

6.4C-1

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF REDWOOD CITY APPROVING AN AMENDMENT OF THE FRANCHISE BETWEEN THE CITY OF REDWOOD CITY AND RCN TELECOM SERVICES, INC., FORMERLY RCN TELECOM SERVICES OF CALIFORNIA, INC. TO CHANGE THE METHOD BY WHICH CONSTRUCTION COMPLIANCE IS REGULATED AND TO PROVIDE FOR THE CREATION OF A MULTI-JURISDICTIONAL FIBER NETWORK WITHIN REDWOOD CITY AND NEIGHBORING COMMUNITIES.

WHEREAS, in August 2000, the City Council of the City of Redwood City, California ("City") granted a Cable Television Franchise ("Franchise") to RCN Telecom Services of California, Inc., now providing services as RCN Telecom Services, Inc. ("RCN"); and

WHEREAS, RCN has constructed a telecommunication system that passes over ten thousand (10,000) residences and provides cable television and/or high speed Internet access to approximately two thousand one hundred (2,100) Redwood City residences; and

WHEREAS, the Franchise has an eleven (11) year term and calls for RCN to pass by and provide access to all Redwood City residences by 2006; and

WHEREAS, in 2002 RCN's parent company, RCN Corporation, halted most of its nationwide construction due to difficulties in raising financial capital; and

WHEREAS, in May 2004, RCN Corporation filed for Chapter 11 bankruptcy protection; and

WHEREAS, to avoid a similar bankruptcy filing by RCN Telecom Services, Inc. and possible non-compliance with the Franchise, the City was asked to relieve RCN of certain Franchise requirements; and

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WHEREAS, RCN and the City have reached agreement on three (3) substantive amendments to the Franchise by which: 1) the Franchise expiration date will be shortened should RCN not engage in substantive system construction; 2) for a period of five (5) years, the City will receive liquidated damages in the amount of ten thousand dollars (\$10,000) per year for each year in which RCN does not complete significant cable construction as defined in the Franchise; and 3) a multi jurisdictional fiber optic network will be provided along the length of El Camino Real for participating San Mateo County entities for a period of twenty-five (25) years; and

WHEREAS, both the City and RCN desire to expressly reserve all of their respective rights under state and federal law.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF REDWOOD CITY DOES HEREBY ORDAIN AS FOLLOWS:

1. That the amendment to the Franchise, attached as Exhibit A and incorporated by this reference, is hereby approved and the City Manager is authorized to execute same.
2. That this ordinance will be effective thirty (30) days after adoption.

* * *

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**AMENDMENT NO. 1 TO CABLE SYSTEM FRANCHISE AGREEMENT
BETWEEN THE CITY OF REDWOOD CITY AND
RCN TELECOM SERVICES, INC.**

The Cable System Franchise Agreement, effective August 28, 2000 (the "Franchise Agreement"), between the City of Redwood City, California (the "City" or "Grantor") and RCN Telecom Services, Inc., formerly RCN Telecom Services of California, Inc. ("Grantee"), is hereby amended as follows:

1. This Amendment No. 1 shall become effective on the day that the last of the Cities of Belmont, Burlingame, Millbrae, Redwood City and San Carlos have executed similar Franchise amendments with Grantee ("Effective Date of this Amendment No. 1").

2. Section 3.6(a) of the Franchise Agreement is deleted and replaced by the following:

Grantee shall indemnify, hold harmless, release and defend Grantor, its officers, employees and agents from and against any and all actions, claims, demands, damages, disability, losses, expenses including attorney's fees and other defense costs or liabilities of any nature that may be asserted by any person or entity, including Grantee, from any cause whatsoever arising from the granting or amending of the Franchise, or from the activities of Grantee, its subcontractors, employees and agents hereunder. Grantee shall be solely responsible and hold Grantor harmless from all matters relative to payment of Grantee's employees including, but not limited to, compliance with Social Security and withholding requirements.

3. Sections 3.7(a) and 3.7(b) ("Security Fund") of the Franchise Agreement are deleted and replaced by the following:

(a) As of the Effective Date of Amendment No. 1, Grantee shall establish to the account of Grantor, either an irrevocable letter of credit, acceptable to Grantor's City Attorney, or a cash deposit in a local bank, in the amount of Fifty Thousand Dollars (\$50,000)(the "Incentive Fund").

(b) For each year, starting from the Effective Date of Amendment No. 1, during which Grantee fails to complete Significant Cable System Construction, Grantor may withdraw Ten Thousand Dollars (\$10,000) from the Incentive Fund. For example, if Grantee has failed to complete Significant Cable System Construction by the Effective Date of this

Amendment No. 1, Grantor may immediately withdraw Ten Thousand Dollars (\$10,000) from the Incentive Fund. If Grantee has not completed Significant Cable System Construction before August 28, 2005, Grantor may withdraw Ten Thousand Dollars (\$10,000) from the Incentive Fund, if Grantee has not completed Significant Cable System Construction by August 28, 2006, Grantor may withdraw Ten Thousand Dollars (\$10,000) from the Incentive Fund, and so on. If the Incentive Fund is in the form of a letter of credit, Grantee shall not oppose such withdrawal. For the purposes of this Section, "Significant Cable System Construction" shall mean the activation of at least twenty (20) new, or previously not activated, nodes during said year.

(c) On or before the Effective Date of Amendment No. 1, Grantee shall also establish a security fund (the "Security Fund") as security for the faithful performance by Grantee of all material provisions of this Agreement. Such Security Fund shall be in the form of an irrevocable letter of credit established to the account of Grantor in the amount of Fifty Thousand Dollars (\$50,000), and shall be maintained throughout the Term of this Agreement; provided that, at intervals of three (3) years, Grantor shall have the right to require that this amount be increased to reflect changes in the San Francisco Metropolitan Consumer Price Index during the prior three year period.

(d) In the event that Grantee intends to commence Significant Cable System Construction, no later than ninety (90) days prior to the start of such construction the Grantee also shall obtain and provide proof of a performance bond (the "Construction Performance Bond") from a surety admitted in the State of California in favor of the Grantor in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) to be maintained by Grantee until the completion of such Significant Cable System Construction, at which time the bond shall be released upon written notice by Grantee to the Grantor, provided there are then no outstanding material violations of this Agreement.

(e) Significant Cable System Construction will be measured from August 28 through the immediately subsequent August 27 (the "Construction Year"). In the event Grantee completes Significant Cable System Construction during a Construction Year, Grantor shall not withdraw any funds from the Incentive Fund for that year. If the Grantee completes construction of the Cable System prior to the expiration of the Franchise Agreement, Grantee shall be entitled to recover any balance remaining in the Incentive Fund at the time of completion of Cable System construction. If the Grantee does not complete construction of the Cable System prior to expiration of the Franchise Agreement, any funds remaining in the Incentive Fund will become the property of the Grantor. If the Incentive

Fund is in the form of a letter of credit, Grantee shall not oppose Grantor withdrawal.

4. Section 3.8 (d) of the Franchise Agreement is deleted and replaced by the following:

(d)(1) In the event the Council finds that a material violation exists and that Grantee has not corrected the same in a satisfactory manner or has not diligently commenced correction of such violation, the Council may impose liquidated damages, assessable from the security fund, of up to Two Hundred Dollars (\$200) per day or per incident for all violations of this Agreement other than any unexcused violations of the System construction schedule set forth in Section 5.1(a) herein (which shall be enforceable solely as provided in Section 3.8(e) as amended), provided that all violations of a similar nature occurring at the same time shall be considered one (1) incident.

(2) If the Grantor assesses liquidated damages pursuant to this Agreement, then such assessment shall constitute Grantor's exclusive remedy for a period of one hundred twenty (120) days from the date of the first imposition of any damages. Thereafter, if the Grantee remains in non-compliance with the requirements of this Agreement, the Grantor may pursue any other available remedy, provided, however, that Grantor may institute revocation proceedings against Grantee only after declaration of default on the grounds set forth in Section 3.9 herein.

5. Section 3.8 of the Franchise Agreement is amended by adding a new Section 3.8(e) as follows:

(e) Unexcused violations of the System construction schedule provided in Section 5.1(a) shall automatically trigger the provisions of Section 5.1(c) of this Agreement, as amended.

6. Section 5.1(c) of the Franchise Agreement is deleted and replaced by the following:

(c) If construction of the Cable System is not completed by August 28, 2006, as required by Section 5.1(a) above, the remaining term of the Franchise shall be reduced by one (1) month for each month after August 28, 2006 that the Cable System construction has not been completed. By way of example, the potential reduction of the franchise terms is illustrated below:

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<u>Construction Completion Date</u>	<u>Franchise Term Reduction</u>	<u>New Expiration Date</u>
August 28, 2006	0	August 28, 2011
August 28, 2007	12 months	August 28, 2010
August 28, 2008	24 months	August 28, 2009
February 28, 2009	30 months	February 28, 2009

By way of example, if, by August 28, 2007, no additional Significant Cable System Construction has occurred, Grantee will be in the thirty six (36) month "renewal window" provided in 47 U.S.C. 546, since the Franchise term would then expire on August 28, 2010.

7. Exhibit B(2) ("Construction Schedule") of the Franchise Agreement is deleted and replaced by:

It is agreed by Grantor and Grantee that as of the effective date of Amendment No. 1, Grantee has completed and activated one hundred eight (108) residential nodes, with an additional eighty-three (83) nodes remaining to be constructed and activated to complete the Cable System.

8. Exhibit E is hereby added to the Franchise Agreement and shall read as follows:

Multi-Jurisdictional Fiber Network

Grantor and Grantee agree that, in consideration of the mutual covenants, terms and conditions set forth in Amendment No. 1, and in conjunction with similar agreements reached between Grantee and the Cities of Belmont, Burlingame, Millbrae and San Carlos (the "Participating Cities"), Grantee shall provide the following Multi-Jurisdictional Fiber Network (the "MJF Network"):

A. Grantee shall utilize Grantee's optical fiber, previously installed under El Camino Real, and shall provide the following MJF Network at no cost to any of the Participating Cities:

- (1) One installed and operational SONET Ring Fiber Network (herein termed the MJF Network) consisting of two (2) strands of optical fiber and, as described in Subsection B, and appropriate terminal and activation equipment, to a designated connection location in each of

the Participating Cities, as well as San Mateo County, as indicated in Figure 1. Optical fiber shall be connected to San Bruno Cable, as indicated in Figure 1, but Grantee shall not be responsible for termination equipment at that location. The MJF Network shall include lateral connections to the Cities of Belmont, Millbrae and San Carlos where no construction has commenced, provided, however that:

- (i) The Grantee shall only be required to provide one (1) OC-12 installation at whichever of the two (2) San Carlos connection locations set forth in Figure 1 the City of San Carlos may designate;
 - (ii) By separate agreement, Grantee shall obtain access from the City of San Carlos to the following City-owned conduit and fiber for the installation of Grantee's fiber optic facilities and connectivity between the locations (1) conduit located between its City-owned handhole located west of El Camino Real on Holly Street and 501 Laurel Street (Fire Station No. 13); (2) fiber located between 501 Laurel Street (Fire Station No. 13) and 1250 San Carlos Avenue (SAMTRANS Building); and (3) fiber located between 501 Laurel Street (Fire Station No. 13) and 600 Elm Street (San Carlos City Hall);
 - (iii) Grantor shall provide access to City-owned conduit for the installation of Grantee's fiber optic facilities and connectivity between 1017 Middlefield Road (City Hall) and 400 County Center (Hall of Justice);
- (2) Two (2) additional Dark Fiber strands following the same path as the network in section (1) above, as a possible Homeland Security/Emergency Communications network. These Dark Fibers shall be leased by Grantee to the San Mateo County Telecommunications Authority ("SAMCAT") and the Participating Cities for twenty-five (25) years at a lease cost of one dollar (\$1.00) per year.

B. The MJF Network shall also include an initial OC-12 bandwidth capacity of six hundred (600) MBS (upgradeable to an OC-48 ring with a capacity of 2.4 GBS). Each site shall include OC-12 terminal and activation equipment, with OS-1 voice capability and 10/100 MBS Ethernet point-to-point data capability. By way of illustration, Figure 2 indicates the type of terminal and activation equipment that may be utilized. In any event, however, it shall be Grantee's responsibility to design the MJF Network and supervise its installation as provided in Subsection C below.

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C. Grantor shall be responsible for the purchase and ongoing maintenance of all terminal and activation equipment used to provide communications services using the MJF Network constructed by Grantee pursuant to this Exhibit; provided, however that (1) Grantee shall recommend the appropriate terminal and activation equipment; (2) Grantee shall negotiate with vendors to obtain a firm price quote for the purchase and installation of equipment specified in this Exhibit and shall pay to SAMCAT, as trustee for the Participating Cities and coordinator of the operation of the MJF Network, the amount of such quote, which funds shall be used by SAMCAT for the purchase and installation of such equipment; (3) Grantee shall assist SAMCAT and equipment vendors to coordinate the installation of such equipment at all of the locations specified in Section A(1) of this Exhibit E; and (4) Grantee shall test and validate the MJF Network performance prior to Grantor acceptance.

D. The MJF Network shall be installed to all participating municipalities and be fully operational by no later than nine (9) months from the Effective Date of Amendment No. 1. Grantee's failure to meet this deadline shall be deemed to be a material breach of this Agreement and subject Grantee to all available remedies, including termination of the Franchise.

E. Grantee shall lease the optical fiber used for the MJF Network to SAMCAT and the Participating Cities for a period of twenty-five (25) years from the date of activation of the entire network, at a lease cost of one dollar (\$1.00) per year.

F. Grantee shall maintain all portions of the MJF Network external to the connected public buildings, at no cost, for the term of the lease.

G. No later than ten (10) days after the Effective Date of Amendment No. 1, Grantee shall provide one (1) construction performance bond (the "MJF Performance Bond") in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) to insure the installation and activation of the MJF Network referenced in A and B above. The MJF Performance Bond shall be issued to SAMCAT, as trustee for those jurisdictions to be connected to the MJF Network, and shall be in a form acceptable to SAMCAT legal counsel. The MJF Performance Bond may be released after written acceptance of the MJF Network by each of the Participating Cities, providing that there are then no outstanding material violations of this Exhibit.

H. Within thirty (30) days after the Effective Date of Amendment No. 1, Grantee shall provide to SAMCAT, with a copy to Grantor a written detailed design and installation plan for the MJF Network, including details of terminal equipment, installation locations and implementation

schedules.

I. Within one hundred twenty (120) days after the Effective Date of Amendment No. 1, Grantee shall provide Grantor with a written status report on the MJF Network installation, including progress to date and estimated completion date.

J. The Grantor and SAMCAT may use the MJF Network for any data, PEG video or other communications services between and among Grantor, SAMCAT, San Mateo County, and the other Participating Cities, for governmental communications relating to the public health, safety and welfare. Upon reasonable written notice to Grantee, the Grantor, or any Grantor-designated entity, may use the MJF Network for any other lawful municipal or public purpose; provided, however, that the Grantor shall not use or permit the use of the MJF Network to provide any services that are in competition with services provided by Grantee over its network or facilities. The Grantor may solicit bids to provide services using the MJF Network, and Grantee shall be invited to respond to any such solicitation.

K. Section 8.2 ("Force Majeure") of the Franchise Agreement shall be applicable to Grantee's obligations to construct the MJF Network pursuant to this Exhibit E, and Grantee's inability to obtain and incorporate into the MJF Network the Redwood City and San Carlos conduit and fiber described in Section A(1) of this Exhibit or to obtain from the Participating Cities or San Mateo County any of the authorizations, permits or other right-of-way or building access permissions necessary to construct the MJF Network shall be considered to be a cause or event beyond the Grantee's reasonable control.

9. This Amendment No. 1 represents a settlement between Grantor and Grantee of certain disputes and potential disputes arising out of Grantee's inability to meet the Cable System construction requirements of 5.1(a) of the Franchise Agreement. As a settlement, Grantor agrees not to utilize Grantee's failure to meet the construction requirements as a criterion to deny franchise renewal. In any renewal proceedings, Grantor may consider other applicable criteria including, but not limited to, Grantee financial capability and compliance with non-construction schedule obligations of the Franchise Agreement.

10. Grantee reserves all of its rights under applicable law to seek certification as an Open Video System provider upon the expiration or termination of the Franchise Agreement, and neither Grantee's inability to complete construction nor any reduction in the Franchise term resulting therefrom shall be considered in connection with or prejudice the conversion of the Cable System to an Open Video System. In any application from Grantee to Grantor for an Open Video

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System agreement, Grantor may consider other applicable criteria including, but not limited to, Grantee financial capability and compliance with non-construction schedule obligations of the Franchise Agreement.

11 In the event of early termination of this Franchise Agreement, other than by mutual agreement, Grantor shall retain all cash deposits, rights of withdrawal under any letter of credit and demand rights under performance bonds as may be allowed under the Franchise or its amendments.

CITY OF REDWOOD CITY

By: _____

Date: _____

Attest: _____

City Clerk

RCN TELECOM SERVICES, INC.

(Corporate Seal)

By: _____

Name: _____

Title: _____

Date: _____

FIGURE 1
NETWORK CONNECTION LOCATIONS

Municipality	Connection Locations
Belmont	City Hall, 1070 Sixth Avenue
Burlingame	City Hall 501 Primrose Road
Millbrae	City Hall, 621 Magnolia Avenue
Redwood City	City Hall, 1017 Middlefield Road
San Carlos	City Hall, 600 Elm Street and SAMTRANS Building, 1250 San Carlos Avenue
San Mateo County	Hall of Justice, 400 County Center
San Bruno*	San Bruno Cable, 398 El Camino Real

* Optical Fiber shall be connected to San Bruno Cable at this address, but Grantee shall not be responsible for termination equipment at this location.

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FIGURE 2

**SONET RING FIBER NETWORK
TERMINAL AND ACTIVATION EQUIPMENT**

<i>ITEM</i>	<i>UNIT</i>	<i>DESCRIPTION</i>	<i>FNC PART NO.</i>	<i>Quantity</i>
COMMON & LINE CARDS				
1	MPA1-CPU2	CPU (Supports OC3/12)	FC9681CPU2	1
2	LUA1-C2D1	OC-12 LR 1310 nm Line Card (SC)	FC9681C2D1	2
SERVICE INTERFACE UNITS				
3	IFA1-D1V1	14-port DS1 unit	FC9681D1V1	1
4	IFA1-EVT1	4-port 10/100BaseT (VT-mapped)	FC9681EVT1	1
HARDWARE				
5	FW4100 Shelf	4100 Large Shelf (12 I/O slots)	FC9681SFL1-I04	1
6	FW Lg. Shelf Cover	FW 4100 Large Shelf Cover	FC9681FCL1	1
7	Fan	Fan Unit (Extended Temp Only)	FC9681FAN3	1
8	Filter	Fan Filter	FC9681FLT1	1
9	Heat Baffle	Upper Heat Baffle	HA15B-0001-B268	1
10	Filler Panel	Filler Panel (Interface slots)	FC9681FIL1	10
11	Power Cable	Power Harness	22-515-015	1
12	DS-1 Cable	DS-1 Cable	21-441-070	2
13	Clock Cable*	Clock Cable, Pri ,Sec*	21-601-100*	1*
14	Alarm Cable*	Alarm Cable*	22-605-050*	1*
SOFTWARE				
15	NE Software*	R3.1Generics*	FC9681CR03.I01*	1*
16	RTU	FW4100 CPU3.1 RTU	RTU4100AR03.1	1
17	FLEXR GT*	FLEXR GT R4.5*	SPFLXGT04-I05*	1*
18	Documents*	CD-ROM Documents*	FNC-UNI-0104-010*	1*
*Equipment required for only one location within the MJF Network.				