized officer, official, employee or agency thereof, or any successor thereto.

1.4 "Commissioner" means the Commissioner of DoITT, or his or her designee, or any successor in function to the Commissioner.

1.5 "Company" means (fill in company name) organized and existing under the laws of the State of (fill in name of state), whose principal place of business is located at (address).

1.6 "Comptroller" means the Comptroller of the City, the Comptroller's designee, or any successor in function to the Comptroller.

1.7 "Control" or "Controlling Interest" in a Person, in the System, in the Company or in the franchise granted herein means working control in whatever manner exercised, including

without limitation, working control through ownership, management, debt instruments or negative control, as the case may be, of such Person, the System (as defined in this Section 1, the "System"), of the Company or in the franchise granted herein. A rebuttable presumption of the existence of Control or a Controlling Interest in a Person, in the System, in the Company or in the franchise granted herein shall arise from the beneficial ownership, directly or indirectly, by any Person, or group of Persons acting in concert (other than underwriters during the period in which they are offering securities to the public), of ten percent (10%) or more of such Person (which Person or group of Persons is hereinafter referred to as "Controlling Person"), the System, the Company or the franchise granted herein. "Control" or "Controlling Interest" as used herein may be held simultaneously by more than one Person or group of Persons.

1.8 "Curb" means a raised stone or concrete edging along the side of a roadway (or, where no such raised edging exists, the similar line of separation between those portions of the Inalienable Property of the City used primarily for pedestrian and sidewalk uses and those portions used primarily for vehicular and roadway use).

1.9 "Curb Line PPT" means a PPT located no more than 24 inches from a Curb.

1.10 "DoITT" means the Department of Information Technology and Telecommunications of the City, its designee, or any successor thereto.

1.11 "DOT" means the Department of Transportation of the City, its designee, or any successor thereto.

1.12 "District" means the Inalienable Property of the City (as defined in this Section 1) located within the Boroughs of Manhattan, Brooklyn, Staten Island, Queens and the Bronx.

1.13 "Effective Date" means the date of execution of this Agreement by and between the City and the Company.

1.14 "FCC" means the Federal Communications Commission, its designee, or any successor thereto.

1.15 "FCRC" means the Franchise and Concession Review Committee of the City, or any successor thereto.

1.16 "Franchisee" means any holder of a franchise granted by the City pursuant to the Revised Request For Proposals issued by DoITT on June 9, 1997 regarding the installation, operation and maintenance of PPTs and associated equipment on, over and under the Inalienable Property of the City (as defined in this Section 1) to be used in providing PPT Services (as defined in this Section 1, "PPT Services") or any subsequent solicitation with a similar purpose whether or not such subsequent solicitation includes all or part of the components of the June 9, 1997 solicitation.

1.17 "Historic Districts" means those districts so designated by the Landmarks Preservation Commission (or any successor agency thereto).

1.18 "Inalienable Property of the City" means the rights of the City in and to its waterfront, ferries, wharf property, bridges, land under water, public landings, wharves, docks, streets, avenues, highways, parks, waters, waterways and all other public places.

1.19 "Mayor" means the chief executive officer of the City or any designee thereto.

1.20 "Non-Curb Line" PPT means any PPT which is not a Curb Line PPT.

1.21 "Parkland" means any park, square, public place or playground solely and directly under the control of the New York City Department of Parks and Recreation.

1.22 "Person" means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for profit or not for profit, but shall not mean the City.

1.23 "PSC" means the New York State Public Service Commission, its designee, or any successor thereto.

1.24 "Public Pay Telephone" or "PPT" means a telephone: (i) from which calls can be paid for at the time they are made by a coin, credit card, prepaid debit card or in any other manner; (ii) which is available for use by the public; and (iii) which provides access to a switched telephone network or similar type conduit for the purpose of voice or data communications. The term "Public Pay Telephone" or "PPT" shall include any pedestal or telephone bank supporting one or more such telephones, PPT Enclosures, signage and other associated equipment.

1.25 "Public Pay Telephone Rules" or "PPT Rules" means Chapter 6 of Title 67 of the Rules of the City of New York as such rules may be amended from time to time.

1.26 "Public Pay Telephone Enclosure" or "PPT Enclosure" means any associated housing or enclosure that is attached to a pedestal, telephone bank, or affixed to a building, and partially or fully surrounds a PPT.

1.27 "Service(s)", "PPT Service(s)" or "Public Pay Telephone Service(s)" means any public pay telephone service provided by the Company within the District which the Company is authorized to provide under applicable federal, state and local law and any equipment required for and integrated with the Service provided by the Company within the District.

1.28 "System" or "PPT System" means all of the PPTs which are to be installed, operated and/or maintained by the Company pursuant to this Agreement, including PPT Enclosures, and any associated equipment, wiring, and/or cables that are attached to such PPTs or PPT Enclosures and that connect such PPT or PPT Enclosures to the network interface device of the switched telephone network or similar type conduit and/or power source."

1.29 "Term" means the term of the Agreement as described in Section 2.1 hereof.

SECTION 2 – GRANT OF AUTHORITY

2.1 Term. This Agreement, and the franchise granted hereunder, shall commence upon the Effective Date, and shall continue for an initial term of eleven (11) years from the Effective Date, unless this Agreement is earlier terminated as provided by Section 12.3 hereof or for any other reason as set forth in this Agreement. The Commissioner, in his or her sole discretion, shall have the option to renew this Agreement for an additional term of four (4) years.

2.2 Renewal. It is the Commissioner's current intention to renew this Agreement and the franchise granted hereunder for an additional term of four (4) years subject to the same conditions for early termination stated above, if upon review of the performance of the Company, the Company has been and is in substantial compliance with this Agreement. The Company may submit a written petition to the City to renew this Agreement and the franchise granted hereunder not later than twelve (12) months nor more than eighteen (18) months before the expiration of the Term. Any Company seeking to renew this Agreement shall be required, in accordance with Section 9.5.1(b) herein, to submit to DoITT, at such time as specified by the Commissioner, prior to any renewal, a complete set of audited general purpose financial statements, including, but not limited to, 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. Such financial statements shall 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. Nothing in this section shall be construed to obligate the City to renew this Agreement or the franchise granted hereunder.

In the event the Commissioner proposes not to renew this Agreement, the Commissioner shall set forth, in writing, the reasons therefor and shall provide the Company an opportunity to respond in writing.

2.3 Certain Actions by the Company Before Execution. (a) Prior to the City's execution of this Agreement, the Company shall have submitted to DoITT current and up-to-date questionnaires required in connection with the City's Vendor Information Exchange System ("VENDEX"), and such questionnaires shall have been fully completed by the Company and received a favorable review by the City.

(b) The Company shall demonstrate that it has satisfied certain conditions prior to the City's execution of this Agreement by delivering to DoITT the following: (i) an insurance certificate pursuant to Section 11.2.1 hereof, (ii) certified copies of documentation (as amended to date) showing that (x) the Company is duly organized and in good standing (with authority to do business in New York) as a corporation, partnership, limited liability company or sole proprietorship, (y) the person or persons who will execute this Agreement on the Company's behalf is (or are) authorized to execute and deliver the Agreement on the Company's behalf as a

legal, binding and enforceable agreement of the Company and (z) an opinion of the Company's counsel dated as of the Effective Date opining that this Agreement has been duly authorized, executed and delivered by the Company and is a binding obligation of the Company and opining as to such other matters as the City may request; (iii) a letter from the Company to DoITT, signed by a senior officer of the Company, certifying that a listing supplied to the Company by DoITT from its records of PPTs owned and operated by the Company is accurate and complete, or if not accurate and complete then the Company shall set forth, in a format prescribed by DoITT, all changes necessary to make such listing accurate and complete. Inconsistencies between the Company's records and DoITT's listing shall be reconciled to the satisfaction of DoITT prior to the City's execution of this Agreement; and (iv) a list, certified by a senior officer of the Company, setting forth the location, including street address or corner location, for each PPT operated by the Company 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 must demonstrate, in a manner and form acceptable to the Commissioner, that each such PPT is not located on, over or under the Inalienable Property of the City and that a user of such PPT could not stand on the Inalienable Property of the City when using that PPT.

2.4 Security Fund Evidence. The Company shall deliver to DoITT, within thirty (30) calendar days of the Effective Date, evidence that the Security Fund required pursuant to Section 6 hereof has been created. If the Security Fund is being provided by a cash deposit, such evidence shall consist of documents showing that the required cash amount has been deposited with the Comptroller. If the Security Fund is being provided in the form of a letter of credit, such evidence shall consist of a copy of the executed letter of credit, in the required amount and approved form, deposited with the Comptroller. If the Security Fund is being provided in the form of a performance bond, such evidence shall consist of an original executed performance bond in the required amount and approved form. Failure to submit such evidence as stated in this paragraph shall constitute an Event of Default and shall be grounds for termination of this Agreement.

2.5 Nature of Franchise, Effect of Termination and Renewal.

2.5.1 Nature of Franchise. The City hereby grants the Company, subject to the terms and conditions of this Agreement, a non-exclusive franchise providing the right and consent to install, operate, repair, maintain, upgrade, remove and replace PPTs on, over and under the Inalienable Property of the City in order to provide Services, the exercise of such franchise being subject to all applicable requirements of Local Law Number 68 for the Year 1995 and any rules promulgated pursuant thereto and all other applicable laws, rules and regulations of the City. The Inalienable Property of the City does not include premises controlled by the Port Authority of the City of New York, the New York City Board of Education, the Health and Hospitals Corporation, the Metropolitan Transit Authority, the New York City Housing Authority, the New York City Off Track Betting Corporation, or the interior of any buildings owned, leased, or operated by the City of New York, or any other City property not expressly included in Section 1.18 hereof.

2.5.2 Permits, Authorizations, Approvals, Consents and Licenses. (a) Before installing any PPT, the Company shall obtain, at its own cost and expense, and comply with, any

necessary permits, authorizations, approvals, consents, licenses, and certifications required for each PPT, including but not limited to: (i) a separate permit from DoITT for each PPT as set forth in Local Law Number 68 for the Year 1995 and the PPT Rules; (ii) all permits, authorizations, approvals, consents, licenses and certifications required by DOT, the Landmarks Preservation Commission and any other agency of the City with jurisdiction over the property on which the PPT is to be located (including, with respect to PPTs on Parkland, the Department of Parks and Recreation); (iii) any necessary permits, authorizations, approvals, consents, licenses, and certifications required pursuant to any applicable state and federal laws, regulations and policies, writs, decrees and judgments, including but not limited to, all rules and regulations of the PSC regarding 911 service, operator service and all other requirements, the FCC and any other applicable governmental body having jurisdiction over the services being provided and/or the locations of which such services are provided pursuant to this franchise; and (iv) any necessary permits, authorizations, approvals, consents, licenses and certifications from Persons to use a building or other private property, easements, poles, and conduits as required by Section 23-403 of the New York City Administrative Code. Permits for PPTs shall only be issued by the Commissioner, upon a determination at his or her discretion, that issuance of a permit will be in the best interest of the City as provided by the PPT Rules.

(b) The Commissioner shall issue permits in accordance with the provisions of the PPT Rules.

(c) The Company agrees that fees paid to obtain any permits, consents, licenses, or any other forms of approval or authorization shall not be considered in any manner to be in the nature of a tax, or to be compensation for this franchise in lieu of the compensation described in Section 8 of this Agreement.

2.5.3 Minimum Number of PPTs. The Company agrees to operate and maintain a minimum of twenty-five (25) PPTs under this Agreement throughout the Term. If the Company is not operating and maintaining at least twenty-five (25) PPTs on the Effective Date, it shall diligently take all actions within its control to assure that it is operating and maintaining at least twenty-five (25) PPTs, in accordance with all the terms and conditions of this Agreement, as soon as feasible and in any event no later than twelve (12) months after the Effective Date, subject to the timely issuance of necessary permits, which will be diligently pursued by the Company.

Except where the Company demonstrates to the satisfaction of DoITT that the Company's failure to operate and maintain a minimum of twenty-five (25) PPTs pursuant to this Section 2.5.3 is due to circumstances beyond its control, such failure shall constitute an Event of Default and shall be grounds for termination of this Agreement.

2.5.4 Effect of Termination. Upon termination of this Agreement (and provided no new franchise of similar effect has been granted to the Company pursuant to the Charter, any authorizing resolution, and any other applicable laws and rules in effect at the time) the franchise shall expire; all rights of the Company in the franchise shall cease, with no value allocable to the franchise itself; and the rights of the City and the Company to the System, or any part thereof, shall be determined as provided in Section 12.3 through 12.7 hereof. The

termination of this Agreement and the franchise granted hereunder shall not, for any reason, operate as a waiver or release of any obligation of the Company or any other Person, as applicable, for any liability: (i) pursuant to Section 11.1 hereof, which arose or arises out of any act or failure to act required hereunder prior to the termination; (ii) which exists pursuant to or as a consequence or a breach of Section 8, "Compensation"; Section 9.6.2, "Right of Inspection"; Section 12.3 through 12.7, "Termination"; Section 14.9, "Governing Law"; and Section 14.11, "Claims Under Agreement" hereof; and (iii) to maintain in full force and effect the Security Fund and coverage under the liability insurance policies required under and in accordance with Section 6 and 11.2 hereof.

2.6 Conditions and Limitations on Franchise.

2.6.1 Not Exclusive. Nothing in this Agreement shall affect the right of the City to grant to any Person other than the Company a franchise, consent or right to occupy and use the Inalienable Property of the City, or any part thereof, for the construction, operation and/or maintenance of a System to provide PPT Services in the City.

2.6.2 Sidewalks of a Distinctive Design. PPTs may not be installed on, or result in the destruction, damage, or removal of any part of, a sidewalk of a distinctive design as defined in the PPT Rules.

2.6.3 Excluded Outdoor Locations. At least seventy-two (72) hours prior to the Company's 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 shall notify the City of its intention to install such PPT. Such notification shall identify the location of the PPT, and provide a brief description why the Company believes that the location is not on, over or under the Inalienable Property of the City. If the City does not agree and believes that the PPT may be on, over or under the Inalienable Property of the City and so notifies the Company in writing, the Company will not install the PPT until such time as it demonstrates, 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 Inalienable Property of the City when using such PPT. If the City notifies the Company after the PPT is already installed, the Company will remove said PPT within thirty (30) days of such notification unless, during that time period, it demonstrates, 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 such user could not stand on Inalienable Property of the City when using such PPT.

2.6.4 Additional Information. In connection with the City's oversight, review and enforcement of the Company's compliance with the terms and conditions of this Agreement, and with the requirements of applicable local laws and the PPT Rules, the Company hereby authorizes access by the City to and agrees to waive any objection to the receipt by the City of any information or documentation regarding the Company's provision of Services in the possession of a provider of dialtone service or an affiliate of a provider of dialtone service, including, but not limited to, work orders or other records that identify the time and demarcation point of a PPT installation and the billable party for dialtone service to such installation, the placement of orders for lines for the provision of PPT Service, the assigning of an automatic

number identification ("ANI"), and any correspondence or communications related thereto. The Company hereby waives any objection, under applicable tariff(s), if any, or agreement(s), if any, to the release of such information to the Commissioner as provided herein. At the Commissioner's request, any Company that is also a provider of dialtone service or is affiliated with a provider of dialtone service, shall also promptly submit any documentation or information it may have regarding the provision of such Services by another party that is a Franchisee and that is relevant to said oversight, review and enforcement, including copies of agreements for dialtone service between a Franchisee and a provider of dialtone service (unless the release of such documentation or information is prohibited by federal or state law, rule or regulation or order, or unless the applicable Franchisee, in violation of Section 2.6.4 of its version of this Agreement, objects to the City's receipt of such submission).

2.6.5 Billable Party Dialtone Service. The Company shall be throughout the term of this Agreement, the billable party for dialtone service and the entity to whom the dialtone is being directly provided at each permitted PPT that is subject to this Agreement. In the event a transfer of this Franchise is approved by the City as required under this Agreement, then the transferee shall thereafter be the billable party, as required under this Section.

2.6.6 Removal and Relocation.

2.6.6.1 Public Works and Improvements. Nothing in this Agreement shall abrogate the right of the City to change the grades or lines of any Inalienable Property of the City within the District, or perform any public works, or public improvements, or any street widening project, or any other capital project of any description. In the event the grades or lines of any Inalienable Property of the City within the District are changed at any time during the Term in a manner affecting the System, or it is determined that the System interferes with the construction, operation, maintenance, repair or removal of any public works, or public improvements, or the conduct of any street widening project, or any other capital project of any description, the Company shall, at its own cost and expense and as directed by the City, promptly protect or remove or alter or relocate the affected portion of the System. In the event that the Company refuses or neglects to so protect, remove, alter, or relocate such portion of the System as directed by the City, the City shall have the right to protect, remove, alter, or relocate such portion of the System without any liability to the Company, and the Company shall pay to the City the costs incurred in connection with such protection, removal, alteration, or relocation. To the extent practicable under the circumstances, the City will provide thirty (30) days prior notice of any change to the grades or lines of any Inalienable Property of the City within the District, or of any public works, public improvements, street widening project, or any other capital project of any description that will require protection, removal, alteration or relocation of any part of the System, and if such thirty (30) day prior notice is not practicable, the City will provide such notice as is practicable.

2.6.6.2 Public Use, Public Nuisance, Other. The City shall have the right at any time to inspect the Company's System that is located on the Inalienable Property of the City and order the removal or relocation of a PPT upon a determination that: (i) the PPT unreasonably interferes or will unreasonably interfere with the use of a street by the public or constitutes a public nuisance; or (ii) for any other reason that a PPT may be removed or a permit terminated or revoked as specified in the PPT Rules.

2.6.6.3 Notification. (a) In the event the Commissioner determines that a PPT should be relocated or removed pursuant to Section 2.6.6.2 herein, the Commissioner shall notify the Company, as set forth in Section 14.2 herein, in accordance with the PPT Rules.

(b) In the event that the Company fails to relocate or remove the PPT by the date specified by the Commissioner, the Commissioner may remove or cause the removal of the PPT and have repair and restoration work performed at the expense of the Company, who shall be liable for the amount expended by the City and for any other costs or damages incurred by the City arising out of the performance of such work.

2.6.6.4 Emergency. Notwithstanding the foregoing and in accordance with the PPT Rules, if the Commissioner determines that an imminent threat to life or property exists, the Commissioner may remove or cause the removal of a PPT and have repair and restoration work performed at the expense of the Company, without affording the Company an opportunity to be heard prior to such removal. The Commissioner may, if he or she determines that such PPT can be safely reinstalled and maintained, permit the owner to reinstall such PPT.

2.6.7 No Waiver. Nothing in this Agreement shall be construed as a waiver of any local law or rule of the City or of the City's right to require the Company to secure the appropriate permits or authorizations for PPT installation.

2.6.8 No Release. Nothing in this Agreement shall be construed as a waiver or release of the rights of the City in and to the Inalienable Property of the City. In the event that all or part of the Inalienable Property of the City within the District is eliminated, discontinued, closed or demapped, all rights and privileges granted pursuant to this Agreement with respect to said Inalienable Property of the City, or any part thereof so eliminated, discontinued, closed or demapped, shall cease upon the effective date of such elimination, discontinuance, closing or demapping. If said elimination, discontinuance, closing or demapping is undertaken for the benefit of any private Person, the City shall make reasonable efforts to condition its consent to said elimination, discontinuance, closing or demapping on the agreement of said private Person to: (i) grant the Company the right to continue to occupy and use said Inalienable Property of the City, or (ii) reimburse the Company for the reasonable costs of relocating the affected part of the System.

SECTION 3 – SERVICE

3.1 Maintenance and Inspection.

3.1.1 General Requirements. Commencing on the Effective Date and thereafter throughout the Term of this Agreement, the Company shall at all times comply with the provisions of this Section 3.1 to ensure that, to the maximum extent possible:

(a) The Company's PPTs provide coinless access on a continuous, round-the-clock basis to 911 service and operator service consistent with the rules and regulations promulgated by the PSC and as described in the PPT Rules;

(b) The Company's PPTs are in an operable condition as described in the PPT Rules; and

(c) The Company's PPTs are in a clean condition as described in the PPT Rules.

3.1.2 Minimum Service Operating Procedures. The Company shall, at a minimum, comply with the following service operating procedures:

(a) 911 Access and Operability

(i) PPTs shall be electronically tested and/or physically inspected for compliance with the PPT Rules on a daily basis. In the case of a Company that utilizes electronic testing: (x) one-hundred percent (100%) of PPTs shall be polled daily and (y) during each calendar quarter, successful contact must be made, on average, with at least ninety percent (90%) of such PPTs each day (that is, during each quarterly period, the Company must maintain an average daily rate for PPTs successfully contacted of ninety percent (90%)). In the case of a Company that utilizes on-site physical inspection methods, during each quarterly period, at least ninety percent (90%) of PPTs must be inspected, on average, each day (that is, during each quarterly period, the Company must inspect an average of at least ninety percent (90%) of the Company's PPTs per day). In the case of a Company that utilizes a combination of electronic testing and on-site physical inspecting methods, during each quarterly period: (x) successful contact must be made, on average, with at least ninety percent (90%) of all those PPTs that are electronically polled and (y) at least ninety percent (90%) on average, of those PPTs that are inspected by on-site methods must be inspected each day (that is, during each quarterly period, the Company must maintain an average daily rate of successful contact with ninety percent (90%) of the Company's PPTs that are electronically polled and during that same period the Company must inspect an average of at least ninety percent (90%) of the Company's PPTs that are physically inspected by on-site methods).

(ii) No fewer than seventy percent (70%) of PPTs identified as inoperable by each daily electronic testing and/or physical inspection shall be fully repaired within forty-eight (48) hours of such identification, and one-hundred percent (100%) of PPTs identified as inoperable shall be repaired within seventy-two (72) hours of such identification; provided, that with respect to a service condition that renders 911 emergency service inoperable, such service shall be restored within twenty-four (24) hours of identification unless service restoration is dependent on the actions of a third party. If service restoration is dependent on the actions of a third party, such as a supplier of dialtone or electricity (not an entity such as a contractor specifically hired by the Company to perform maintenance or repair services, which for purposes of this clause shall be treated as an instrument of the Company, not a "third party"), the Company shall notify DoITT of the circumstances within twelve (12) hours following such identification, shall use its best efforts to have service restored as soon as possible, and shall

notify DoITT in the same manner promptly following service restoration. Notification to DoITT under this subparagraph shall be made to the DoITT Director of Public Pay Telephone Operations, by facsimile at 718-403-8504, or by such other method(s) as the Commissioner shall determine from time to time.

(b) Cleanings

(i) The Company shall, at a minimum, clean all PPTs two (2) times each month, on non-consecutive days, with at least two (2) such cleanings occurring no fewer than fourteen (14) days apart ("Minimum Cleaning Cycle"). In the case of any PPT that is cleaned by the Company at a frequency greater than required by the Minimum Cleaning Cycle, cleanings may be scheduled at the Company's discretion.

(ii) All materials and methods used for such cleaning purposes shall comply with all applicable federal, state and local laws, rules and regulations governing environmental, health and safety standards. Each cleaning required hereunder shall include, at a minimum, the removal of dirt, grime, stickers and graffiti from all surfaces of a PPT.

(iii) For any PPT that is cleaned at a frequency no greater than the Minimum Cleaning Cycle prescribed under section 3.1.2(b)(i) above, the Company must, in addition, conduct at least one (1) on-site visual survey of such PPT every month to inspect for the presence of graffiti and/or stickers. In the event that graffiti and/or stickers are found on such PPT as a result of such survey, the Company shall remove such graffiti and/or stickers within seventy-two (72) hours following the discovery of same.

3.1.3 Recordkeeping.

(a) The Company shall maintain records, in a form satisfactory to the Commissioner, demonstrating compliance with the minimum service operating procedures set forth in Section 3.1.2. Such records shall be available for inspection by DoITT at all times upon demand and copies thereof, whether in paper, electronic or other form, shall be provided to DoITT promptly upon request. Not later than fifteen (15) calendar days after the execution of this Agreement, the Company shall submit to DoITT a detailed description of all proposed recordkeeping procedures that will document compliance with the minimum service operating procedures set forth in Section 3.1.2. If DoITT determines that such proposed recordkeeping procedures are insufficiently detailed or otherwise unlikely to adequately document compliance with the minimum service operating procedures set forth in Section 3.1.2, DoITT shall direct the Company to adopt such modifications to the proposed recordkeeping procedures as it deems necessary.

(b) A failure to propose recordkeeping procedures or to adopt modifications of such procedures at the direction of DoITT pursuant to Section 3.1.3(a), or a failure to implement or maintain such recordkeeping procedures at any time during the Term, shall constitute an Event of Default.

3.1.4 Performance Standards and Corrective Actions. (a) If, during the term of this Agreement, the Commissioner determines that:

(i) During any quarterly period, ten percent (10%) or more of the Company's PPTs surveyed by the City (by means of a survey of a representative sample of PPTs) did not provide 911 service within the meaning of the PPT Rules; or

(ii) During any quarterly period, ten percent (10%) or more of the Company's PPTs surveyed by the City (by means of a survey of a representative sample of PPTs) did not provide PPT service within the meaning of the PPT Rules; or

(iii) During any quarterly period, ten percent (10%) or more of the Company's PPTs surveyed by the City (by means of a survey of a representative sample of PPTs) were not clean within the meaning of the PPT Rules;

then, notwithstanding compliance with the minimum service operating procedures described in Section 3.1.2 above, the Commissioner shall require the Company to adopt and implement such modifications to its inspection, maintenance, repair or cleaning procedures as he or she deems appropriate to ensure the Company's compliance with the requirements set forth in Section 3.1.1 and 3.1.2 above, and may, in addition, require such other corrective action as he or she deems appropriate, including, but not limited to, requiring the Company to enter into a service agreement with another party acceptable to the Commissioner to ensure the Company's compliance with the requirements set forth in Section 3.1.1 and 3.1.2 above. In order to secure full implementation of such modified procedures and other corrective action measures, and to protect the interests of the City pending implementation thereof, the Commissioner may also suspend further approvals of the Company's applications for permits for the installation, operation and maintenance of new PPTs or suspend a Company's right to advertise with respect to one or more PPTs within the System until such time as the Company has demonstrated achievement of appropriate compliance milestones in a manner satisfactory to the Commissioner.

(b) In the event that the Commissioner makes a second determination pursuant to Section 3.1.4(a)(i),(ii),(iii) or (iv) within a four (4) year period following an initial such determination, the Commissioner may, in addition to taking any action specified above, declare an Event of Default that shall be grounds for termination of this Agreement.

3.2 Complaint Handling Procedures. (a) Within thirty (30) days after the Effective Date of this Agreement, the Company shall establish and maintain prompt and efficient complaint handling procedures for handling complaints from customers and others and for handling complaints forwarded to the Company by DoITT, which procedures shall be consistent with all applicable laws, rules and regulations and the provisions of this Section 3.2. Such procedures shall be set forth in writing and copies thereof shall be maintained at the Company's office and shall be available to the public and the Commissioner upon request.

(b) The Company shall have a telephone line for receiving complaints from customers and others and for complaints as forwarded to the Company by DoITT. This line shall be a free telephone number that will not require a caller to remit any compensation for placement of a call. The line shall be answered twenty-four (24) hours per day, seven (7) days per week,

with an answering service or automated device answering it outside of normal business hours. For purposes of this Section 3.2, "normal business hours" shall mean nine o'clock a.m. to five o'clock p.m. Eastern Standard Time or Daylight Time (whichever is in effect) during business days (for purposes of this Agreement, "business days" shall mean any day which is not Saturday, Sunday or a day observed as a holiday by either the State of New York or the federal government). The telephone number for this complaint telephone line and an indication that such telephone number is a free call shall be clearly and legibly displayed on each permitted PPT operating pursuant to this Agreement, as set forth in Section 5.2.1 herein. The answering service or automated device used outside of normal business hours shall record all incoming calls and the Company or Company's employees shall begin processing such calls, as set forth in the appropriate subsection of this Section 3.2 below, no later than the next business day after the answering service or automated device takes the message. Where such a call is received after normal business hours, response time will begin the next business day after the answering service or automated device takes the message in accordance with the appropriate response time frame as stated below. All calls received during normal business hours shall be processed immediately and responded to as set forth in this Section 3.2 below.

(c) Any complaint regarding an uncompleted call for which no refund was received shall be recorded in the manner set forth in Section 3.2.1 below, diligently investigated and, if reasonably determined to be accurate, the appropriate refund shall be mailed within thirty (30) calendar days from receipt of the complaint.

(d) Any complaint regarding an unauthorized charge for a call(s) made from a PPT shall be recorded in the manner set forth in Section 3.2.1 below, diligently investigated, and referred to the appropriate operator service provider within seventy-two (72) hours from receipt of the complaint.

(e) Any complaint regarding incidents of theft from or vandalism to a PPT shall be recorded in the manner set forth in Section 3.2.1 below, diligently investigated, and, if reasonably determined to be accurate, within five (5) business days from receipt of the complaint the Company shall take reasonable measures to deter and/or prevent any such further illegal activity, which may include, without limitation, the installation of physical mechanisms designed to prevent theft and/or vandalism and participation in any enforcement program or programs, established by or with DoITT or other applicable City agencies, against the sources of such vandalism and/or theft.

(f) Any complaint regarding coinless access to 911 service and/or operator service at a PPT shall be recorded in the manner set forth in Section 3.2.1 below. Such complaint shall be verified by testing and/or inspection no later than the Company's next scheduled daily testing and/or inspection visit made pursuant to Section 3.1.2(a)(i). If determined to be accurate, the condition shall be cured promptly but in no case later than as required pursuant to Section 3.1.2(a)(ii).

(g) Any complaint regarding a non-working (i.e., jammed coin slot, etc.) PPT shall be recorded in the manner set forth in Section 3.2.1, below. Such complaint shall be verified by testing and/or inspection no later than the Company's next scheduled daily testing

and/or inspection visit pursuant to Section 3.1.2(a)(i) herein. If determined to be accurate, the condition shall be cured promptly but in no case later than as required pursuant to Section 3.1.2(a)(ii) herein.

(h) Any complaint regarding the cleanliness of a PPT (including, but not limited to, the presence of stickers or graffiti) shall be recorded in the manner set forth in Section 3.2.1 below and diligently investigated. If such complaint is reasonably determined to be accurate, the condition shall be cured within seventy-two (72) hours from receipt of the complaint.

(i) Any complaint regarding overcharges at any PPT shall be recorded in the manner set forth in Section 3.2.1 below and diligently investigated. If such complaint is reasonably determined to be accurate the appropriate refund shall be mailed within thirty (30) calendar days from receipt of the complaint.

(j) Any complaint regarding the blocking of additional dialing on a PPT as set forth in Section 5.3 herein, shall be recorded in the manner set forth in Section 3.2.1 below and diligently investigated. If such complaint is reasonably determined to be accurate, the condition shall be cured within seventy-two (72) hours from receipt of the complaint.

(k) Any complaint regarding any aspect of service not set forth in subsections (c) through (j) above shall be recorded in the manner set forth in Section 3.2.1 below and diligently investigated. If such complaint is reasonably determined to be accurate the underlying problem shall be cured as promptly as possible and in no event later than thirty (30) calendar days from the receipt of the complaint; provided, however, that a complaint regarding a hazardous condition shall be promptly investigated and, if reasonably determined to be accurate, shall be cured immediately.

(l) At the City's request, the Company shall provide a reasonable and adequate explanation describing corrective steps taken by the Company in response to any complaint or reasons why no corrective steps were taken.

(m) In the event that a complaint has not been reasonably investigated and/or the underlying problem cured by the Company to the satisfaction of the Commissioner within a reasonable time, the Commissioner may order the Company to take appropriate action to investigate such complaint and/or cure such problem.

(n) Based on a review of the Company's complaint history, the Commissioner may direct the Company to take such actions (in addition to those specifically set forth herein) as he or she deems necessary to ensure that a PPT or PPTs meet the service standards set forth in Sections 3.1.1 and 3.1.2 above.

3.2.1 Complaint Record Keeping. The Company shall maintain written, accurate and complete records of all complaints. Such records shall be kept in a log that indicates: (i) the telephone number and exact location (including street address and cross streets) of the PPT in which the complaint is being made about; (ii) the type of complaint; (iii) the date and time of complaint; (iv) if the complaint is associated with a request for a refund or is in

written form, the name, address, and telephone number of the Person filing the complaint; and (iv) the Company's response to such complaint. All such records shall be retained by the Company for the entire Term.

3.3 Americans with Disabilities Act. The Company agrees to comply with the applicable provisions of the Americans With Disabilities Act of 1990, 42 U.S.C. 12132 ("ADA"), Section 255 of the Telecommunications Act of 1996, the Architectural and Transportation Barriers Compliance Board Guidelines, and any additional applicable federal, state and local laws relating to accessibility, usability, and compatibility of telecommunications equipment for persons with disabilities and any rules or regulations promulgated thereunder, as such laws, rules or regulations may from time to time be amended. At least twenty-five percent (25%) of the Company's PPTs shall be equipped with volume control equipment to enable hearing-impaired persons to access the System and utilize the Services.

3.4 Design and Appearance of PPT(s). (a) The design and appearance of all PPTs installed prior to the execution of this Agreement shall be in compliance with all applicable laws, rules and regulations of the City (including, to the extent applicable and without limitation, Landmarks Preservation Commission and Art Commission requirements) in effect as of the time of installation and shall be subject to modification at specified location(s) upon a determination by the Commissioner that such modification is necessary to promote public safety, the integrity of City facilities, and non-interference with pedestrians and vehicular traffic.

(b) The design and appearance of all PPTs installed, reinstalled, or substantially altered subsequent to the Effective Date shall be subject to the City's right to review and approve the final design and appearance of such equipment: (i) to insure compliance with all applicable laws, rules and regulations of the City (including, to the extent applicable and without limitation, Landmarks Preservation Commission and Art Commission requirements); and (ii) to promote public safety, the integrity of City facilities, and non-interference with pedestrians and vehicular traffic; and (iii) to promote aesthetic consistency and compatibility with the surrounding environment.

(c) In the event that, subsequent to the Effective Date, the Company installs a new PPT or reinstalls or substantially alters, as determined by the Commissioner, at his or her sole discretion, an existing PPT and such PPT is located in an area of the City in which DoITT has approved design guidelines governing the design and appearance of PPTs, the design and installation of such PPT shall conform to such guidelines.

3.5 No Interference. In the installation and/or operations of the System, the Company shall not interfere with the operation of any other PPT System, or part thereof, in the City.

3.6 No Monopoly. 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 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, such determination shall be deemed

to be an Event of Default under this Agreement. In such event, in addition to pursuing any of the actions set forth in Section 12 hereof, DoITT may issue a directive to correct such conditions, consistent with this Agreement and the determination of the court, without following the procedural requirements of Section 12 hereof.

3.7 No Discrimination. The Company shall not discriminate in the provision of Services on the basis of race, creed, color, national origin, sex, age, handicap, marital status, or real or perceived sexual orientation.

3.8 Service. (a) Notwithstanding any other term, condition or requirement of this Agreement, the Company agrees to maintain its Services on the System throughout the Term. In the event the Company, with the consent of the City as required and in accordance with the provisions of Section 10, sells or otherwise transfers the System or Control thereof to any Person, or to the City or the City's assignee, or in the event the franchise terminates, the Company shall transfer the System in an orderly manner in order to maintain continuity of Service.

(b) In addition to any other term, condition or requirement of this Agreement, the Company shall not have more than ten percent (10%) of its PPTs out of service at any given time.

3.9 Tariffs. Upon the written request of the Commissioner, and at his or her sole discretion, the Company shall submit to DoITT a list of all and any tariffs or tariff applications, and all amendments or modifications thereof, that the Company has filed with any federal, state or local regulatory authorities or other government agencies with respect to PPT Services offered within the District. The Company shall have thirty (30) calendar days to submit such list in a form acceptable to the Commissioner. In addition, upon a written request of the Commissioner and at his or her sole discretion, the Company shall promptly, but in no case later than thirty (30) calendar days following the request, deliver to DoITT a complete copy of any tariff or tariff applications, and all amendments or modifications thereof.

3.10 Removal. If at any time the Company chooses to remove a PPT operated by the Company hereunder the Company may do so, provided that:

(a) If the PPT will be replaced at the same location by a repaired, redesigned or upgraded PPT, then

- (i) the Company will install such replacement as soon as practicable;
- (ii) the Company has received all applicable approvals from the DOT, and any other applicable City approvals, with respect to such removal and replacement;
- (iii) the Company has received approval from DoITT pursuant to Section 3.4(b) hereof; and

(iv) the Company has notified DoITT as to the period of time during which PPT service will be unavailable (i.e., the period between removal and replacement) and DoITT has approved such temporary unavailability of service.

(b) If the PPT will not be replaced as described in the preceding subsection (a), then

(i) the Company has provided written notice to DoITT at least ten (10) days in advance of such removal;

(ii) the Company has received all applicable approvals for such removal from DOT and any other applicable City approvals;

(iii) such removal does not reduce the number of PPTs operated by the Company hereunder below twenty-five (25);

(iv) the Company's permit allowing the Company to maintain a PPT at the site shall be automatically terminated upon such removal and a permit for such site may be granted to another franchisee in accordance with DoITT permitting procedures; and

(v) the Company shall restore the Inalienable Property of the City and other affected property to its original condition and comply in full with Section 5.5. hereof.

[continued on next page]

SECTION 4 -- ADVERTISING

4.1 Introduction. (a) The City hereby grants the Company, subject to and consistent with the terms and conditions of this Agreement, Local Law Number 68 for the Year 1995, and the PPT Rules, the right and consent to place advertising, through a Media Representative as described below, on the exterior rear and side panels of its Curb Line PPTs in commercial and/or manufacturing zoning districts and any other zoning districts where commercial and/or manufacturing uses are permitted as of right.

(b) The City shall qualify entities (hereinafter, "Media Representative(s) as defined in Section 4.2, below") as eligible to be selected by the Company to represent, organize and manage the advertising space on its PPTs. Media Representative representation, organization and management responsibilities shall include, without limitation: the sale and lease of advertising space, the maintenance and service of advertising displays, the billing and collection of all advertising revenues, the periodic payment of compensation due to the City, and the payment to the Company of the net revenues generated by advertising displayed on the Company's PPTs after payment of compensation due to the City and after deduction of a

reasonable amount due to the Media Representative as set forth in the Company's agreement with the Media Representative.

(c) The Company shall be permitted to select and engage the services of one or more Media Representative(s). Except as otherwise provided by subsection (d) below, in the event the Company sells or leases advertising space, or otherwise places advertising on its PPTs without utilizing one or more Media Representative(s), such action shall constitute an Event of Default and the Company's right and consent to place advertising on its PPTs subject to this Agreement shall terminate upon notice from the City in accordance with Section 14.2 herein.

(d) If: (i) the Company seeks to place advertising on PPTs as described in this Section 4.1, and (ii) the Company has used its best efforts to engage the services of the Media Representatives qualified by the City on commercially reasonable terms, and (iii) none of such Media Representatives is willing to provide to the Company, on commercially reasonable terms, the services required for advertising to be placed on the Company's PPTs as described above, and (iv) the Company has taken all reasonable steps, but been unable to identify another entity that could qualify as a Media Representative and would provide the required services to the Company on commercially reasonable terms, then the Company may petition the Commissioner for a hardship designation pursuant to which the Commissioner may order a City-qualified Media Representative to provide the required services to the Company on commercially reasonable terms. Such petition shall include: (1) evidence that the Company has used its best efforts to engage the services of each Media Representative qualified by the City on commercially reasonable terms, (2) evidence that each such Media Representative has declined to provide the required services on commercially reasonable terms, and (3) a showing that the Company has taken all reasonable steps, but has been unable, to find another entity that could qualify as a City-qualified Media Representative and would provide the required services to the Company on commercially reasonable terms. If the Commissioner determines that the petition meets in full the requirements of clauses (1), (2), and (3) of the preceding sentence, then the Commissioner may grant the Company a hardship designation pursuant to which the Commissioner may direct, as determined by the Commissioner, at his or her sole discretion, a City-qualified Media Representative to provide the required services to the Company on commercially reasonable terms.

(e) The City reserves the right in the future to waive the requirement that Franchisees must retain a Media Representative to represent, organize and manage the advertising space on PPTs as set forth in this Section 4. If the City waives such requirement, the City may adopt additional requirements that shall be binding on the Company with respect to advertising on PPTs to ensure that activities otherwise to be performed by a Media Representative are appropriately performed by or on behalf of the Company.

4.2 Defined Terms. For the purposes of this Section, the following terms, phrases, words and their derivations shall have the meaning set forth herein, unless the context clearly indicates that another meaning is intended. When not inconsistent with the context, words used in the present tense include the future tense, words used in the plural number include the singular number, and words used in the singular number include the plural number. All capitalized terms

used in the definition of any other term shall have their meaning as otherwise defined in Section 1.1.

(a) "advertising" shall mean any printed matter including, but not limited to, words, pictures, photographs, symbols, graphics or visual images of any kind, or any combination thereof, in connection to the promotion or solicitation of sale or the use of a product or service, but in no event shall include the textual information that is required to be posted on a PPT by federal, state and local law, rule or regulation, or this Agreement.

(b) "bus stop shelter" shall mean a structure installed pursuant to a franchise or other agreement granted by the City to construct, install, maintain, operate, and sell advertising on shelters at bus stops within the City.

(c) "Media Representative(s)" shall mean an entity(ies) qualified by the City and selected by a PPT Franchisee to represent, organize and manage the advertising space available on all PPTs subject to this Agreement.

(d) "newsstand" shall mean a freestanding structure which is operated for the purpose of providing newspapers and periodicals for purchase by the public pursuant to a license from the Department of Consumer Affairs or a concession agreement with DOT.

(e) "tobacco advertisement" shall mean words, pictures, photographs, symbols, graphics or visual images of any kind, or any combination thereof, which bear a health warning required by federal statute, the purpose or effect of which is to identify a brand of a tobacco product, a trademark of a tobacco product or a trade name associated exclusively with a tobacco product, or to promote the use or sale of a tobacco product.

(f) "tobacco product" as used herein shall be defined as any substance which contains tobacco, including, but not limited to, cigarettes, cigars, pipe tobacco and chewing tobacco.

4.3 Notification of Advertisement.

4.3.1 Advertising Notice. In the event that a Company, acting through its Media Representative(s), intends to display advertising on a PPT, prior to the installation of any such advertising, the Company or its Media Representative shall submit written notice to the Commissioner of each such advertising location. Such notice shall indicate the exact location, including street address and cross streets, where advertising is proposed to be displayed, shall indicate the zoning district for each such location, shall state the name of the Media Representative representing each such location, and shall certify, in writing, that each location complies with all the requirements of this Section 4 and with all siting and locational requirements of the PPT Rules.

4.4 Advertising Siting and Clearance. Advertising on PPTs is not permitted:

(a) on Non-Curb Line PPTs;

(b) within Historic Districts unless such placement of advertising complies with the rules and other requirements of the Landmarks Preservation Commission;

(c) on the interior of any PPT, or on any portion of a PPT Enclosure other than the rear and side panels;

(d) (i) in the borough of Manhattan, on the same side of an avenue block on which advertising on a bus stop shelter, newsstand or computer terminal which provides access to government or commercial activity, or public pay toilet, is located, except that as to newsstands, computer terminals and public pay toilets, such advertising shall be permitted on PPTs that are installed prior to any grant by the City of a street furniture franchise or similar franchise(s) that encompass(es) newsstands, computer terminals or public pay toilets, and grants the right to advertise on newsstands, computer terminals or public pay toilets;

(ii) in all other areas, at locations which are within one-hundred-fifty (150) feet of a bus stop shelter, newsstand, or public pay toilet on any of which advertising is displayed, except that advertising is permitted within one-hundred-fifty (150) feet of a bus stop shelter, newsstand, or public pay toilet if such advertising is on a PPT located around the corner or across the street from such bus stop shelter, newsstand, computer terminal which provides access to government or commercial activity, or public pay toilet, except that as to newsstands, computer terminals and public pay toilets, such advertising shall be permitted on PPTs that are installed prior to the grant by the City of a street furniture franchise or similar franchise(s) that encompass(es) newsstands, computer terminals or public pay toilets, and grants the right to advertise on newsstands, computer terminals or public pay toilets; or

(e) on Parkland.

4.4.1 Advertising Display Panels. (a) All advertising display panels must be flush against or part of the PPT Enclosure; and

(b) advertising on side display panels will only be permitted if such panels are no greater in size than 27" x 57"; and

(c) advertising on rear panels shall be flush with the rear mounting portion of a PPT or shall have dimensions smaller in length and width than the rear mounting portion of such PPT and shall be no greater in size than:

(i) 27" x 57" in a vertical format for a single PPT pedestal rear panel;

(ii) 57" x 27" in a horizontal format for a two PPT pedestal rear panel;

(iii) 54" x 57" in a vertical format for a two PPT pedestal rear panel; and,

(iv) 36" x 81" in a horizontal format on a two or three PPT pedestal rear panel; and

(d) no advertising shall be permitted on PPT Enclosures with panels that are smaller than 27" x 57" without the express, prior permission from the Commissioner.

4.4.2 Removal of Advertising Displays. (a) In the event advertising has been placed on a PPT, and such advertising is not permitted under Section 4.4 above or fails to comply with any other term, condition or requirement of this Section 4, the Company, acting through its Media Representative, shall remove said advertising or cure said failure at no cost to the City within thirty (30) days after written notice as set forth in Section 14.2 herein. If the Company refuses or neglects to do so, the City shall have the right to do so without any liability to the Company and the Company shall pay to the City immediately, but in no event later than thirty (30) days, the costs incurred in connection with such removal. In addition, the Commissioner may, at his or her sole discretion, suspend or terminate the right to advertise with respect to each such PPT for such period as he or she deems appropriate. In the event the failure is with respect to a significant portion of PPTs in the System, the Commissioner may, at his or her sole discretion and upon thirty (30) days written notice to the Company, as set forth in Section 14.2 herein, suspend or terminate the right to advertise on all PPTs within the System for such period as he or she deems appropriate.

(b) Any action by the Commissioner pursuant to Section 4.4.2(a) above shall be in addition to and cumulative of all rights and remedies set forth in Section 12 herein and any and all other rights or remedies, existing or implied, now or hereafter available to the City at law or in equity.

4.4.3 Additional Restrictions. The City retains the right, in the future, to impose additional restrictions on advertising after giving the Company reasonable notice and a reasonable period to comply with such additional restrictions.

4.5 Maintenance of Advertising Displays. (a) The Company, acting through its Media Representative(s), shall maintain the advertising display panels on PPTs in a clean and attractive condition at all times and be responsible for the cost of any power consumption used, electrical or otherwise.

(b) All advertising display panels must be safe, secure and sturdy, and shall be maintained as such throughout the Term. In the event the Commissioner deems a display panel or any part thereof to be unsafe, insecure or unsteady, or to otherwise pose a threat to public safety, the Company shall remove such panel immediately upon notification. A replacement may be installed only with the express, prior approval of the Commissioner.

4.6 Visibility to Outside. The Company, acting through its Media Representative(s), shall make certain that the display panels affixed thereto provide the caller with optimum visibility to the outside of the booth.

4.7 Termination or Suspension of Media Representative Agreements. All agreements entered into by the Company and Media Representative(s) with respect to the display

of advertising material on any one or more PPTs shall provide: (i) that such agreement shall terminate or be suspended upon the termination or suspension, by the Commissioner pursuant to this Section 4, of the right under this Agreement to advertise on all PPTs in the System; (ii) that any right granted by the Company in connection with the display of advertising material on any individual PPT shall terminate or be suspended, with respect to that individual PPT, upon: (a) the termination or suspension by the Commissioner pursuant to this Section 4, of the right under this Agreement to advertise on such individual PPT, or (b) the revocation by the Commissioner of the permit for the installation or maintenance of such individual PPT; and (iii) that such agreement shall terminate upon the termination of this franchise.

4.8 Compensation to the City for Advertising.

4.8.1 Compensation Fee. The Company or its agent or designee shall pay to the City as compensation for the right and consent to advertise pursuant to the franchise hereby granted (in addition to and not in lieu of any other amounts payable to the City under Section 8 hereof or any other provisions of this Agreement), twenty-six percent (26%) of its "net commission advertising revenues." "Net commission advertising revenues" shall mean the total revenues (i.e., total receipts without reduction for any costs or expenses except as expressly set forth in this definition) derived by the Company, or any subsidiary, affiliate, agent, assignee, contractor, licensee, transferee or lessee of the Company (including the Media Representative(s) with which the Company has contracted), from the display of advertising material on PPTs pursuant to this Agreement (whether such revenues are received in the form of cash or in the form of materials, services, or other benefits, tangible or intangible, in which event such revenues shall be deemed to include the fair market value of such materials, services or other benefits, whether actually received by the Company, an account receivable or otherwise) less any advertising agency commission paid or deducted from such amount, but in no event shall such deduction for advertising agency commissions exceed fifteen percent (15%). In no event shall net commission advertising revenues include any imputed value from the provision of public service advertising under Section 4.9 below. All agreements made by the Company's Media Representative(s), the Company, or its agent or designee in connection with the display of advertising material on PPTs shall provide that the Comptroller and/or the City shall have access to the books of account and records of all parties to such agreements for the purpose of ascertaining the correctness of the amount of net commission advertising revenues represented to the City.

4.8.2 Timing and Method of Payment. Compensation shall be paid by the Company, acting through its Media Representative, to the Department of Finance of the City on a quarterly basis, with a copy of such payment mailed to DoITT, within thirty (30) days after the expiration of each calendar quarter, except in the case of the last payment when the compensation shall be paid within thirty (30) days after the termination, cancellation or expiration of this contract. Each payment shall be based on the calendar quarter immediately preceding the date of payment and shall be accompanied by a statement showing, in a manner reasonably satisfactory to the City, net commission advertising revenues and the components thereof for the applicable quarter. In the event any payment by the Company, acting through its Media Representative, 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.

4.8.3 Taxes. Payments of such compensation to the City pursuant to the provisions of this franchise shall not be considered in any manner to be in the nature of a tax, but such payments shall be made in addition to any and all taxes of any kind and description which are now or may at any time hereafter be required to be paid by any ordinance or local law of the City, or any law of the State of New York or any law of the federal government of the United States.

4.8.4 Continuing Obligation and Holdover. In the event the Company's Media Representative, the Company or its designee continues advertising displays on PPTs after and despite the termination, cancellation or expiration of the franchise or its right to advertise or the revocation of a permit for the installation of a PPT under the franchise, the Company agrees to pay to the City, in addition to all other remedies available to it under this Agreement or by law, the compensation at the rate and in the manner set forth herein, together with all taxes the Company would have been required to pay had its continuation been duly authorized and to comply with all other obligations under this franchise, provided that such payments and compliance shall not constitute an extension of this franchise or the Company's right to advertise or a permit for the installation of a PPT under this franchise.

4.9 Public Service Advertising. If advertising pursuant to this franchise, the Company shall, acting through its Media Representative(s), provide free advertising space for public service announcements. Public service announcements are words, pictures, photographs, symbols, graphics or visual images of any kind, or any combination thereof, the primary purpose of which is to communicate information pertaining to the public health, safety and welfare of the citizens of the City. Such public service advertising space obligation may be satisfied by either: (i) the Company's provision of at least two percent (2%) of its total advertising space or two (2) advertising display panels (whichever is greater) for public service advertising purposes; or (ii) provisions of the Company's agreement with a Media Representative pursuant to which such Media Representative pools together not less than two percent (2%) of the total advertising space of all its franchisee clients for public service advertising purposes. In the event the Company, pursuant to this Section 4.9.1, is only required to provide two (2) display panels for public service announcements, such panels may not be located on the same PPT Enclosure. In the event the Company satisfies its public service advertising obligations through provisions of its agreement with Media Representative, copies of relevant portions thereof shall be provided to DoITT no later than seven (7) days following the effective date thereof. The installation, maintenance and removal of all public service announcements shall be performed in accordance with the same standards and utilize the same materials and methods as are used by the Company for commercial displays. The Company shall be permitted to determine the location of public service announcements required hereunder, subject to the reasonable approval of the Commissioner.

4.10 Standards for Advertising. The display or placement of tobacco advertising shall be prohibited. Any type of advertising which the City or DoITT determines is false or misleading, which promotes unlawful or illegal goods, services or activities, or which is

otherwise unlawful or obscene, including, but not limited to, advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11 shall also be prohibited. Any such prohibited material displayed or placed shall be immediately removed by the Company, acting through its Media Representative, upon written notice from DoITT in accordance with Section 14.2, herein. If the Company fails to do so, the City shall have the right to do so without any liability to the Company and the Company shall pay to the City immediately, but in no event later than thirty (30) days, the costs incurred in connection with such removal.

4.11 Additional Advertising Provisions. (a) The Company shall be permitted to use backlighting of advertising on PPT Enclosures except where prohibited by rules or regulations of the Landmarks Preservation Commission or where the Commissioner otherwise specifies.

(b) Any other multimedia, electronic or illuminated advertising or other non-traditional form or type of advertising, including Light Emitting Diode ("LED") advertising, shall be permitted only on a case by case basis, as determined by the Commissioner, at his or her sole discretion, and shall be subject to all applicable approvals by City agencies.

4.12 Future Compliance. The Company and its designee shall comply with all applicable laws, rules and regulations in force, or which may hereafter be adopted with respect to advertising.

SECTION 5 -- CONSTRUCTION AND TECHNICAL REQUIREMENTS

5.1 General Requirements. The Company agrees to comply with the provisions of Local Law Number 68 for the Year 1995 and any rules promulgated pursuant thereto and with each of the terms set forth in this Section governing construction and technical requirements for its System, in addition to any other requirements or procedures specified by the Commissioner.

5.2 Identification of PPT.

5.2.1 Signage. The Company shall have displayed on each permitted PPT operating under this franchise a visible sign that shall comply with the provisions set forth in the PPT Rules and shall be consistent with the rules and regulations promulgated by the PSC.

5.2.2 Identification Medallion And Accompanying Raised Number Strip. (a) If it is determined pursuant to subsection (b) of this Section 5.2.2 to proceed with full implementation of a medallion plan, then the following terms, conditions and procedures (the "Medallion Plan") will apply. The Company shall receive from the City (at no cost to the Company) for each permitted PPT operating under this franchise an identification medallion and accompanying raised number strip for the visually disabled. The Company shall, in a manner authorized by the Commissioner, affix both the identification medallion and accompanying raised number strip to each PPT Enclosure, or in the event that no enclosure exists at such PPT, then directly onto the PPT itself in a clearly visible and unobstructed manner. The Company shall also receive from the City (at no cost to the Company) replacement medallions and

replacement raised number strips that shall also be affixed to each PPT Enclosure in the same manner and form as described herein. All identification medallions and accompanying raised number strips shall be issued by the Commissioner. Any medallion or accompanying raised number strip that is damaged or defaced, whether by vandalism or ordinary wear and tear, shall be replaced at the next cleaning of the applicable PPT scheduled pursuant to Sections 3.1.2(b) and 3.1.4 hereof, and any failure to perform such replacement shall be treated as a failure to comply with the requirements of said provisions. Use of a counterfeit identification medallion and/or accompanying raised number strip, unauthorized removal of an identification medallion and/or raised number strip, or intentional defacement of an identification medallion and/or raised number strip shall be an Event of Default and grounds for termination of the franchise pursuant to Section 12 hereof.

(b) Promptly after the Effective Date, DoITT will implement, by notice to the Company pursuant to Section 14.2 hereof, a limited "pilot" form of the above-described Medallion Plan in which the Company will be required to affix and maintain medallions as set forth above for a limited number of PPTs, and for a limited period, to be set forth in said notice. The Company will comply with the applicable provisions of the preceding subsection (a) for the period of such pilot program. At the conclusion of such pilot program, the Commissioner will review the results of the program and determine whether full implementation of the Medallion Plan is appropriate, or whether an alternative method of PPT identification is appropriate. DoITT will notify the Company of the Commissioner's determination by notice pursuant to Section 14.2 hereof. The Commissioner reserves the right to modify or waive the requirements set forth in the Medallion Plan. In the event the Commissioner modifies or waives part or all of the Medallion Plan, the City may adopt substitute requirements that shall be binding on the Company with respect to the identification of PPTs.

5.3 Blocking of Additional Dialing. (a) Unless directed by DoITT or authorized by express, prior approval from DoITT, the Company agrees that no PPT shall have any type of electronic block or other technological impediment that interferes or prevents the dialing and/or connection of additional numbers subsequent to the area code (NPA) (and the associated prefix number one, if required), the exchange code (NXX) and the station identification (NPX) numbers.

(b) In the event that authorization or direction by DoITT is given to allow the blocking of additional dialing as described in subsection (a) above, such blocking shall be done at the Company's own cost and expense. DoITT reserves the right to require such PPTs to have signage (e.g., sticker, medallion, or placard) alerting users to the blockage and may direct the content, form, and placement of any such signage. All costs associated with the purchase and/or affixation of such signage shall be borne by the Company.

(c) The Company shall have sixty (60) days from the Effective Date to insure that each PPT existing prior to the Effective Date that is installed on, over, and under the Inalienable Property of the City that blocks additional dialing as described in subsection (a) above has express approval from DoITT and complies with all other provisions of subsection (b) above.

5.4 Quality. The Company agrees to comply with all applicable sections of the building and electrical codes of the City and the National Electrical Safety Code and where the nature of any work to be done in connection with the installation, construction, operation, maintenance, repair, upgrade, removal or deactivation of the System requires that such work be done by an electrician, the Company agrees to employ and utilize only licensed electricians.

All such work shall be performed in a safe, thorough and reliable manner using materials of good and durable quality and all such work shall be done in accordance with all rules promulgated under Section 23-403 of the New York City Administrative Code in relation thereto. If, at any time, it is determined by the City or any other agency or authority of competent jurisdiction that any part of the System, is harmful to the public health or safety, then the Company shall, at its own cost and expense, promptly correct all such conditions.

5.5 Protect Structures. In connection with the installation, operation, maintenance, repair, upgrade, removal, alteration or deactivation of any and all PPTs and PPT Enclosures, and/or the System, the Company shall, at its own cost and expense, protect any and all structures belonging to the City and all designated landmarks, and all other structures within any Historic District. The Company agrees that it shall be liable, at its own cost and expense, to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the City, any municipal structure or any part of the Inalienable Property of the City that may become disturbed or damaged as a result of any work thereon by or on behalf of the Company pursuant to this Agreement.

Nothing in this Agreement shall be construed to relieve any obligation or liability the Company may have with respect to any third party or any other obligation or liability to the City.

5.6 No Obstruction. In connection with the installation, operation, maintenance, repair, upgrade, removal, alteration or deactivation of the System and/or any associated equipment, the Company shall minimize the extent to which the public use of the streets or other Inalienable Property of the City is disrupted, and shall not obstruct the public use of such streets and/or Inalienable Property of the City, including, but not limited to, pedestrian travel, without prior authorization by the City. Sidewalk clearance must be maintained at all times so as to insure a free pedestrian passage of eight feet or one-half the width of the sidewalk, whichever is greater, unless prior consent has been obtained from the appropriate authorities.

5.7 Safety Precautions. The Company shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, security personnel and bollards at the Curb, and suitable and sufficient lighting.

5.8 Security Systems. The Company shall establish and maintain adequate security systems to protect the Company's revenues. Such security systems shall include measures to ensure that coin boxes on the Company's PPTs are secured and not at risk from theft or vandalism.

5.9 Power Outages. In the event that any type of power outage occurs, to the extent the source of such outage is under the direct control of the Company, the Company shall restore service within twenty-four (24) hours at all PPT locations so affected. If the source of a power outage is not under the direct control of the Company, the Company shall make a good faith effort to restore service at all affected PPT locations and shall notify the responsible party and the Commissioner within twenty-four (24) hours.

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SECTION 6 -- SECURITY FUND

6.1 General Requirement. The Company shall in accordance with Section 2.4 herein, deposit with DoITT and/or the Comptroller, as indicated in this section, a security deposit for each PPT subject to this Agreement (the "Security Fund"). The amount of such deposit for each PPT shall be two-hundred-fifty dollars (\$250.00).

If, subsequent to the execution of this Agreement, the Company at any time during the Term obtains one or more additional permits for PPT installations, then to the extent that the total amount deposited with DoITT and/or the Comptroller pursuant to this section represents less than two-hundred-fifty dollars (\$250.00) for each PPT, including any such newly permitted PPTs, then the Company shall increase the Security Fund such that the amount deposited with DoITT and/or the Comptroller shall include two-hundred-fifty dollars (\$250.00) for each PPT in the System, including such newly permitted PPTs. An additional deposit to increase the Security Fund must be received by DoITT, and/or proof of such deposit with the Comptroller satisfactory to the Commissioner must be received by DoITT, from the Company, no later than five (5) business days from receipt by the Company of a new permit by DoITT. In the event that the Company's Security Fund consists of either an Irrevocable Letter of Credit or a Performance Bond pursuant to Section 6.1.1, below, the Company must provide, no later than five (5) business days from receipt by the Company of a new permit by DoITT, the Comptroller and DoITT proof, satisfactory to the Comptroller, that such Security Fund has been increased accordingly.

In lieu of a separate Security Fund being established by the Company, a Security Fund may be established on behalf of the Company by either: (i) a qualified Trade Association (as defined further in Section 6.2 herein); or (ii) a qualified Franchisee Aggregation (as defined further in Section 6.3 herein). Every Trade Association Security Fund and Franchisee Aggregation Security Fund must fund, in the manner described in Section 6.1.1 below, two-hundred-fifty dollars (\$250.00) for each PPT of each Franchisee that has opted to utilize such a fund for purposes of meeting the requirements of this section.

Throughout the Term, and for one-hundred-twenty (120) days after the end of the Term, unless the City notifies the Company, the Trade Association or a Franchisee Aggregation that a reasonably longer period shall apply, the Company, the Trade Association or a Franchisee Aggregation shall maintain two-hundred-fifty dollars (\$250.00) for each PPT in the Security Fund. At any time during the Term, the City may, in its reasonable discretion, require the Company, the Trade Association or a Franchisee Aggregation to increase the amount of the

Security Fund if it finds that new risk factors exist which reasonably necessitate an increase in the amount of the Security Fund.

6.1.1 Security Fund Form. The Company, the Trade Association or a Franchisee Aggregation must deposit the Security Fund with DoITT or the Comptroller, as indicated in this subsection, using one of, or, as determined by the Comptroller at the Comptroller's reasonable sole discretion, using a combination of, the following three forms:

(a) **Cash.** A Cash Form Security Fund may consist of a certified check, bank check, or money order payable to the "City of New York," or other cash equivalent in the amount of two-hundred-fifty dollars (\$250.00) per PPT covered. Such Cash Form Security Fund shall be deposited with and held by the Comptroller as custodian.

(b) **Irrevocable Letter of Credit.** Subject to the approval of the Comptroller as being of an acceptable form and from an acceptable institution, the Company, Trade Association, or Franchisee Aggregation may provide the City with an Irrevocable Letter of Credit Security Fund. In such cases, the irrevocable letter of credit, which shall be unconditional in form, shall have a face amount equal to two-hundred-fifty dollars (\$250.00) per PPT covered and shall name the "City of New York Department of Information Technology and Telecommunications" as beneficiary. The original letter of credit shall be deposited with the Comptroller and the Comptroller shall serve as the holder of such letter. Interest will neither accrue nor be payable on this type of Security Fund. The Comptroller shall be entitled, as authorized by law, to charge and collect from the Company, Trade Association or Franchisee Aggregation for any administrative expenses, custodial charges, or otherwise, as may result from the operation of this fund.

(c) **Performance Bond.** Subject to the approval of the Comptroller as being of an acceptable form and from an acceptable institution, the Company, Trade Association, or Franchisee Aggregation may provide the City with a surety Performance Bond Security Fund. In such cases, the "City of New York Department of Information Technology and Telecommunications" shall serve as the sole obligee under the performance bond, which bond shall have a face amount equal to two-hundred-fifty dollars (\$250.00) per PPT covered. The original performance bond shall be deposited with DoITT and DoITT shall serve as the holder of such bond. Interest will neither accrue nor be payable on this type of Security Fund. DoITT shall be entitled, as authorized by law, to charge and collect from the Company, Trade Association, or Franchisee Aggregation for any administrative expenses, custodial charges, or otherwise, as may result from the operation of this fund.

6.1.2 Comptroller Approval. Any letter or credit or performance bond specified in Section 6.1 hereof evidencing the Security Fund shall be subject to the approval of the Comptroller and shall contain the following endorsement:

"It is hereby understood and agreed that this (name of written instrument) may not be canceled or not renewed by the issuer/surety, nor may the intention to cancel or not to renew be stated by the issuer/surety, until at least ninety (90) days after receipt by the City of

New York Department of Information Technology and Telecommunications of a written notice stating such intention to cancel or not to renew.”

6.2 Security Fund Established By A Qualified Trade Association. Any qualified Trade Association may, consistent with the terms, conditions and requirements set forth in this Section 6, establish a Security Fund. A qualified Trade Association means a Trade Association, duly organized under the Not-For-Profit Corporation Law of the State of New York and open to all Franchisees. A qualified Trade Association must represent two (2) or more Franchisees, and must meet the requirements set forth in Section 6.2.1 herein.

6.2.1 Additional Requirements. (a) A Trade Association must apply, in writing, to the Commissioner, for the right to establish a Security Fund for its membership. The Commissioner may, in his or her reasonable sole discretion, approve the establishment of such a fund. In the event the Commissioner approves the establishment of a qualified Trade Association Security Fund, the Commissioner shall notify such qualified Trade Association of such acceptance in writing. The qualified Trade Association must include a complete list of any prospective Franchisee members of such a fund with application to the Commissioner. Changes in the list of Franchisees covered by such fund shall only be effective as provided in Section 6.12 hereof.

(b) Any Trade Association that fails to comply with the terms, conditions or requirements of this Section 6 shall not be a qualified Trade Association. The Commissioner may terminate a Trade Association Security Fund in accordance with Section 6.4 herein in the event that a Trade Association fails to comply with the requirements of this Section 6.

(c) The qualified Trade Association shall provide the City, in a form acceptable to the City, a report every six (6) months with a complete list of the membership of the Security Fund. The Commissioner, at his or her discretion, may request this report more frequently.

6.3 Security Fund Established By Franchisee Aggregation. Any Franchisee may, consistent with the terms, conditions and requirements set forth in this Section 6, pool resources with at least one (1) other Franchisee for the purpose of establishing a qualified Franchisee Aggregation Security Fund. A qualified Franchisee Aggregation means a Franchisee Aggregation that represents two (2) or more Franchisees, is open to all Franchisees and meets the requirements set forth in Section 6.3.1 herein.

6.3.1 Additional Requirements. (a) A Franchisee Aggregation must apply, in writing, to the Commissioner, for the right to establish a qualified Security Fund for its participants. The Commissioner may, in his or her reasonable sole discretion, approve the establishment of such a fund. In the event the Commissioner approves the establishment of a qualified Franchisee Aggregation Security Fund, the Commissioner shall notify such qualified Franchisee Aggregation of such acceptance in writing. The qualified Franchisee Aggregation must include a complete list of any prospective Franchisee members of such a fund with application to the Commissioner. Changes in the list of Franchisees covered by such fund shall only be effective as provided in Section 6.12 hereof.

(b) Any Franchisee Aggregation that fails to comply with the terms, conditions or requirements of this Section 6 shall not be a qualified Franchisee Aggregation. The Commissioner may terminate a Franchisee Aggregation Security Fund in accordance with Section 6.4 herein in the event that a Franchisee Aggregation fails to comply with the requirements of this Section 6.

(c) The qualified Franchisee Aggregation shall provide the City, in a form acceptable to the City, a report every six (6) months with a complete list of the participants of the Security Fund. The Commissioner, at his or her discretion, may request this report more frequently.

6.4 Reduction or Termination of Fund. In the event that a permit for a PPT is revoked by the City or surrendered by the Company, such Company, Trade Association or Franchisee Aggregation may, after one-hundred-twenty (120) days, request in writing a reduction in the Security Fund to reflect such revocation or surrender. In reviewing such request, the City shall determine whether the amount of such requested reduction has been or will be used for the purposes set forth in Section 6.6 below. The Commissioner may, for cause, revoke his or her approval of a Trade Association Security Fund and/or a Franchisee Aggregation, upon sixty (60) days prior written notice to the Trade Association and/or a Franchisee Aggregation and, if necessary, the member(s) of the Security Fund of the Trade Association and/or a Franchisee Aggregation as set forth in Section 14.2, herein.

6.5 Scope of Security Fund. (a) A Security Fund established by a Company (i.e., not a Security Fund established by a Trade Association or Franchisee Aggregation) shall secure the City, up to the full face amount of such Company Security Fund, for any purpose set forth in Section 6.6 below.

(b) A Security Fund established by a qualified Trade Association or a qualified Franchisee Aggregation shall secure the City up to the full amount of Security Fund allocable to each Franchisee member of such qualified Trade Association or qualified Franchisee Aggregation for any purpose set forth in Section 6.6 below.

6.6 Security Fund Purposes. The Security Fund shall serve as security for:

(a) any loss or damage to any municipal structure or Inalienable Property of the City during the course of any construction of the System;

(b) any other costs, or loss or damage actually incurred by the City as a result of the Company's failure to perform its obligations pursuant to this Agreement;

(c) the removal of all or any part of the System from the Inalienable Property of the City, as authorized by this Agreement;

(d) the faithful performance by the Company of all terms, conditions and obligations of this Agreement;

(e) any expenditure, damage, or loss incurred by the City occasioned by the Company's failure to comply with all rules, regulations, orders, permits and other directives of the City and the Commissioner issued pursuant to this Agreement;

(f) payment of compensation set forth in Section 8 hereof;

(g) the removal of the System from the Inalienable Property of the City, at the election of the City, pursuant to this Agreement;

(h) the payment of any other amounts which become due to the City pursuant to this Agreement or law (including, but not limited to, fines and/or penalties owed pursuant to the PPT Rules); and

(i) any costs, losses or damages incurred by the City as a result of a default of the Company's obligations under this Agreement.

It is not intended that the Security Fund serve as security for the payment to the City of amounts for which the Company is liable pursuant to Section 11.1.1 hereof which are not paid by the Company's insurance (although the Company itself shall be liable for such amounts).

6.7 Withdrawals from or Claims Under the Security Fund. In accordance with the procedures set forth in Sections 6.8 and 12.2.2, and if applicable, Section 6.11, DoITT may make withdrawals from (or, in the case of a performance bond, claims under) the Security Fund, or for the purposes specified in Section 6.6 hereof. Withdrawals (or, in the case of a performance bond, claims paid) from the Security Fund shall not be deemed a cure of the default(s) that led to such withdrawals. DoITT may not seek recourse against the Security Fund for any costs or damages for which DoITT has previously been compensated through a withdrawal from the Security Fund or otherwise by the Company.

6.8 Notice of Withdrawals. Within one (1) week after any withdrawals from the Security Fund, DoITT shall notify the Company, the Trade Association or a Franchisee Aggregation of the date and amount thereof, provided, however, that DoITT shall not make any withdrawals by reason of any breach for which the Company, the Trade Association or a Franchisee Aggregation has not been given notice in accordance with Section 14.2, herein. The withdrawal of the amounts from the Security Fund shall constitute a credit against the amount of the applicable liability of the Company.

6.9 Replenishment. Within thirty (30) days after receipt of notice from DoITT that any amount has been withdrawn from the Security Fund as provided in Section 6 hereof, the Company, the Trade Association or a Franchisee Aggregation shall restore the Security Fund to the amount specified in Section 6.1 hereof, provided that if a court finally determines that said withdrawal by the DoITT was improper, DoITT shall refund the withdrawn amount to the Security Fund or to the Company, the Trade Association or a Franchisee Aggregation such that the balance in the Security Fund shall not exceed the amount specified in Section 6.1 hereof. In case of such an improper withdrawal, the Company, the Trade Association or a Franchisee

Aggregation shall receive any interest accrued on the amount improperly withdrawn from the time of withdrawal to the time of refund to the Fund. If the Company, the Trade Association or a Franchisee Aggregation has not made the required restoration to the Security Fund within such thirty (30) day period, interest on said amount shall accrue at the rate specified in Section 8.5 hereof, to commence at the completion of such thirty (30) day period. Such interest shall be payable to the City, and shall not be for deposit in the Security Fund. The Comptroller may withdraw from any remaining amounts in the Security Fund and pay to the City such interest periodically up to the date on which the Company makes the required replenishment, provided that the Company, the Trade Association or a Franchisee Aggregation shall not be obligated to pay such interest with such replenishment to the extent such interest has been already withdrawn by the Comptroller.

6.10 Not a Limit on Liability. The obligation to perform and the liability of the Company pursuant to this Agreement shall not be limited in nature or amount by the acceptance of the Security Fund required by this Section 6.

6.11 Additional Performance Bond Provision. Any performance bond used for all or part of the Security Fund may provide that the surety shall be allowed a period of thirty days after notice of a claim thereunder is given to the surety (at the address of the surety set forth in the performance bond and otherwise pursuant to the notice procedures set forth in Section 14.2 of this Agreement) for the surety to investigate the claim and arrange for the payment or other required resolution of the claim. No claim by the City under such performance bond shall be required to be paid until such notice to the surety has been provided and such thirty day period has expired.

6.12 Notice of Trade Association/Franchisee Aggregation Changes.

(a) When a Franchisee is to be added to the list of Franchisees covered by a Security Fund provided under Section 6.2 or 6.3, such additional coverage shall be effective upon notice to DoITT from the applicable Trade Association or Franchisee Aggregation of such addition and receipt of proof, satisfactory to the Commissioner, that the Security Fund provided by the Trade Association or Franchisee Aggregation is of sufficient amount to cover all covered Franchisees, including the newly added Franchisee, at the amounts required under Section 6.1.1.

(b) When a Franchisee is to be withdrawn from the list of Franchisees covered by a Security Fund provided under Section 6.2 or Section 6.3, withdrawal shall be effective as follows:

(i) if the withdrawal is initiated by the Franchisee, then upon notice to DoITT from the Franchisee of such withdrawal (which notice to DoITT shall include a copy of the notice of such withdrawal given to the applicable Trade Association or Franchisee Aggregation) and receipt of proof that a separate Security Fund which meets the requirements of this Agreement has been established; or

(ii) if the withdrawal is initiated by the Trade Association or Franchisee Aggregation, then the earlier to occur of (x) one-hundred-twenty (120) days from receipt of notice of such withdrawal by DoITT from the Trade Association or Franchisee

Aggregation, or (y) upon receipt of proof that a separate Security Fund which meets the requirements of this Agreement has been established as the Security Fund for the withdrawing Franchisee; provided, however, that

(iii) notwithstanding the preceding subsections (i) and (ii), any claim made (with respect to a performance bond, by the notice given to the surety as provided in Section 6.11) by the City under the Security Fund provided by a Trade Association or Franchisee Aggregation, shall, if made prior to the effectiveness of the withdrawal as described above continue to be enforceable against the Trade Association or Franchisee Aggregation Security Fund until such claim is paid to the City or is otherwise finally resolved (that is, no withdrawal from a Trade Association or Franchisee Aggregation Security Fund shall be deemed to be effective with respect to claims made against it prior to such withdrawal).

SECTION 7 – EMPLOYMENT AND PURCHASING

7.1 Right to Bargain Collectively. The Company agrees to recognize the right of its employees to bargain collectively through representatives of their own choosing in accordance with applicable law. The Company shall recognize and deal with the representatives duly designated or selected by the majority of its employees for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment or any other terms, conditions or privileges of employment. The Company shall not dominate, interfere with, participate in the management or control of, or give financial support to any union or association of its employees.

7.2 Local Opportunities. The Company using its best efforts shall endeavor, at its own cost and expense, to recruit, educate, train and employ residents of the City, for the opportunities to be created by the construction, operation, management, administration, marketing and maintenance of the System. Such recruitment activities shall include provisions for the posting of employment and training opportunities at appropriate City agencies responsible for encouraging employment of City residents. The Company shall ensure the promotion of equal employment opportunity for all qualified Persons employed by, or seeking employment with, the Company.

7.3 No Discrimination. The Company shall not: (i) refuse to hire, train, or employ; (ii) bar or discharge from employment; or (iii) discriminate against any individual in compensation, hours of employment, or any other term, condition, or privilege of employment, including, without limitation, promotion, upgrading, demotion, downgrading, transfer, layoff, and termination, on the basis of race, creed, color, national origin, sex, age, handicap, marital status, affectional preference or sexual orientation in accordance with applicable law. The Company agrees to comply in all respects with all applicable federal, state and local employment discrimination laws and requirements during the Term.

SECTION 8 – COMPENSATION AND OTHER PAYMENTS

8.1 Defined Terms. For the purposes of this Agreement, the following terms, phrases, words and their derivations shall have the meaning set forth in this Section, unless the context clearly indicates that another meaning is intended. When not inconsistent with the context, words used in the present tense include the future tense, words used in the plural number include the singular number, and words used in the singular number include the plural number. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in Section 1.1.

(a) "Location Level-One" PPT means a Curb Line PPT.

(b) "Location Level-Two" PPT means a Non-Curb Line PPT.

(c) "Gross Revenues" generated by a PPT means all revenues (from whatever source derived, and without any deduction whatsoever for costs or expenses), as determined in accordance with generally accepted accounting principles, which are received, directly or indirectly, by the Company or by any Affiliated Person, from the provision of any PPT Service using such PPT. In addition to any revenues generated in the form of monetary receipts, Gross Revenues shall be deemed to include the fair market value of any non-monetary consideration the Company or an Affiliated Person may receive. In the event that the Company or an Affiliated Person provides any PPT Service using a PPT pursuant to a transaction which is not an arm's-length transaction (because, for example the transacting Persons share some common ownership, or are engaged in one or more other business relationships), the amount to be included in Gross Revenues with respect to such transaction will be the fair market value of the provided PPT Service as if such PPT Service were provided pursuant to an arm's-length transaction. Per-call compensation received for PPT calls (as such compensation is required and defined under the FCC's *Third Report and Order, and Order on Reconsideration of the Second Report and Order* issued in Docket No. 96-128, and any related, subsequent FCC orders that amend the requirement or otherwise redefine the amount of PPT per-call compensation) shall be included in "Gross Revenues" but other revenue from such per-call compensated PPT calls is not intended to be revenue received from the provision of PPT Service and is therefore not included in "Gross Revenues" (see attached Appendix D for an example). Notwithstanding anything to the contrary in this definition, "Gross Revenues" shall *not* include the following: (1) revenues from PPT advertising pursuant to Section 4 hereof, which revenues are to be separately treated for compensation purposes under Section 4.8 hereof; (2) revenues from the provision of presubscription long distance service by the Company or an Affiliated Person (if the Company or an Affiliated Person is selected by the City to provide presubscription long distance service, any compensation to the City with respect to revenues derived therefrom will be agreed upon pursuant to such selection); (3) any sales taxes or other taxes imposed by law on PPT users which the Company is obligated to collect.

(d) "Long Distance" means "InterLATA Service" (defined under Section 153(21) of the Communications Act of 1934, as amended to date), but excluding InterLATA Service that the Bell Operating Companies are authorized to provide as of the Effective Date of this Agreement.

8.2 Compensation

8.2.1 Compensation. As compensation for the franchise, the Company shall have the following obligations:

(a) Franchise Fee. Commencing on the Effective Date, the Company shall pay to the City (subject to the adjustments set forth in Appendix F to the Agreement and the remaining provisions of this Section 8.2.1) the following applicable franchise fee for each PPT subject to this Agreement:

(i) for Location Level-One PPTs: ten percent (10%) of Gross Revenues generated by each PPT;

(ii) for Location Level-Two PPTs:

(A) from and including the Effective Date until and including the day preceding the first anniversary of the Effective Date, forty cents (\$0.40) per day;

(B) from and including the first anniversary of the Effective Date until and including the day preceding the second anniversary of the Effective Date, forty-two and one-half cents (\$0.425) per day;

(C) from and including the second anniversary of the Effective Date until and including the day preceding the third anniversary of the Effective Date, forty-five cents (\$0.45) per day;

(D) from and including the third anniversary of the Effective Date until and including the day preceding the fourth anniversary of the Effective Date, forty-seven and one-half cents (\$0.475) per day;

(E) from and including the fourth anniversary of the Effective Date until and including the day preceding the fifth anniversary of the Effective Date, fifty cents (\$0.50) per day;

(F) from and including the fifth anniversary of the Effective Date until and including the day preceding the sixth anniversary of the Effective Date, the Fifth Year Base Rate, defined as fifty-two and one-half cents (\$0.525) per day unless Section 8.2.1 (b)(i) is applicable, in which event the Fifth Year Base Rate is defined as the rate per day established pursuant to Section 8.2.1 (b)(i) below;

(G) from and including the sixth anniversary of the Effective Date until and including the day preceding the seventh anniversary of the Effective Date, an amount per day equal to the sum of the Fifth Year Base Rate plus two and one-half cents (\$0.025);

(H) From and including the seventh anniversary of the Effective Date until and including the day preceding the eighth anniversary of the Effective Date, an amount per day equal to the sum of the Fifth Year Base Rate plus five cents (\$0.05);

(I) from and including the eighth anniversary of the Effective Date until and including the day preceding the ninth anniversary of the Effective Date, an amount per day equal to the sum of the Fifth Year Base Rate plus seven and one-half cents (\$0.075);

(J) from and including the ninth anniversary of the Effective Date until and including the day preceding the tenth anniversary of the Effective Date, an amount per day equal to the sum of the Fifth Year Base Rate plus ten cents (\$0.10);

(K) from and including the tenth anniversary of the Effective Date until and including the day preceding the eleventh anniversary of the Effective Date, the Tenth Year Base Rate, defined as an amount per day equal to the sum of the Fifth Year Base Rate plus twelve and one-half cents (\$0.125) unless Section 8.2.1 (b)(ii) is applicable, in which event the Tenth Year Base Rate is defined as the rate per day established pursuant to Section 8.2.1 (b)(ii) below;

(L) from and including the eleventh anniversary of the Effective Date until and including the day preceding the twelfth anniversary of the Effective Date, an amount per day equal to the sum of the Tenth Year Base Rate plus two and one-half cents (\$0.025);

(M) from and including the twelfth anniversary of the Effective Date until and including the day preceding the thirteenth anniversary of the Effective Date, an amount per day equal to the sum of the Tenth Year Base Rate plus five cents (\$0.05);

(N) from and including the thirteenth anniversary of the Effective Date until and including the day preceding the fourteenth anniversary of the Effective Date, an amount per day equal to the sum of the Tenth Year Base Rate plus seven and one-half cents (\$0.075);

(O) from and including the fourteenth anniversary of the Effective Date until and including the day preceding the fifteenth anniversary of the Effective Date, an amount per day equal to the sum of the Tenth Year Base Rate plus ten cents (\$0.10).

(b) Fixed Rate Review.

(i) Fifth Year Rate Review. If the Fifth Year Rate Review (defined below) is conducted and shows that the Fifth 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 fifth 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