

**ORDINANCE NO. 2000-17**

AN URGENCY ORDINANCE ENACTING THE SACRAMENTO METROPOLITAN CABLE COMMISSION'S CABLE TELEVISION FRANCHISE ORDINANCE, ADOPTING THE CABLE COMMISSION'S AMENDED AND RESTATED FRANCHISE RESOLUTION AND ENACTING THE CABLE TELEVISION LICENSING ORDINANCE, ACKNOWLEDGING AND AGREEING TO OTHER APPLICABLE ORDINANCES AND RESOLUTIONS AND EXECUTING THE CABLE COMMISSION AGREEMENT OF FORMATION SO AS TO BECOME A MEMBER OF THE CABLE COMMISSION TO BE IMMEDIATELY EFFECTIVE AS AN URGENCY ORDINANCE

THE CITY COUNCIL OF THE CITY OF ELK GROVE DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Findings.

WHEREAS, the City of Elk Grove ("City") has recently incorporated to form a new city with the boundaries of the County of Sacramento ("County"); and

WHEREAS, the Sacramento Metropolitan Cable Television Commission ("Cable Commission") provides cable television services within the County; and

WHEREAS, the City wishes to join the Cable Commission so as to receive cable television services for the City and obtain representation for the City on the Cable Commission Board of Directors; and

WHEREAS, Sacramento County Code Section 5.50.113 sets forth requirements that a city must satisfy in order to join the Cable Commission after its initial formation;

Section 2. The City Council of the City of Elk Grove ("City Council") amends the Elk Grove Municipal Code to include the text of Sacramento County Code Chapter 5.50, "Cable Television Ordinance" in a form identical to the form of the Chapter, as it presently exists.

Section 3. The City Council amends the Elk Grove Municipal Code to include the text of Sacramento County Code Chapter 5.75, "Cable Television Licensing Ordinance" in a form identical to the form of the Chapter, as it presently exists.

Section 4. The City Council hereby adopts Cable Commission Resolution No. 88-007, the "Amended and Restated Franchise Resolution," as a resolution of the City Council.

The City Council additionally acknowledges and agrees to all other ordinances and resolutions that are applicable to the Cable Commission or its members.

Section 5. The City Council hereby approves the Sacramento Metropolitan Cable Television Commission Agreement of Formation, as amended to add the City. The Amended

Agreement of Formation is attached hereto as "Attachment A." The mayor is hereby authorized to execute said agreement of formation.

Section 6. This ordinance shall take effect immediately upon its adoption as an urgency ordinance. A statement of the reason for its urgency is: That the transfer of the franchise from Comcast to AT&T has been approved by the Sacramento Metropolitan Cable Commission and the action of the City of Elk Grove must be immediately effective so as to come within the deadlines of the federal law relating to approval of such transfers. If this ordinance were not immediately effective, that portion of the franchise within the City of Elk Grove might be subject to other conditions not the same as those throughout the remainder of the County of Sacramento, thereby making the terms of the franchise ambiguous and enforcement of the franchise difficult. Therefore, its immediate effect is necessary for the preservation of the public health, safety and welfare.

Section 7. This ordinance shall be published within 15 days of its adoption in a newspaper of general circulation published and circulated within the City of Elk Grove; or if no such newspaper exists, it shall be posted in at least 3 public places in the City of Elk Grove or published in a newspaper of general circulation printed and published by the County of Sacramento and circulated in the City of Elk Grove.

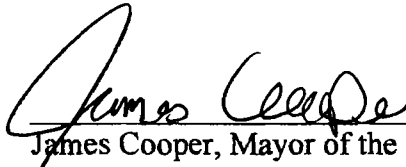
PASSED AND ADOPTED by the City Council of the City of Elk Grove on this 20<sup>th</sup> day of December, 2000, by the following 4/5 vote on roll call:

AYES: Leary, Scherman, Soares, Cooper

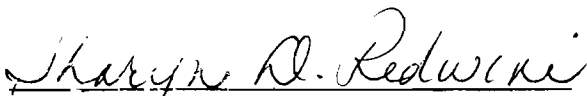
NOES: 0

ABSTAIN: 0

ABSENT: Briggs

  
James Cooper, Mayor of the City of Elk Grove

ATTEST:

  
Sharyn D. Redwine, Interim City Clerk  
of the City of Elk Grove

## ATTACHMENT A

### AMENDED AGREEMENT OF FORMATION

#### CABLE TELEVISION COMMISSION

##### **Agreement of Formation Sacramento Metropolitan Cable Television Commission**

THIS AGREEMENT is made and entered into pursuant to the provisions of Section 6500 et seq. of the Government Code of the State of California by and between the County of Sacramento, herein referred to as "County"; and the City of Sacramento and municipalities of Folsom, Isleton, Galt, Citrus Heights and Elk Grove, herein referred to as "Cities"; who do hereby mutually agree as follows:

1. **Establishment.** There is hereby created an organization known and denominated as the Sacramento Metropolitan Cable Television Commission, which shall be a public entity, separate and apart from the County and Cities. The Sacramento Metropolitan Cable Television Commission (hereinafter referred to as "Commission") shall be governed by the terms of this Agreement, the terms of an ordinance enacted by each agency which enters into this Agreement which is entitled "Cable Television Ordinance", and is hereinafter referred to as the "Ordinance", and by such rules as are duly passed and adopted by the Board of Directors of the Commission.

Notwithstanding the provisions of the introductory paragraph of this Agreement, it is specifically contemplated that each of the Municipalities of Folsom, Isleton, Galt, Citrus Heights and Elk Grove may or may not execute this Agreement and participate in the formation of and become members of the Commission. Therefore, the Commission shall be formed by, as members, the County, the Municipality of Sacramento, and so many of the other Municipalities as approve and execute this Agreement. If neither Folsom, Isleton, Galt, Citrus Heights, nor Elk Grove approve and execute this Agreement, this Agreement shall be deemed to have been entered into and the Commission formed by, as members, the County and Municipality of Sacramento.

2. **Board of Directors.** The Commission shall be governed by and the powers of the Commission vested in a Board of Directors. The number of members of the Board of Directors, composition thereof, and tenure of Directors shall be prescribed by Sub-Chapter 2 of the Ordinance.

a. Meetings of the Board of Directors and of such advisory or other committees as the Board may appoint, shall be governed by the provisions of the Ralph M. Brown Act (Government Code Sec. 54950 et seq.). The Board of Directors shall establish a time and place for its regular meetings, which shall be held not less frequently than every three (3) months.

b. A majority of the members of the Board of Directors shall constitute a quorum for the purpose of transacting business.

c. No action taken by the Board of Directors shall be effective except by duly adopted motion receiving the votes of a majority of the Directors of the Board.

d. The Board of Directors shall annually elect its Chairperson.

e. The Clerk of the Board of Supervisors of the County shall serve as Secretary to the Board of Directors, shall be responsible for recordation of the official actions by the Board, and shall be the official custodian of all records of the Board of Directors.

The County may determine reasonable charges to be made against the Commission for the services of the Clerk and the Commission shall pay such charges.

**3. Powers.** The Board of Directors of the Commission shall be vested with the following powers:

a. To employ in the name of the Commission an Executive Director and such other personnel as the Board of Directors deems appropriate. The Executive Director shall be appointed by and serve at the pleasure of the Board of Directors.

b. To make and enter into contracts in the name of the Commission as authorized by or in order to carry out the objects or purposes of this Agreement or the Ordinance, including, but not limited to, contracts with the County providing for provision by County personnel of services for the Commission and reimbursement of the County by the Commission of the costs thereof.

c. To acquire in the name of the Commission take title to, hold and dispose of real and personal property.

d. To incur in the name of the Commission debts, liabilities and obligations, which shall not constitute debts, obligations or liabilities of any of the member agencies.

e. To accept in the name of the Commission grants, gifts and donations in the public interest to carry out the purposes and functions of the Commission;

f. To establish and provide for the payment of reasonable compensation to its members or their personal representatives for performance of the duties of office; and

g. To exercise such other powers as are expressly conferred by the provisions of this Agreement or the Ordinance.

The Board of Directors shall also be authorized to sue in the name of the Commission. The Commission shall be subject to suit in its name.

4. **Limitations.** Pursuant to the provisions of Government Code Section 6509, the powers of the Commission are subject to the restrictions upon the manner of exercising such powers of one (1) of the designated member agencies. For such purposes, the Municipality of Sacramento is hereby designated.

5. **Budget.** Prior to July 1st of each fiscal year, the Board of Directors shall adopt a preliminary budget. Prior to September 1st of each fiscal year, said Board shall adopt a final budget.

6. **Payments.** Not later than the first day of October of each year during the term of this Agreement, the Commission shall distribute to the County and Cities who are members of the Commission the difference between: (i) the revenue required to finance the costs to be incurred in accordance with the Commission's Budget (including a reserve for contingencies) for the fiscal year commencing on the preceding first day of July; and (ii) the revenues from franchise fees actually received by the Commission pursuant to the provision of Article 4-d of Sub-Chapter 4, on or before the preceding first day of August for the preceding fiscal year ending June 30. Notwithstanding the foregoing, the Commission shall distribute to said County and Cities not later than the first day of each October not less than twenty (20%) percent of the revenue from such franchise fees.

The franchise fees shall be paid to the County and Cities who are members of the Commission in the same proportion as the ratios which the population of the unincorporated area of the County and incorporated area of the Cities bear to the total population of the Sacramento Community, as disclosed by the Federal Decennial Census for 1980 during the period ending June 30, 1991, the Federal Decennial Census for 1990 during the Federal Decennial Census for 2000 during any period succeeding June 30, 2001.

Each distribution shall be accompanied by a statement by the Auditor of the Commission stating the amounts of all franchise fees received by the Commission for the distribution period, the dates of receipt, the amount of revenue required to finance the Commission Budget, and the population ratios upon which apportionment of the distribution is being made.

7. **Treasurer.** The Treasurer of the County shall be the depository of funds of the Commission, and said Treasurer shall be the ex officio Treasurer of the Commission.

The Treasurer shall receive and have custody of and disburse Commission funds on the warrant of the Auditor and shall make disbursements authorized by this Agreement. The Treasurer shall invest Commission funds in accordance with the general law. All interest collected on Commission funds shall be accounted for and posted to the account of said funds.

The County may determine reasonable charges to be made against the Commission for the Services of the Treasurer, and the Commission shall pay such charges.

8. **Auditing.** The Auditor of the County shall be the ex officio Auditor of the Commission, and shall draw warrants against the funds of the Commission when the demands are approved by the Executive Director or his designee. At the close of each fiscal year, as provided in Government Code Section 6505, the Auditor shall make an audit. In the alternative, the Board of Directors may contract with a public accountant or certified public accountant to make an audit of the accounts and reports of the Commission.

The Auditor shall establish and maintain such funds and accounts as are deemed necessary to account for and report on receipts and disbursements. The Commission shall keep such additional records and accounts which are deemed necessary to account for and report on sources of funds, expenditures, grants and programs as may be required by good accounting practices. The books and records of the Commission shall be open to inspection at all reasonable times by representatives of the member agencies.

The County may determine reasonable charges to be made against the Commission for the services of the Auditor, and the Commission shall pay such charges.

9. **Term.** Except as hereinafter provided, this Agreement shall terminate and the Commission shall be deemed dissolved on December 31, 2007.

In the event the Initial CATV Franchise is not renewed at the expiration of its term and at the expiration of said term there is no other franchise issued pursuant to the provisions of this Chapter to operate a Cable Television System in effect within the Sacramento Community, the Agreement shall be deemed terminated and the Commission shall be deemed dissolved on the date of expiration of the Initial CATV Franchise.

10. **Disposition of Assets.** Upon dissolution of the Commission, its assets shall be distributed to member agencies in the same proportion as distributions to member agencies have most recently been made pursuant to the provisions of Paragraph 6, above. Any real property owned by the Commission shall, in advance of dissolution, be conveyed by the Board of Directors to member agencies as tenants in common with proportional interests equal to the proportion of distributions most recently made pursuant to the provisions of said Paragraph 6.

11. **Debts.** The debts, liabilities and obligations of the Commission shall not constitute any debts, liabilities or obligations either jointly or severally of the County of Sacramento, City of Sacramento or municipalities of Folsom, Isleton, Galt, Citrus Heights or Elk Grove.

12. **Amendment.** This Agreement may be amended by written contract approved by and executed in behalf of the Governing Bodies of each member agency. No Franchisee shall be deemed to either expressly or impliedly be a party to this Agreement, a third party beneficiary thereof, or to have any interest which precludes amendment of the terms of this Agreement in any manner in which the Governing Bodies of the member agencies, in their discretion, may mutually agree.

IN WITNESS HEREOF the parties hereto have approved and executed this Agreement as follows.

AMENDED AND RESTATED FRANCHISE RESOLUTION

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Appendix:

— Amendment to Amended and Restated Resolution



RESOLUTION NO. 88-007

**AMENDED AND RESTATED RESOLUTION OF THE BOARD OF DIRECTORS OF  
THE SACRAMENTO METROPOLITAN CABLE TELEVISION COMMISSION  
REGARDING INITIAL CABLE TELEVISION FRANCHISE.**

WHEREAS, the County of Sacramento, ("County"), the City of Sacramento ("City"), the City of Folsom ("Folsom") and the City of Galt ("Galt") (City, Folsom and Galt are hereinafter collectively referred to as the "Municipalities") enacted an ordinance relating to cable television franchises ("Franchise Ordinance") in substantially identical form and content by the Board of Supervisors of the County of Sacramento as Ordinance No. SCC 488 on November 24, 1981, by the City Council of the City of Sacramento as Ordinance No. 81-103 on November 23, 1981, by the City Council of the City of Folsom as Ordinance No. 467 on December 8, 1981, and by the City Council of the City of Galt as Ordinance No. 81-18 on December 8, 1981; and

WHEREAS, the County and Municipalities have amended the Franchise Ordinance from time to time and, as so amended, the Franchise Ordinance remains in full force and effect; and

WHEREAS, the Franchise Ordinance permits cable companies to occupy valuable public rights-of-way by means of a nonexclusive, competitive selection process; and

WHEREAS, the Board of Directors of the Sacramento Metropolitan Cable Television Commission (hereinafter "Commission" and Commission, County and Municipalities are hereinafter collectively referred to as the "Public Entities"), by means of Resolution No. CATV 83-023 dated November 22, 1983 ("Franchise Resolution"), granted an initial, nonexclusive franchise ("Franchise") to Cablevision of Sacramento, a California general partnership, whose name was subsequently changed to Sacramento Cable Television ("SCT"), to erect, install, construct, reconstruct, operate, maintain, dismantle, test, repair and use a cable television and communication system in the County and Municipalities; and

WHEREAS, pursuant to Section 5.50.214 of the Franchise Ordinance, the City Council of the City, by means of Resolution No. 83-920 dated November 22, 1983, and the Board of Supervisors of the County, by means of Resolution No. 83-1450 dated November 22, 1983, approved resolutions identical to the Franchise Resolution; and

WHEREAS, SCT, Scripps Howard Cable Company of Sacramento, Inc., a Delaware corporation ("SHCC"), River City Cablevision, Inc., a California corporation ("River City"), and Scripps Howard Broadcasting Company, an Ohio corporation ("SHBC") (All of the foregoing hereinafter collectively referred to as the "Franchise Entities"),

accepted the Franchise Resolution, as it was adopted, and each subsequent amendment thereto by acceptances properly filed within thirty days after each such amendment; and

WHEREAS, under Section 5.50.018 of the Franchise Ordinance, the Franchise granted to Franchise Entities is deemed to constitute a contract between Franchise Entities and the Commission, and Franchise Entities are deemed to have contractually committed themselves to comply with the terms, conditions and provisions of the "Franchise Documents", as that term is defined in Section 5.50.012j of the Franchise Ordinance; and

WHEREAS, the aforesaid nonexclusive, competitive selection process of the Franchise Ordinance was challenged as to its constitutionality by Pacific West Cable Company in that certain action entitled Pacific West Cable Company v. City of Sacramento, et al., U.S. Dist. Ct. No. CIV S-83-1034 MLS ("Pacific West Federal case"); and

WHEREAS, following certain verdicts of the jury in the Pacific West Federal case, the County and Municipalities each enacted a licensing ordinance ("Licensing Ordinance") in substantially identical form and content creating a limited purpose, noncompetitive right of entry for cable television operators into the public rights-of-way of the Sacramento community, separate and apart from the Franchise Ordinance; and

WHEREAS, pursuant to certain provisions of the Franchise Ordinance and Franchise Resolution, SCT entered into certain contracts ("Grantee Contracts") with certain nonprofit program providers, viz., Sacramento Community Cable Foundation ("Foundation"), Sacramento County Corporation for Educational Telecommunications ("Education Consortium"), Central California Educational Television ("KVIE"), public radio station KXPR ("KXPR"), Interfaith Service Bureau, Inc., d/b/a Religious Coalition, and the Commission as agent for the County and Municipalities (the Foundation, Education Consortium, KVIE, KXPR, Interfaith Service Bureau, Inc., and the Commission are hereinafter collectively referred to as the "Grantees"); and

WHEREAS, in July 1987, SCT filed that certain action entitled Sacramento Cable Television v. City of Sacramento, et al., U.S. Dist. Ct. No. CIV S-87-1099 MLS, in which the Commission thereafter filed a counterclaim and third party complaint; and

WHEREAS, the Franchise Entities and Public Entities desire to compromise and settle all claims and disputes between themselves, and, in conjunction therewith, confirm Franchise Entities' Franchise and amend and restate in their entirety the Franchise Entities' contractual obligations thereunder; and

WHEREAS, the Board of Supervisors of the County, by means of Resolution No. 88-0104 dated January 26, 1988, and the City Council of the City, by means of Resolution No. 88-076 dated January 26, 1988, have approved resolutions identical to this Amended and Restated

R solution.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE SACRAMENTO METROPOLITAN CABLE TELEVISION COMMISSION hereby resolves as follows:

**1.00 Contract and Parties.**

**1.01 Franchise Entities' Franchise.** In or about December 1983, the Commission granted a nonexclusive Franchise to Franchise Entities to erect, install, construct, reconstruct, operate, maintain, dismantle, test, repair, and use a cable television and communication system ("System") in, upon, along, across, above, over, under, or in any manner connected with the streets, public ways, or public places within the boundaries of the County and Municipalities, as such boundaries now or in the future may exist, in strict accordance with the terms of the Franchise Documents and the laws of the United States of America, the State of California, the County of Sacramento, the City of Sacramento, the City of Folsom and the City of Galt, now existing or hereinafter adopted, amended, supplemented or interpreted by a court of competent jurisdiction. The Public Entities hereby confirm that SCT is the initial franchisee under the Franchise Ordinance, and that Franchise Entities' Franchise is in full force and effect as of the date hereof.

**1.02 Interpretation of Terms.** Unless the context clearly indicates that a different meaning is intended or unless this Amended and Restated Resolution expressly sets forth a different meaning, all terms, phrases and words in this Amended and Restated Resolution shall have the respective meanings ascribed to them in the Franchise Ordinance.

**1.03 Commission as Sole Obligor.** The Commission is intended to be the sole obligor as franchisor under this Amended and Restated Resolution. Neither the County nor any of the Municipalities shall be obligated to perform any of the obligations of franchisor hereunder, except as provided in Section 1.04 hereof.

**1.04 Existence of Commission.** If, for any reason, the Commission should cease to exist prior to the expiration of the Franchise or any extension or renewal thereof, the obligations of the Commission as franchisor hereunder shall devolve upon the parties to the joint powers agreement establishing the Commission.

**1.05 Contractual Terms.** Franchise Entities' Franchise will continue to be deemed a contract between Franchise Entities and the Commission, and, as of the effective date of this Amended and Restated Resolution, the Franchise Entities' contractual obligations and commitments thereunder shall be as set forth in the Franchise Ordinance (as amended as of the effective date of this Amended and Restated Resolution) and this Amended and Restated Resolution. Notwithstanding the foregoing, nothing contained herein shall be deemed to circumscribe or delimit to any degree whatsoever the regulatory authority conferred by Section 8.01 below of this Amended and Restated Resolution. Except

as set forth in the Franchise Ordinance as amended, this Amended and Restated Resolution, and enactments pursuant to Section 8.01, the Franchise Entities shall have no other contractual obligations, commitments, or rights under the Franchise, and all other contractual obligations and commitments of the Franchise Entities under the Franchise Documents or otherwise shall be terminated as of the effective date of this Amended and Restated Resolution.

**1.06 County and Municipalities as Intended Third Party Beneficiaries.** While the County and Municipalities are not parties to the contract between Franchise Entities and the Commission, such contract is made expressly for the benefit of the County and Municipalities on behalf of their respective citizens. The County and City are intended third party beneficiaries of the contract and shall be entitled to enforce any of the provisions hereof without the concurrence or participation of any other party or entity.

**1.07 Unauthorized Transfer Does Not Release Franchise Entities.** Where the Commission shall have given its prior written consent to a transfer of the entire interest of the Franchise Entities pursuant to Franchise Ordinance Section 5.50.758, said approval shall operate to release and relieve the Franchise Entities of any further obligation or liability under the Franchise Documents. Unless such prior written consent shall have been obtained and notwithstanding any contrary provisions of any other document, the sale or transfer by the Franchise Entities of all or part of their ownership interest in the system or franchise shall not operate to relieve the Franchise Entities of their obligations or liabilities under the Franchise Documents.

**1.08 Franchise Entities Not Intended Third Party Beneficiaries of Joint Powers Agreement.** None of the Franchise Entities shall be deemed to be an intended third party beneficiary of the agreement of formation of the Commission pursuant to Section 5.50.112 of the Franchise Ordinance. The Franchise Entities shall not have any right to enforce the provisions of said agreement of formation against any of the parties thereto.

**1.09 Foreign Corporation Law.** At all times during the term of the Franchise, SHCC and SHBC shall comply with the provisions of Chapter 21 of Division 1 of Title 1 of the General Corporation Law of California (Corporation Code Section 2100, et seq.) as applicable.

**1.10 Joint and Several Liability.** The obligations, commitments and promises of Franchise Entities under the Franchise Ordinance as amended and this Amended and Restated Resolution shall be the direct, joint and several obligations, commitments and promises of SHCC, River City and SHBC, and shall not be deemed to be secondary in nature or those of a guarantor or a surety. By filing Certificates of Acceptance to this Amended and Restated Resolution in the form attached hereto as Exhibit A, SHCC, River City and SHBC expressly agree that in the event of any default or breach by Franchise Entities, the Commission, City or County may proceed directly against any of the Franchise Entities in any litigation which may be undertaken, without first seeking a

judgment or satisfaction thereof from any of the other Franchise Entities.

**2.00 Compromise, Settlement, Waiver and Estoppel.**

**2.01 Purpose of this Amended and Restated Resolution.** The Franchise Entities and the Public Entities acknowledge that, inasmuch as the effect of this Amended and Restated Resolution is to reduce substantially or eliminate many of the public benefits which the County and Municipalities had under the Franchise Documents, it is the intent of the Franchise Entities and the Public Entities to provide for an assured stream of cash payments to the Commission for the benefit of the County and Municipalities, notwithstanding any change, modification or clarification of law.

**2.02 Intentional Waiver by Franchise Entities.** The Franchise Entities and the Public Entities acknowledge that it is possible, and the Franchise Entities believe likely, that the Franchise Entities could ultimately obtain a final judgment from a court of competent jurisdiction that substantially all of the Franchise Entities' obligations under the Franchise Documents, including without limitation Franchise Entities' obligation to pay franchise fees, could be determined to be unconstitutional or otherwise void and unenforceable.

Nonetheless, the Franchise Entities desire to accept this Amended and Restated Resolution, inter alia, to terminate litigation and render the reduction and/or elimination of certain of their obligations under the Franchise Documents a certainty rather than a mere possibility. The Franchise Entities understand and acknowledge that the payments to be made and performances rendered pursuant to this Amended and Restated Resolution may be in excess of those which would otherwise be required by the Public Entities.

**2.03 Intentional Waiver by Public Entities.** The Franchise Entities and Public Entities acknowledge that it is possible, and the Public Entities believe likely, that a final judgment could ultimately be obtained from a court of competent jurisdiction to the effect that all of the Franchise Entities' obligations under the Franchise Documents, including without limitation Franchise Entities' obligation to pay franchise fees, are constitutional and enforceable. Nonetheless, the Public Entities desire to enter into this Amended and Restated Resolution, inter alia, to terminate litigation and secure an assured stream of cash payments to the Commission.

**2.04 Mutual Waiver and Estoppel.** It is the express desire of the Franchise Entities and the Public Entities that the Franchise Entities and Public Entities mutually waive irrevocably any and all claims and defenses, including without limitation constitutional claims and defenses, that any of them may have regarding the legal force and efficacy of the Franchise Ordinance as amended and this Amended and Restated Resolution, and that all of them be estopped to assert such claims and defenses hereafter.

**2.05 Attorn y's Fees.** In the event of any controversy, claim or dispute between the parties h reto affecting or relating to the purpose or the subject matter of this Amended and Restated Resolution, the prevailing party shall be entitled to recover from the nonprevailing party in any litigation, all of its reasonable expenses, including, without limitation, reasonable attorneys' fees.

**3.00 Settlement Payments.**

**3.01 Forgiveness of Prepaid Franchise Fees as Settlement Payment.** Article 4-d of the Franchise Ordinance provides that Franchise Entities are obligated to pay franchise fees in an amount equal to five percent (5%) of SCT's gross revenues and make certain advances to the Commission against future payments of those franchise fees. All such paym nts for the period through June 30, 1987, have been made. As of June 30, 1987, Franchise Entities had advanced to the Commission net prepaid franchise fees ("Prepaid Franchise Fee Account") of approximately \$1.7 million (One Million Seven Hundred Thousand Dollars).

Subsequent to June 30, 1987, no further franchise fees have been or will be paid. The Prepaid Franchise Fee Account, as verified by subsequent audit, shall be reduced by the amount of the franchis fees that Commission would have earned under the Franchise Documents (absent this Amended and Restated Resolution) between July 1, 1987 and December 31, 1987, and such adjusted Prepaid Franchise Fee Account as of December 31, 1987 shall become property of the Commission upon the effective date of this Amended and Restated Resolution. Franchise Entities' 'forgiveness and discharge of the Prepaid Franchise Fee Account as of December 31, 1987 shall be deemed a settlement payment.

**3.02 Lump Sum Settlement Payment.** Upon the effective date of this Amended and Restated Resolution, Franchise Entities shall pay to th Commission a lump sum settlement payment ("Lump Sum Settlement Payment") of \$15.25 million (Fifteen Million Two Hundred Fifty Thousand Dollars), less the Good Faith Deposit defined in Section 10.01 below.

**3.03 Fixed Settlement Payments.** In addition to the Lump Sum Settlement Payment, Franchise Entities shall pay to the Commission th following additional settlement payments ("Fixed Settlement Payments"), in accordance with the following schedule:

(1) On October 1, 1993, the sum of \$250,000 (Two Hundred Fifty Thousand Dollars), said amount to be increased or decreased by the amount by which the balance of the Prepaid Franchise Fee Account as of December 31, 1987 is, as the case may be, less than or more than \$1.7 million (One Million Seven Hundred Thousand Dollars);

(2) On January 1, 1994, the sum of \$750,000 (Seven Hundred Fifty Thousand Dollars); and

(3) On April 1, 1994, July 1, 1994, October 1, 1994, January 1, 1995, April 1, 1995, July 1, 1995, October 1, 1995 and January 1, 1996,

payments each in the sum of \$625,000 (Six Hundred Twenty Five Thousand Dollars).

**3.04 Variable Settlement Payments.** Beginning May 1, 1996 and quarterly thereafter on August 1, November 1, February 1, and May 1 to and including February 1, 2004, and, in the event the option to extend the term of the franchise pursuant to Section 4.02 below is exercised, to and including February 1, 2024, Franchise Entities shall pay to the Commission additional settlement payments ("Variable Settlement Payments") in an amount equal to the lowest of:

a. an amount derived when the gross revenues of SCT for the preceding three month period ending, respectively, March 31, June 30, September 30, and December 31, are multiplied by a fraction, the numerator of which is \$2,500,000 (Two Million Five Hundred Thousand Dollars) and the denominator of which is the total gross revenues of SCT for the period from January 1, 1995 through December 31, 1995; or

b. an amount equal to five percent (5%) of the gross revenues of SCT for that quarterly period; or

c. an amount equal to the maximum amount of franchise fees which, but for this Amended and Restated Resolution, could have been imposed by the Public Entities upon Franchise Entities for the period in question under then applicable law; or

d. an amount equal to the amount derived when the total gross revenues of SCT for such quarterly period are multiplied by a fraction, the numerator of which is the total amount of franchise or license fees imposed on any franchisee or licensee (other than Franchise Entities, and other than any person or entity in litigation with the Public Entities at any time between January 1, 1988 and the effective date of this Amended and Restated Resolution) for such quarterly period, and the denominator of which is such other franchisee's or licensee's total gross revenues for such quarterly period.

**3.05 Maximum Legal Franchise Fees.** For purposes of paragraph (c) of Section 3.04 above, the "maximum amount of franchise fees which, but for this Amended and Restated Resolution, could have been imposed by the Public Entities upon Franchise Entities for the period in question under then applicable law" shall be determined by a court of competent jurisdiction in an action brought by Franchise Entities against the Commission on or after January 1, 1994, or by such mechanism or other agreement as Franchise Entities and the Commission may, from time to time, establish.

**3.06 No Applicability of Limitations.** It is expressly agreed by the Franchise Entities and Public Entities that no limitation, modification, interpretation or construction, whether judicial or statutory, applicable to franchise fees or other payments required by franchising authorities of cable television operators shall have any application to the transfer and forgiveness of the Prepaid Franchise Fee Account pursuant to Section 3.01 hereof, the Lump Sum Settlement

Payment pursuant to Section 3.02 hereof, the Fixed Settlement Payments pursuant to Section 3.03 hereof, nor, except as expressly set forth therein, the Variable Settlement Payments pursuant to Section 3.04 hereof. Except as provided in the aforementioned Sections 3.01 through 3.04 above, the Franchise Entities shall have no further obligation to make any cash payments, however denominated (including without limitation franchise fees) to or for the benefit of the Public Entities, excepting any tax, fee or assessment of general applicability.

**4.00 Franchise Term.**

**4.01 Term of Franchise.** The term of Franchise Entities' Franchise shall expire on December 23, 2003.

**4.02 Option to Extend Term.** In consideration of the payment of \$50,000 (Fifty Thousand Dollars) by Franchise Entities upon the effective date of this Amended and Restated Resolution, the Commission hereby grants Franchise Entities an irrevocable option to extend the term of Franchise Entities' Franchise to and including December 23, 2023. Said option is granted as of the effective date of this Amended and Restated Resolution. Said option to extend the term of Franchise Entities' Franchise shall be exercised by Franchise Entities by giving written notice thereof to the Commission on or before December 23, 2003. ✓

**4.03 Exercise of Option.** Immediately upon Franchise Entities exercising the option under Section 4.02 above, the term of Franchise Entities' Franchise shall be extended to December 23, 2023, without any further action on the part of the Commission. Franchise Entities' exercise of the option shall not be conditioned in any way upon approval by any of the Public Entities, nor shall the exercise of the aforesaid option be subject to any requirement for prior public hearing or any other requirement of any kind. In addition, Franchise Entities shall retain all of their rights to seek further extensions or renewals of the term of the Franchise, including, without limitation, extensions or renewals pursuant to Sections 5.50.228 through 5.50.239 of the Franchise Ordinance.

**5.00 PEG Access Provisions.**

**5.01 PEG Access Channel Capacity.** Franchise Entities shall make available to the Commission and to nonprofit entities designated from time to time by the Commission, to and including December 23, 2003, and, in the event the option to extend the term of the franchise pursuant to Section 4.02 above is exercised, to and including December 23, 2023, and without regard to subsequent changes of law, if any, the channel capacity specified in Section 5.75.212 of the Licensing Ordinance for public, governmental and educational access use ("PEG Access Channels"). The Commission acknowledges that the PEG Access Channels currently provided by Franchise Entities satisfy the configuration and other requirements of the aforesaid Section 5.75.212.



**5.02 Termination of Grantee Contracts.** The Franchise Entities and Public Entities will mutually undertake all necessary action to terminate the Grantee Contracts forthwith, and use their best efforts to complete all such action prior to or simultaneously with the effective date of this Amended and Restated Resolution. The parties intend that the termination of the Grantee Contracts shall be a provision and condition of the Stipulated Judgment entered by the Court referred to in Section 10.02(1) below.

**5.03 Delivery of Equipment.** Franchise Entities are in possession of certain equipment, identified on Exhibit B attached hereto, which was to have been provided by Franchise Entities to the Foundation and the Commission, respectively, pursuant to the Franchise Documents and the Grantee Contracts. Franchise Entities shall transfer said equipment to the Foundation and the Commission, respectively, not later than the effective date of this Amended and Restated Resolution.

**5.04. Title to Grantee Equipment.** Franchise Entities will execute such documents as reasonably necessary to transfer to the respective Grantees all of Franchise Entities' right, title and interest in all facilities and equipment that Franchise Entities have previously provided, and will provide pursuant to Section 5.03 above, to the Grantees. The equipment that Franchise Entities will transfer to the Foundation and the Commission under Section 5.03 above and the facilities and equipment that Franchise Entities will transfer to the Grantees under this Section 5.04 shall be transferred "as is" and without any representations or warranties of any kind, except that Franchise Entities shall represent and warrant that it has not encumbered any of said facilities or equipment between December 7, 1987 and the date of the transfer.

**5.05 Free Drops to Schools.** As of December 7, 1987, Franchise Entities have provided free "subscriber drop" connections to approximately 90 educational institutions. Franchise Entities will provide additional "subscriber drop" connections to the cable television system to the educational institutions, listed on Exhibit C attached hereto. In addition, Franchise Entities will make available to all of the foregoing educational institutions, at all times to and until December 23, 2003, and, in the event the option to extend the term of the franchise pursuant to Section 4.02 above is exercised, to and until December 23, 2023, the least expensive, "basic" tier of service, as defined in the Franchise Documents, including without limitation that lowest tier containing all of the PEG Access Channels. Such educational institutions shall be responsible for all charges for necessary converters. The Franchise Entities will also provide free drops and basic service as defined above to new public schools in the Imposed Service Area provided that sufficient advance notice is given to the Franchise Entities to allow for joint-trenching and pre-wiring.

**5.06 Commission's Intention to Fund PEG Access.** The Commission intends, subject to the exercise of its legislative discretion, to establish a grant program, upon such terms and conditions and in such amounts as it deems appropriate, to support activities of nonprofit

program providers utilizing the PEG Access Channels.

**5.07 Commission's Intention to Fund "Electronic Classrooms".** The Commission intends, subject to the exercise of its legislative discretion to make a grant to the Education Consortium, upon such terms and conditions as it deems appropriate and in the approximate amount of \$300,000 (Three Hundred Thousand Dollars), for the purpose of funding the construction of "electronic classrooms" in certain educational institutions.

**5.08 Termination of Restraints of Grantee Contracts.** The Franchise Entities will execute, prior to the effective date of this Amended and Restated Resolution, such documents as are reasonably necessary to waive, discharge and terminate any and all limitations previously imposed on the Grantees under the Grantee Contracts, including without limitation those restraints imposed upon equipment grants, prior payments and copyright ownership on production of Grants.

**5.09 Limitation of PEG Access Obligations.** Except as provided in Sections 5.01 through 5.08 above and Sections 5.75.212 and 5.75.216 of the Licensing Ordinance as presently constituted, the Franchise Entities shall have no further obligation of any kind to support the PEG Access Channels, any programming or the Grantees, including without limitation any obligation to make cash payments, to make property transfers or to provide services, irrespective of any changes, modifications, interpretations or constructions of the law, whether judicial or statutory, and any changes in or enactments of any ordinances by the County or Municipalities.

**5.10 No Limitations on Defenses.** This Amended and Restated Resolution shall not be deemed to contain any provision which impairs or restricts any defense which the Franchise Entities or the Public Entities would otherwise have to any claim by any of the Grantees or any other person or entity.

**6.00 Contractual Obligations.**

**6.01 Incorporation of Obligations from Licensing Ordinance.** Pursuant to the delegation provided for in Section 5.05(848) of the Franchise Ordinance, the Commission finds and determines that it is necessary and appropriate to make inapplicable to the Franchise Entities all obligations other than those obligations imposed on licensees under the Licensing Ordinance as presently constituted, and to impose on the Franchise Entities all those obligations imposed on licensees under the Licensing Ordinance as presently constituted, except as expressly set forth herein or below:

a. the performance bonding requirements and insurance requirements of the Franchise Ordinance shall be maintained in lieu of those specified in Sections 5.75.600 and 5.75.604 of the Licensing Ordinance; and

b. the prohibition of activities not protected by the United States or California Constitutions (Section 5.75.012 of the Licensing Ordinance) shall not apply to the Franchise Entities; and

c. the system interconnect capacity specified in Section 5.75.206 of the Licensing Ordinance shall not apply to the Franchise Entities to the extent that such provision provides a higher standard for interconnect capacity than that presently provided in the Franchise Documents; and

d. the accounting and auditing requirements of Sections 5.75.506 through 5.75.510 of the Licensing Ordinance shall not apply to the Franchise Entities prior to January 1, 1995; and

e. the settlement payments provided for in Sections 3.01 through 3.03 of this Amended and Restated Resolution shall be accepted in lieu of, inter alia, all obligations of the Franchise Entities to pay any franchise or license fees after June 30, 1987, and all obligations of the Franchise Entities to make any cash payments or property transfers to the Grantees, including, without limitation, any obligation to pay fees under Article 4-d of the Franchise Ordinance; and

f. the Franchise Entities shall retain all rights with respect to future incorporations and annexations, and for extension of cable service to areas outside of the Imposed Service Area (as defined in Section 5.50.402 of the Franchise Ordinance), as presently provided for in the Franchise Ordinance; and

g. within the Imposed Service Area, the Franchise Entities shall be subject to the provisions relating to completion of construction of Article 4-b of the Franchise Ordinance, provided that the Franchise Entities shall not be subject to provisions relating to the construction of studios, studio facilities, and equipment within the aforesaid Article 4-b, and the Franchise Entities shall not be subject to the provisions of Section 5.75.306 of the Licensing Ordinance; and

h. the Franchise Entities' right to appeal to arbitration pursuant to Section 5.50.824 of the Franchise Ordinance shall be retained.

**6.02 Eligibility for Licenses:** The Franchise Entities shall be entitled at any time to apply for and receive one or more licenses in accordance with the provisions of the Licensing Ordinance, notwithstanding Franchise Entities' ability to service such area(s) under the Franchise through extension. Any such license shall be governed by all provisions of the Licensing Ordinance as then existing.

**7.00 Universal and Uniform Service.**

**7.01 Universal and Uniform Service.** Notwithstanding any other provision hereof, the Franchise Entities shall provide universal and uniform service and rates, charges and fees throughout the Imposed Service Area provided that the Franchise Entities shall be free to

offer and/or charge nonuniform rates, charges and fees to those subscribers or potential subscribers to whom (a) cable television services are then presently available from another cable television provider offering such services pursuant to a franchise, license or other authorization issued by the Public Entities, and/or (b) promotional subscriptions, or upgrade offers are made with the reduced or waived rate, charge or fee not to exceed twelve (12) months for any subscriber for any given offer.

The Franchise Entities retain the right to package their services and to narrowcast as they wish, so long as those services and packages are uniformly available to all residents of the Imposed Service Area.

#### 8.00 Additional Regulatory Impositions.

8.01 Additional Regulatory Impositions. Nothing contained in the Franchise Ordinance as amended, or this Amended and Restated Resolution shall be deemed to preclude additional, constitutionally permissible, "police power" regulatory impositions upon the Franchise Entities at any time in the future, provided that, notwithstanding the foregoing, this Amended and Restated Resolution shall operate to preclude the Public Entities from imposing any monetary or property obligation on the Franchise Entities based on their being cable companies or cable television operators, or on their subscribers by reason of their status as such, excepting any tax, fee or assessment of general applicability.

8.02 Equal Protection Analysis. For purposes of equal protection analysis in assessing the constitutionality of additional "police power" regulations imposed on the Franchise Entities, no distinction shall be drawn by reason of the form of the authorization of the cable television provider whether "franchise", "license", "permit" or other term is utilized. The Franchise Entities reserve the right to challenge on any grounds the legality of any additional "police power" regulations which may be imposed upon them, including, without limitation, regulations imposed pursuant to Section 5.50.544 of the Franchise Ordinance.

8.03 Police Power Defined. As used in Sections 8.01 and 8.02 hereof, "police power" regulations shall mean any enactment by the Public Entities pursuant to the police powers conferred by Article XI Section 7 of the California Constitution for the promotion and protection of the peace, health, safety, and general welfare of the citizens within their respective jurisdictions.

8.04 Benefit from Future Changes. In the event any obligation or requirement imposed under the Franchise Ordinance or Licensing Ordinance is reduced, modified or eliminated (or in the event an obligation or requirement is not imposed on a cable television provider under any other ordinance enacted by the County or Municipalities or any resolution adopted by the Commission), any obligation or requirement then imposed on the Franchise Entities relating to the same subject matter shall be comparably reduced,

modified or eliminated, except as provided in Section 3.05 above.

**9.00 Release and Defaults.**

**9.01 Mutual Waiver of Claim.** The Franchise Entities and the Public Entities shall exchange releases of all known claims against each other as of the effective date of this Amended and Restated Resolution.

**10.00 Good Faith Deposit and Implementation of Amended and Restated Resolution.**

**10.01 Good Faith Deposit.** On or about December 7, 1987, Franchise Entities paid the sum of Four Hundred Seventy Seven Thousand Dollars (\$477,000) to the Commission and to the Grantees (collectively, the "Good Faith Deposit"). Such Good Faith Deposit is a credit or offset against the Lump Sum Payment specified in Section 3.02 above.

**10.02 Conditions Precedent to This Resolution's Effectiveness.** This Amended and Restated Resolution shall become effective upon the last to occur of the following:

(1) entry by the United States District Court for the Eastern District of California of a Stipulated Judgment in Civil Action No. CIVS 87-1099 MLS, mandating the performance of this Amended and Restated Resolution; and

(2) enactment by the County and Municipalities of all amendments to the Franchise Ordinance necessary to effectuate this Amended and Restated Resolution; and

(3) payment by Franchise Entities of the Lump Sum Settlement Payment to the Commission pursuant to Section 3.02 hereof; and

(4) filing by each of the Franchise Entities of a Certificate of Acceptance to this Amended and Restated Resolution in the form attached hereto as Exhibit "A".

**10.03 Implementation.** If all of the conditions precedent set forth in Section 10.02 above shall not have occurred on or before February 7, 1988, this Amended and Restated Resolution shall be deemed repealed and revoked, and shall be null, void and of no further effect. The Commission shall not convene any hearing relating to any default or commercial impracticability prior to February 7, 1988. The Franchise Entities and the Public Entities shall cooperate in an effort to stay all proceedings in any litigation between them, including, but not limited to, the proceedings in the aforesaid Civil Action No. CIVS-87-1099 MLS, until February 7, 1988.

**11.00 Miscellaneous Provisions.**

**11.01 Acceptance.** This Amended and Restated Resolution shall be accepted by the parties in strict conformity to the provisions of

Section 5.50.220 of the Franchise Ordinance. The Certificates of Acceptance shall be in the form attached hereto as Exhibit A. The submission of any Certificate of Acceptance by the Franchise Entities in any form or subject to any conditions other than as set forth as Exhibit A attached hereto shall be a nullity, and this Amended and Restated Resolution shall be deemed repealed.

**11.02. Approval of Form of Policies of Insurance and Performance Bond.** The performance bond and the policy or policies of insurance prescribed by Sections 5.50.700 and 5.50.706 respectively of the Franchise Ordinance and required to be maintained pursuant to Section 5.50.220 of the Franchise Ordinance shall be in a form acceptable to the County's Risk Manager. In the event that said Risk Manager should reject either the performance bond or the insurance policies by reason of its form, Franchise Entities shall resubmit said performance bond or the insurance policies in acceptable form within thirty (30) days from the date of said rejection. Failure of Franchise Entities to resubmit such documents in said acceptable form within the period specified shall render the accompanying Certificate of Acceptance a nullity, whereupon this Amended and Restated Resolution shall be deemed to be repealed.

**11.03 Involuntary Transfers.** The provisions of Article 5-a of the Franchise Ordinance shall apply to involuntary transfers (except transfers caused by death) as well as voluntary transfers. The Franchise Entities shall notify the Commission in writing of any condition, event or occurrence which constitutes an involuntary transfer under the provisions of this section and the Franchise Ordinance within three (3) business days of their learning of same. Additionally, SCT, SHCC and River City shall notify the Commission of any final judgment rendered against them in excess of Twenty Five Thousand Dollars (\$25,000) within three (3) business days of their learning of same and SHBC shall notify the Commission of any final judgment rendered against it in excess of One Million Dollars (\$1 million) within five (5) business days after learning of same.

**11.04 Gross Revenues.**

a. For purposes of calculating the Variable Settlement Payments set forth in Section 3.04 above, the "gross revenues of SCT" or "SCT's gross revenues" shall be defined as provided in Section 5.50.012 (m) of the Franchise Ordinance.

b. For purposes of the gross revenue calculations required by Section 3.04 above, the phrase "financial interest" as used in Section 5.50.012(m) of the Franchise Ordinance shall include:

(1) Any contract in which the Franchise Entities are to receive a percentage of the gross revenues and/or a percentage of the net income of the other party to the contract;

(2) Any debt relationship in which the Franchise Entities as

debtor(s) borrow funds at a rate more advantageous than that generally available to similarly situated entities of similar creditworthiness;

(3) Any debt relationship in which the Franchise Entities as creditor(s) receive a rate of interest exceeding that which would otherwise be paid by a similarly situated debtor of similar creditworthiness;

(4) Any option or warrant to purchase the stock or other equity interest in an entity or entity related to an entity which generates revenues arising from or attributable to the operation of the System; and

(5) Any debt relationship which has conversion privileges to a form of equity of the nature described in the preceding subsection.

c. At any time during the term of the Franchise, the Franchise Entities may apply to the Commission for exclusion of gross revenues of any entity where Franchise Entities' only financial interest in such entity is one defined by subparagraph b. above. After a noticed public hearing called for that purpose in which Franchise Entities shall have been entitled to present evidence, the Commission shall exclude such revenue, notwithstanding the provisions of subsection b. above, if the Commission shall determine that:

(1) said contract embodies a legitimate arms-length business transaction; and

(2) said contract does not represent an artifice or device to avoid the payment of Variable Settlement Payments under this Amended and Restated Resolution.

Evidence that the contracting entity has concluded the same or similar contracts with other entities of similar size shall be relevant and competent evidence to support an affirmative determination of the factors set forth above. A determination shall be based upon a preponderance of the evidence presented at the hearing.

Franchise Entities may appeal the Commission's determination at such hearing to arbitration pursuant to the provisions of Section 5.50.830 et seq. of the Franchise Ordinance.

d. For purposes of the gross revenue calculation required by Section 3.04 above, the phrase "arising from or attributable to operation of the cable television system" as used in Section 5.50.012(m) of the Franchise Ordinance shall include:

(1) Any activity, product or service which generates revenue of any type whatsoever and which is offered to the subscribers of the system by means of the system or any related system;

(2) Any activity, product or service which is revenue producing and is offered to the subscribers of the system by any medium other than the system including but not limited to direct mail and home delivery if the system's subscriber list or any portion thereof is utilized for purposes of solicitation;

(3) Any activity, product or service in the production or provision of which any of the assets of the system including but not limited to cable production facilities, and administrative facilities, are utilized, unless reasonable consideration is paid to the system for such utilization;

(4) Any television programming or other services offered to the citizens of Sacramento County within the term of the franchise by any means of delivery whatsoever where such programming or services are or could be offered by means of the system.

e. The provisions of subparagraph d(4) above shall not be construed to include gross revenues derived by an entity, in which the Franchise Entities or any of them has a financial interest, by reason of the provision or delivery of television programming by means of microwave delivery, commonly known as a satellite master antenna television ("SMATV") system, on or before January 1, 1995, provided that such gross revenues from any particular subscriber to such SMATV system shall be included within the gross revenues of SCT as soon as the System shall be completed to such a degree as to allow delivery of services to said subscriber by means of the System.

**11.05 Possessory Interest Taxation.** The Commission hereby declares that, as a result of the Franchise Resolution and this Amended and Restated Resolution, a possessory interest subject to property taxation may be created and any such property interest may be subject to property taxation if such interest is created. The Franchise Entities, as the parties in whom the possessory interest would be vested, may be subject to the payment of property taxes levied upon such an interest.

**11.06 Section Headings.** Section headings contained in this Amended and Restated Resolution are intended solely for the convenience of the reader and shall not be construed to augment, delimit or otherwise affect the content of such Sections.

**11.07 Severability.** To the extent that any provision of this Amended and Restated Resolution is inconsistent with any provision of State or Federal law, that provision of this Amended and Restated Resolution shall be deemed completely severable from the balance of this Amended and Restated Resolution and shall not be construed to condition, delimit or otherwise affect the validity of any other provision of this Amended and Restated Resolution, nor shall the apparent or presumed validity of the inconsistent provision be deemed



to provide the basis for any estoppel or reliance whatsoever in the enactment or acceptance of this Amended and Restated Resolution.

**11.08 Inapplicability of Revenue Distribution Requirement.** The Commission finds and determines that the minimum revenue distribution provisions of Section 5.50.112, Section 6 of the Franchise Ordinance relating to franchise fees shall have no application to settlement payments received pursuant hereto. This finding and determination is made by the Commission pursuant to the authority delegated to the Commission by Section 5.50.848 of the Franchise Ordinance.

**11.09 Reference to Ordinance Section Numbers.** As indicated in the recitals of this Amended and Restated Resolution, the Franchise Ordinance was enacted in substantially identical form and content by the County, the City, Folsom and Galt. All references in this Amended and Restated Resolution to sections of the Franchise Ordinance are to sections of the County's version of the Franchise Ordinance.

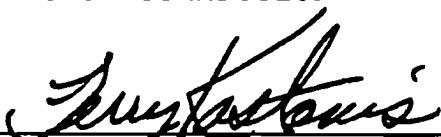
ON A MOTION by Commissioner Doug Pope, seconded by Commissioner Orvell Fletcher, the foregoing resolution was passed and adopted this 26th day of January, 1988, by the following vote to wit:

Ayes: Commissioners, Fletcher, Pope, Collin, Robie, Johnson, Kastanis

Noes: none

Absent: none

SACRAMENTO METROPOLITAN CABLE  
TELEVISION COMMISSION

By:   
Chairperson

Attested By:

  
Clerk of the Commission

RESOLUTION NO. 88-015

AMENDMENT TO AMENDED AND RESTATED RESOLUTION OF THE BOARD OF  
DIRECTORS OF SACRAMENTO METROPOLITAN CABLE TELEVISION  
COMMISSION REGARDING INITIAL CABLE TELEVISION FRANCHISE.

WHEREAS, the County of Sacramento, ("County"), the City of Sacramento ("City"), the City of Folsom ("Folsom") and the City of Galt ("Galt") (City, Folsom and Galt are hereinafter collectively referred to as the "Municipalities") enacted an ordinance relating to cable television franchises ("Franchise Ordinance") in substantially identical form and content by the Board of Supervisors of the County of Sacramento as Ordinance No. SCC 488 on November 24, 1981, by the City Council of the City of Sacramento as Ordinance No. 81-103 on November 23, 1981, by the City Council of the City of Folsom as Ordinance No. 467 on December 8, 1981, and by the City Council of the City of Galt as Ordinance No. 81-18 on December 8, 1981; and

WHEREAS, the County and Municipalities have amended the Franchise Ordinance from time to time and, as so amended, the Franchise Ordinance remains in full force and effect; and

WHEREAS, the Board of Directors of the Sacramento Metropolitan Cable Television Commission (hereinafter "Commission" and Commission, County and Municipalities are hereinafter collectively referred to as the "Public Entities"), by means of Resolution No. CATV 83-023 dated November 22, 1983 ("Franchise Resolution"), granted an initial, nonexclusive franchise ("Franchise") to Cablevision of Sacramento, a California general partnership, whose name was subsequently changed to Sacramento Cable Television ("SCT"), to erect, install, construct, reconstruct, operate, maintain, dismantle, test, repair and use a cable television and communication system in the County and Municipalities; and

WHEREAS, SCT, Scripps Howard Cable Company of Sacramento, Inc., a Delaware corporation ("SHCC"), River City Cablevision, Inc., a California corporation ("River City"), and Scripps Howard Broadcasting Company, an Ohio corporation ("SHBC") (All of the foregoing hereinafter collectively referred to as the "Franchise Entities"), accepted the Franchise Resolution, as it was adopted, and each subsequent amendment thereto by acceptances properly filed within thirty days after each such amendment; and

WHEREAS, the Franchise Entities and Public Entities desire to compromise and settle all claims and disputes between themselves, and, in conjunction therewith, confirm Franchise Entities' Franchise and amend and restate in their entirety the Franchise Entities' contractual obligations thereunder; and

AMENDMENT TO AMENDED AND RESTATED FRANCHISE RESOLUTION

RESOLUTION 88-015

WHEREAS, the Board of Supervisors of the County, by means of Resolution No. 88-0104 dated January 26, 1988, and the City Council of the City, by means of Resolution No. 88-076 dated January 26, 1988 have approved and the Board of Directors of the Cable Television Commission by means of Resolution No. 88-007 dated January 26, 1988, have enacted an Amended and Restated Resolution accomplishing such compromise, settlement, amendment and restatement; and

WHEREAS, the Public Entities desire to extend the date for performance of events specified in the Amended and Restated Resolution from February 7, 1988 to March 3, 1988.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF SACRAMENTO METROPOLITAN CABLE TELEVISION COMMISSION hereby resolves as follows:

1. Section 10.03 of the Amended and Restated Resolution is hereby amended to read as follows:

"10.03 Implementation. If all of the conditions precedent set forth in Section 10.02 above shall not have occurred on or before March 3, 1988, this Amended and Restated Resolution shall be deemed repealed and revoked, and shall be null, void and of no further effect. The Commission shall not convene any hearing relating to any default or commercial impracticability prior to March 3, 1988. The Franchise Entities and the Public Entities shall cooperate in an effort to stay all proceedings in any litigation between them, including, but not limited to, the proceedings in the aforesaid Civil Action No. CIVS-87-1099 MLS, until March 3, 1988."

2. All other terms and conditions of the foregoing Resolution shall remain in full force and effect.

AMENDMENT TO AMENDED AND RESTATED FRANCHISE RESOLUTION

RESOLUTION 88-015

ON A MOTION by Commissioner Illa Collin, seconded by Commissioner Doug Pope, the foregoing resolution was passed and adopted this 3rd day of March, 1988, by the following vote to wit:

Ayes: Commissioners, Pope, Collin, Ferris, Johnson, Kastanis, Fletcher

Noes: none

Absent: none

SACRAMENTO METROPOLITAN CABLE  
TELEVISION COMMISSION

By:

*Jerry Kastanis*  
Chairman

Attested By:

*Blaine Hanks*  
Commission Clerk