

Chapter 63 - Cable Communications

ARTICLE I – PURPOSE; NECESSITY; DEFINITIONS

1. Purpose. The purpose of this Chapter is to promote and encourage the furnishing of a high quality but economical cable communications service to the residents of the City and to regulate such service in the public interest.
2. Necessity of Franchise. No person shall own or operate a Cable System, as defined herein, except by Franchise granted by the City, which Franchise shall comply with all requirements of this Chapter.
3. Definitions. For purposes of this Chapter, any subsequent ordinance dealing with cable communications, any Franchise Agreement between the City and a Cable Communications Company, and any application or proposal submitted pursuant to an RFP, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.
 1. Access Cablecasting - Services provided by a cable television system on its public, education, local government, licensed or other access channels.
 2. Applicant - Person or Company submitting a proposal for the Franchise of a cable communications system.
 3. Basic Service - All subscriber services provided by the Grantee, including the delivery of broadcast signals, covered by the regular monthly charge, if any paid by all subscribers, excluding optional services for which a separate charge is made.
 4. Cablecast - To distribute programs (both from broadcasting sources and original programs) through the cable system by means of coaxial cable or other electrical conductors or fiber optical transmitters.
 5. Cable Communications Service - The business, in whole or in part, of receiving directly or indirectly over the air, and amplifying or otherwise modifying signals transmitting programs broadcast by one (1) or more signals, sound signals, pictures, visual images, digital signals, telemetry, or any other type of closed circuit transmission by means of electrical or light impulses, whether or not directed to originating signals or receiving signals off the air, and redistributing such signals by wire, cable or other means to members of the public.
 6. Cable Communications System, Cable System, CATV or System - A system of coaxial cables or other electrical conductors or fiber optical cables and equipment used or to be used to originate or receive television or radio signals directly or indirectly off the air and to transmit them via cable to subscribers for a fixed or variable fee, including the origination, receipt, transmission, and distribution of voices, sound signals, pictures, visual images, digital signals, telemetry, or any other type of closed circuit transmission by means of electrical impulses, whether or not directed to originating signals or receiving signals off the air.
 7. City - The Local Government of Troy and all the territory within its corporate limits.

Chapter 63 - Cable Communications

8. City Council - The governing body of the local unit of government.
9. Community Specific Cablecasting - Programming or channel allocation which selectively cablecasts to individual communities to meet their unique needs or interests. "Community" refers to any unit with common needs or interest such as individual cities or neighborhoods, school districts or groups with common characteristics.
10. Connection - The attachment of the drop to the first radio or television set of the subscriber.
11. Converter - An electronic device, which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and by an appropriate channel selector also permits a subscriber to view all basic subscriber signals included in the basic service delivered at designated converter dial locations. The converter may also allow reception of additional programming and/or services at extra cost to the subscriber.
12. Drop - The cable that connects the subscriber terminal to the nearest feeder cable of a cable system.
13. FCC - The Federal Communications Commission and any legally appointed, designated or elected agent or successor.
14. Feeder - Intermediate line of Cable System that carries signals from trunk line to drops.
15. Franchise - The rights of a Grantee to construct and operate a Cable System in the City, subject to the City Charter, this Ordinance and the Franchise Agreement, as provided in the Franchise Agreement.

(Rev. 04-08-1996)
16. Franchise Agreement - Agreement between cable operator and the City setting specific rights and responsibilities of each for construction and operation of Cable System.
17. Fraud or Deceit - Shall not be limited to common law fraud and deceit but shall include the meaning of those words under federal securities law.
18. Grantee - A person to whom a cable communications franchise has been granted.
19. Gross Revenues - "Gross Revenues" shall mean all revenues earned by Grantee from the operation of Grantee's System within the City and which are attributable to or occasioned by the grant of the Franchise. "Gross Revenues" do not mean, however: (1) any taxes imposed and/or assessed by law on subscribers (including state imposed sales taxes) which Grantee is obligated to collect and pay in full to the applicable authorities; (2) any amounts documented as written off by Grantee as bad debt; and (3) any revenues or commissions which relate directly to the sale of merchandise by home-shopping channel operators over the Grantee's System in the City. "Gross annual revenues" and

Chapter 63 - Cable Communications

“annual gross revenues” shall be deemed to include revenues received by Grantee from the sale of: (1) local advertising for carriage on Grantee’s System within the City; and (2) all cable converter boxes, all remote controls for cable equipment, if any, that Grantee elects to sell to subscribers in the City during the term of the Franchise.

(Rev. 03-08-1996)

20. Headend - The equipment at the antenna site in a master antenna or Cable System. The point of origination that collects all the signals (from Broadcast stations, cable stations, and satellite stations) and sends them to the subscribers.
21. Hub - One of two or more elements in a large cable system from which trunk lines originate, from which programming and data is sent out via trunk lines, and where upstream messages are received and where switching is accomplished. Large Systems have multiple hubs linked to each other and/or to master headend.
22. Installation - The connection of the system from feeder cable to the point of connection.
23. Interactive System - A two-way operations system. See also "two-way capability".
24. Interconnect - To link cable headends, so that subscribers to different Cable Systems can see the same programming simultaneously.
25. Local Public Access - Refers to the public opportunity to use cable channels which are dedicated to that purpose and are not under control of Grantee.
26. Local Origination - Programs produced locally, the content of which may be original or produced elsewhere and sold or licensed to a Grantee for use.
27. Lockout Device - A device which prevents reception of one or more channels at an individual drop.
28. Loop - A completely interactive close-circuit net connecting specified municipal, educational, medical or commercial facilities within a System which should also have the capacity to be interconnected to the main Cable System.
29. Pay TV - Cable channels that require an additional subscriber fee.
30. Person - An individual, partnership, corporation, or other entity as the context may indicate.
31. Point to Point Transmission - A signaling path provided by a system to transmit signals of any type from a subscriber terminal to another point in the System.
32. Producer - A user providing input services to the Cable System for receipt by subscribers.
33. Proposal - An applicant's response to an RFP.
34. Public Access Channels - Channels which are dedicated to the public interest, according to the following categories:

Chapter 63 - Cable Communications

- (a) community
 - (b) education
 - (c) local government
 - (d) health and medical
 - (e) other
35. Public Property - Any real property owned by the City other than a street.
36. RFP - Request by the City for a proposal from applicants for a Cable System.
37. Security System - Optional two-way service(s) offered to cable subscribers which may alert authorities and/or subscribers of potential emergencies in the subscriber's home, or public or private buildings.
38. Senior Citizen - Person 62 years old or older.
39. Street, Highway - The surface of and the space above and below any public street, road, highway, freeway, land, path, public way, alley, court, sidewalk, boulevard, parkway, drive or any easement or right-of-way now or hereafter held by City which shall entitle Grantee to the extent provided in the Franchise Agreement, to the use thereof for the purpose of installing, or transmitting over, poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a System.
- (Rev. 04-08-1996)
40. Subscriber - A person who pays an installation charge and/or monthly fee to a cable system operator for connections to the System and for programs and services carried on the cable.
41. Subscriber Service Drop - Same as Drop.
42. Trunk, Trunk Line - Main line of Cable System that carries signals from headend to extremities of cable system.
43. Two-Way Capability - Ability of Cable System to conduct signals to one headend as well as from the headend. See also Loop.
44. User - A person or organization utilizing a System channel as a producer, for purposes of production and/or transmission of material, or as a subscriber, for purposes of receipt of material.

ARTICLE II - SELECTION OF FRANCHISEE

4. Award of Franchise. The City Council may award a Franchise to an applicant only after a public hearing on the application and proposal, notice of which hearing shall be published in a local newspaper of general circulation at least twenty (20) days prior to the date of the hearing. The City Council may reject all applicants.
5. Franchise Application - Form, Contents and Fees. All proposals shall be submitted in writing and shall be accompanied by a nonrefundable fee of \$6,000.00. If the City issued an RFP with respect

Chapter 63 - Cable Communications

to the grant of a Franchise, all proposals shall contain the information called for by the RFP in the manner prescribed by the RFP.

(Rev. 04-08-1996)

A. Information contained in a Franchise application shall include such information as is required by the City from the applicant and may include, without limitation, the following:

(Rev. 04-08-1996)

1. Information regarding the identity of the applicant.
2. Biographical data of the applicant's principal owners and proposed management, including the experience of such persons in the cable communications field.
3. Audited financial statements for the applicant's last fiscal year together with the applicant's most current interim financial statements, which interim statements need not be audited but which shall be reviewed by a certified public accountant in accordance with standards established by the American Institute of Certified Public Accountants and which interim statements shall be accompanied by the accountant's report thereon.
4. A financing plan for the proposed System and a projection, covering the term of the franchise, of revenue and expense in sufficient detail to permit a determination to be made of the financial viability of the applicant's proposal.
5. A detailed description of the System and facilities proposed for the City, including the matters to which a response is specifically required by Articles IV and V of the Ordinance, and including a schedule of projected rates for all charges and fees to subscribers.
6. A detailed timetable for the construction and commencement of operation of the System, including the matters to which a response is specifically required by Article VI of this Ordinance.

B. An RFP, if issued, shall consist of an application which may be adopted by City Council resolution.

(Rev. 04-08-1996)

C. The City shall be entitled to verify any information furnished by the applicant in response to the RFP or in response to other requests for information regarding the applicant and the applicant's affairs. The City may exercise such right by requiring reports from the applicant, or from third parties having knowledge of the applicant, or by conducting such other kinds of investigation as the City may deem proper. In such cases the applicant shall furnish the City with such written authorization regarding release of information as may be necessary to carry out the intent and purpose of the foregoing provisions. All of the foregoing provisions shall also be applicable to a Grantee as well as an applicant, it being deemed to be in the public interest that the City remain knowledgeable regarding the Grantee and the operation of the System throughout the term of the franchise.

Chapter 63 - Cable Communications

- D. No applicant, nor any person on behalf of any applicant, shall, in responding to an RFP or in responding to any other request for information by the City or by any officer or agency thereof, make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading. A violation of this provision shall constitute a fraud upon the City.
6. Criteria for Selection. The award of a Franchise to an applicant shall be based upon the information contained in the applicant's proposal and such other relevant information as may be obtained by the City regarding such applicants and the proposals. Such award shall be based upon the criteria set forth below together with such other factors as the City may deem relevant.
- A. The experience of the applicant in the cable communications field and the credentials of its owners and managers.
- B. The applicant's financial resources, including both present financial condition and the availability of committed funding to finance the applicant's proposed System; and the specificity and credibility of the applicant's projections of the revenue and expenses attributable to the construction and operation of the System.
- C. The applicant's System design including channel capacity and ability to provide a broad range of services in conformity with the highest quality standards of the cable industry.
- D. The applicant's schedule of rates and the length of time the applicant is committed to maintain such rates.
- E. The applicant's response to specific local concerns or needs, whether formulated by the City and made known to applicants or whether ascertained by the applicant.

ARTICLE III - FRANCHISE AGREEMENT; GRANT OF FRANCHISE

7. Franchise Agreement. The Franchise Agreement shall be in such form and contain such terms and provisions as shall be approved by the City Council. The Agreement may be adopted, and amended, by resolution of the City Council or by any other mode of adoption or amendment authorized or required by law.
8. Grant of Franchise. A Grantee shall be awarded a Franchise, pursuant to the provisions of Section 4 of this Ordinance, either by resolution of the City Council or by any other means authorized or required by law. The Grantee shall be promptly notified of the award by the City by written notice thereof, sent by registered or certified mail, which notice shall be accompanied by one or more copies of the Franchise Agreement.
9. Execution and Delivery of Franchise Agreement by Grantee. The Franchise Agreement shall be properly executed and delivered to the City by the Grantee on or before fifteen days after the date the City sends written notice of the award to the Grantee, which fifteen day period may be extended by the City Council for good cause; provided, however, that the Franchise Agreement shall not become effective until that specific date set forth in the Franchise Agreement.

At the time of delivery of the Franchise Agreement by the Grantee to the City, the Grantee shall pay to the City all costs incurred by the City in the franchise process, as provided in the Franchise Agreement. All other payments which are to be made to the City by Grantee shall similarly be

Chapter 63 - Cable Communications

made in accordance with the terms and conditions of the Franchise Agreement.

At the time of delivery of the Franchise Agreement as provided in this Section, the Grantee shall also deliver all other monies and all documents and instruments required by this Ordinance or by the Franchise Agreement.

10. Execution and Delivery of Franchise Agreement by City. Upon timely receipt by the City from the Grantee of the properly executed Franchise Agreement, together with the payment of all applicable fees, documents and instruments as may be required in accordance with Section 9 of this Article, the City may execute the Agreement and, upon execution thereof, shall deliver one fully executed copy to the Grantee; provided, however, nothing herein shall prohibit the City from revoking the award of the Franchise prior to delivery of an executed copy of the Franchise Agreement to the Grantee. In the event of any such revocation, which shall be accomplished in the same manner as that used in granting the award, any funds and all documents and instruments delivered by the Grantee to the City in connection with the Grantee's acceptance of the award, shall be returned forthwith to the Grantee.
11. Term and Other Provision of Franchise Agreement.
 - A. The Franchise Agreement shall provide for a non-exclusive franchise for a term of not more than fifteen years, which term shall commence as of the date set forth in the Franchise Agreement.
 - B. The Franchise Agreement shall provide that throughout the term of the Franchise, the Grantee shall pay the City Franchise fee within ninety days after the end of each fiscal year of the Grantee. The fee shall not be less than five percent (5%) of the Grantee's gross revenues for each year. The Grantee shall take any action with respect to any federal or state agency which may be necessary or appropriate to make the payment and receipt of such fees lawful. Acceptance of any payment by the City shall not be construed as a release of or as an accord and satisfaction regarding any claim the City may have for further and additional sums payable as a Franchise fee or for the performance of any other obligation of the Grantee under this Ordinance or the Franchise Agreement.
 - C. To the extent provided in the Franchise Agreement, Grantee shall undertake:
 - (1) that the Grantee agrees to and accepts all provisions of this Ordinance and waives any claim that any provision hereof is unreasonable, arbitrary, invalid, or void;
 - (2) that the Grantee recognizes the right of the City to make amendments to this Ordinance during the term of the Franchise to the extent provided in the Franchise Agreement.
12. Negotiated Provisions of Franchise Agreements. The Franchise Agreement shall contain such further conditions or provisions as may be negotiated between the City and the Grantee except that no such conditions or provisions shall conflict with any provision of this Ordinance or other law as in effect on the date of the Franchise Agreement. In the case of such conflict, the provisions of this Ordinance or other law as in effect on the date of the Franchise Agreement shall prevail over the conflicting provisions of the Franchise Agreement.

(Rev. 04-08-1996)

(Rev. 04-08-1996)

Chapter 63 - Cable Communications

13. Rights Reserved by the City.

- A. Any Franchise granted pursuant to this Ordinance shall be subject to the right of the City, by resolution of the City Council, to revoke the Franchise for just cause. Just cause shall include, without limitation:
- (1) A material violation by Grantee of any provision of the Franchise agreement or this Ordinance, or any rule, order, or determination of the City made pursuant thereto, where such violation shall remain uncured pursuant to the terms and conditions of the Franchise Agreement.
 - (2) Any attempt by Grantee to dispose of any of the facilities or property of the System in contravention of the Franchise Agreement.
 - (3) The commission of any fraud or deceit upon the City.
- B. Any Franchise granted hereunder shall be subject to all applicable provisions of other City ordinances of general applicability made pursuant to the police power of the City, the City Charter, and any amendments thereto, whether made prior to or after the inception of the Franchise.

(Rev. 04-08-1996)

- C. Any Franchise granted hereunder shall be subject to the following additional rights of the City:
- (1) To require proper and adequate extension of plant and service and maintenance thereof at the highest practicable standard of efficiency, pursuant to the terms and conditions of the Franchise Agreement.
 - (2) To establish reasonable standards of service and quality of products, and to prevent unjust discrimination in service or rates.
 - (3) To require continuous and uninterrupted service to the public in accordance with the terms of the Franchise throughout the entire period thereof.
 - (4) To impose such other regulations as may be determined by the City Council to be conducive to the safety, welfare and accommodation of the public.
 - (5) Through its appropriately designated representatives, to inspect all construction or installation work performed subject to the provisions of the Franchise and this Ordinance, and make such inspections as it shall find necessary to insure compliance with the terms of the Franchise, this Ordinance, and other pertinent provisions of law.
 - (6) At the expiration of the term for which a Franchise is granted or upon termination and cancellation as provided therein, to require the Grantee to remove at Grantee's sole expense any and all portions of the System from the public ways within the City.

Chapter 63 - Cable Communications

- (7) To require grantee to safeguard and keep private all individual home subscriber information.
14. Procedure for Termination. If the Franchise Agreement establishes procedures for the termination or cancellation of the Franchise before the expiration of the term of the Franchise, such procedures shall control during the term. If the Franchise Agreement does not establish such procedures, the: (a) any termination or cancellation of the franchise prior to the expiration of the term thereof shall be made by resolution of the City Council only after a public hearing thereon; (b) Grantee shall be entitled to thirty days' written notice of such hearing and the notice shall specify with reasonable particularity the grounds upon which the contemplated termination is based; and (c) any such termination shall be subject to any requirements of higher law.

(Rev. 04-08-1996)

15. Contravention of Franchise. Any breach by the Grantee of the Franchise Agreement, in addition to constituting a breach of contract, shall constitute a violation of this Ordinance. The costs of any litigation, including attorney fees, incurred by the City to enforce this Ordinance or Franchise granted pursuant hereto shall be reimbursed to the City by the Grantee, in respect of such litigation or part thereof in which the City is the prevailing party.

ARTICLE IV - DESIGN OF SYSTEM

16. Channel Capacity. Grantee shall maintain throughout the term of the Franchise the number of channels specified to be initially activated in the Franchise Agreement. Grantee shall also activate additional channel capacity as required by public access or institutional users. Grantee shall continually upgrade the System's facilities, equipment, and service pursuant to the terms and conditions of the Franchise Agreement.
17. Picture Quality and Technical Requirements.
- A. The System shall produce a picture upon each subscriber's television screen in black and white or color, depending upon whether color is being telecast and provided the subscriber's television set is capable of producing a color picture, which is undistorted and free from ghost images, without material degradation of color fidelity. The System shall produce a sound which is undistorted on a properly operating standard receiver of a subscriber.
 - B. The System shall transmit or distribute signals to all television and radio receivers of all subscribers without causing cross-modulation in the cables or interfering with other electrical or electronic systems or the reception of other television or radio receivers.
 - C. The System shall at all times meet not less than minimum FCC technical standards.
 - D. The System shall be designed for and operated on a twenty-four (24) hour a day continuous operation basis.
 - E. Grantee's RFP response shall specify the procedure for initially and subsequently testing the technical capacity of the System. Representatives of City may be present during testing. The tests may be done annually at such times as may be determined by the City, with notice to Grantee. All expenses for all such tests shall be paid by Grantee.
18. Two-Way Capacity. Grantee shall provide and maintain an operational two-way System (audio, video and data impulse).

Chapter 63 - Cable Communications

- A. The Grantee will not install or permit transmission of two-way services utilizing audio, video or digital signals without first obtaining written permission of the subscriber. This provision is not intended to prohibit the transmission of signals useful only for the control or measurement of the System performance, or utility meter reading.
19. Facilities. Grantee's proposal shall describe, in detail, the location of its headend, hubs, distribution system, studios, equipment and other facilities and a plan for implementing the construction, utilization and maintenance of those facilities including plans for accommodating future growth and changing needs and desires of the community as determined by the City.
20. Special Channel and Access Requirements.
- A. Grantee shall carry broadcast stations in accordance with FCC rules as from time to time revised.
- B. Grantee's proposal shall describe, in detail, the utilization of converters or other special equipment which subscribers are to receive and any charge for them.
- C. Grantee shall designate an emergency channel to be operated by City.
- D. Grantee shall provide adequate channels for public access as provided in the Franchise Agreement. All residential subscribers who receive all or any part of the total services offered on the System shall also receive all public access channels at no additional charge. These channels shall be activated upon system activation and thereafter maintained as needed. Furthermore, to the extent expressly required by the Franchise Agreement or by federal law: (i) Grantee shall establish rules and regulations for the use of community access channels which shall be approved by City before implementation and thereafter shall not be altered or amended without approval of City, and (ii) in preparing such rules:
- (1) Grantee shall provide an equal opportunity for use of access services.
 - (2) Grantee shall present a needs assessment of the community to be served and provide a plan to meet those needs.
 - (3) Grantee shall develop a plan to allocate to the City a reasonable use of equipment and facilities so that the City can send and receive programming fitted to its needs. Such plan shall be approved by the City before implementation and thereafter shall not be altered or amended without approval of the City.
 - (4) Grantee shall describe all equipment and facilities and any charges for their use.
 - (5) Grantee shall comply, at a minimum, with the requirements of the City now or hereafter adopted or determined regarding access channels.
- (Rev. 04-08-1996)
- E. The Franchise Agreement may describe other channel offerings and charges for the same only to the extent permitted by federal law.
- (Rev. 04-08-1996)

Chapter 63 - Cable Communications

21. Service to Public Buildings. Grantee's proposal shall designate all publicly owned buildings in the City (city hall, police department, fire department, schools, library, etc.) and any buildings owned or leased for governmental use by any state, federal or local government in the city, to which Grantee intends to provide service. The provisions for such service shall be described in detail and shall be provided without charge. Grantee's proposal shall include in such designation plans for existing as well as future publicly owned buildings.
22. Interconnection.
- A. Interconnection required: The Grantee shall interconnect origination and access channels of the Cable System with any or all other systems in adjacent areas, pursuant to the terms and conditions of the Franchise Agreement. Interconnection of systems may be done by direct cable connection microwave link, satellite, or other appropriate method.
 - B. Interconnection procedure: Upon receiving the directive of the City to interconnect, Grantee shall immediately initiate negotiations with the other affected system or systems in order that costs may be shared equitably for both construction and operation of the interconnection link.
 - C. Relief: The Grantee may be granted reasonable extensions of time to interconnect or the City may rescind its order to interconnect upon petition by the Grantee to the City. The City shall grant said request if it finds that the Grantee has negotiated in good faith and has failed to obtain an approval from the system or systems of the proposed interconnection, or that the cost of the interconnection would cause an unreasonable or unacceptable increase in subscriber rates.
 - D. Cooperation Required: The Grantee shall cooperate with any interconnection corporation, regional interconnection authority or City, County, State and Federal regulatory agency which may be hereafter established for the purpose of regulating, financing, or otherwise provided for the interconnection of cable systems beyond the boundaries of the City.
23. Community Specific Cablecasting. The Franchise Agreement may describe the means and manner of providing community specific cablecasting over the System and the time of activation and points of delivery.
- (Rev. 04-08-1996)
24. Computer Services. Grantee shall design and construct a System that accommodates interactive data communications and so that the total network transmission time is less than one-tenth (1/10) of a second. Further, the system shall accommodate interactive communications of point to point, point to multi-point, and multi-point to multi-point communications between subscribers or potential subscribers.
- (Rev. 7-24-95)
25. All Channels Emergency Alert. In case of any emergency or disaster, the Grantee shall make its entire system available, without charge, to the City or to any other governmental or civil defense agency that the City may designate. The System shall be engineered to provide an audio alert system to allow authorized officials to override automatically the audio signals on all channels and to transmit and report emergency information. The system shall also have the capability for visual transmission of emergency messages.

**ARTICLE V - SERVICES AND PROGRAMMING,
SUBSCRIBER CONTRACTS, COMPLAINTS**

26. Services and Programming. Grantee's proposal shall state the extent of its commitment to provide for the following: a variety of origination programming; automated channels carrying information from local sources; local access programming; a home security package (with mechanism to decrease incidents of false alarms); access support including color broadcast studio and location production equipment, post-production equipment, access promotion plans, use of video facilities, plans accommodating growth of access, production centers; a system to accommodate data, audio and video transmissions between institutions, service to public buildings; expanding distant signal offerings as FCC rules allow; broadcast station signals in late night and early morning hours, an FM service with individual station processing; a means for using the System during emergencies; needs of schools and other learning institutions.
- (Rev. 04-08-1996)
27. Local Origination and Cablecasting. To the extent permitted by federal law, the Franchise Agreement may include information on plans for local origination, origination cablecasting, automated channels carrying information from local sources, variety or origination programming, review of and incorporation of the needs and reports of the City, channel allocations, estimated programming hours, equipment, personnel and other resources committed to local origination production.
- (Rev. 04-08-1996)
28. Use of Channels.
- A. Charges made by Grantee to a user shall be made in strict accordance with all applicable requirements of federal law, as amended from time to time.
- (Rev. 04-08-1996)
- B. Advertising for any candidate for political officer or for parties sponsoring such candidates, shall be granted only upon the basis that all such other candidates for the same office, or other parties sponsoring such candidate (where a party itself so advertises in the first instance) shall be provided with comparable advertising time and at a comparable rate.
29. Marketing. Grantee's proposal shall describe a marketing plan, advertising policy and means to promote the use of the access channels only to the extent required by federal law, as amended from time to time.
- (Rev. 04-08-1996)
30. Interruption of Service. Whenever it is necessary to shut off or interrupt service, Grantee shall do so during periods of minimum use of the System. Unless such interruption is unforeseen and immediately necessary, Grantee shall give reasonable notice thereof to subscribers. All costs incurred in repairing the System shall be paid by Grantee, and if service is interrupted or disconnected rebates and/or reductions in charges will be made pursuant to the terms and conditions of the Franchise Agreement. The cause for any such interruption shall be removed, and service restored as promptly as reasonably possible.
31. Complaints. Grantee shall maintain an office in or proximate to the City which shall be open during all usual business hours, have a listed local telephone, and be so operated that complaints and

Chapter 63 - Cable Communications

requests for repairs or adjustments may be received at any time, seven (7) days per week. For purposes of this Section, the "office" which Franchisee is required to maintain in or proximate to the City may be a "Virtual office" consisting of a toll-free telephone number which all subscribers in the City may access from their homes 24 hours a day, seven days a week to register complaints concerning the System.

(Rev. 04-08-1996)

- A. Notice of this information shall be provided to all new subscribers at time of subscription and to existing subscribers annually.
- B. All complaints by the City, subscribers, or other interested persons regarding the quality of service, equipment malfunction, billing disputes, and any other matters relative to the System, shall be investigated and responded to by a service representative of Grantee within twenty-four (24) hours. If reasonably possible, Grantee shall promptly rectify the cause of all valid complaints.

ARTICLE VI - CONSTRUCTION, INITIAL SERVICE AREA, LINE EXTENSION AND CONSTRUCTION STANDARDS

32. Initial Service Area.

- A. Grantee's proposal shall clearly indicate the date by which System engineering and design shall be completed and dates on which each stage of System construction shall be completed.
- B. The energized cable shall be extended substantially throughout the City (as determined by the City) within eighteen (18) months after commencement of construction. All persons along the route of the energized cable who desire them shall have individual drops installed within the same period of time.
- C. A map prepared by Grantee reflecting the areas within the City initially served by the System along with the schedule for development of the System shall be included in Grantee's proposal. Grantee shall provide service to all areas within the City which have at least thirty-five (35) homes per street mile (homes, for purposes of this paragraph shall mean a living unit or each subscriber unit; for example, multiple dwellings with 10 apartments would constitute ten (10) homes).
- D. The City shall cooperate with Grantee in the development of its proposed service area by making available to Grantee for copying all maps, data and other statistical information, then in possession of the City, needed for the preparation of a map defining the initial service area.

33. Construction Timetable.

- A. Grantee's construction timetable as set forth in the Franchise Agreement shall reflect the specific method and schedule of construction of the System. The plan of Grantee shall reflect the following:
 - (1) Location of all facilities including studios, headends, microwave receivers and senders and all hubs and wiring.

Chapter 63 - Cable Communications

- (2) A timetable reflecting when each area within the initial service area will be served.
- (3) Grantee shall provide in its timetable a construction pattern that will allow the utilization of service to the greatest number of people in the shortest time period.

- B. Within thirty (30) days after the commencement of the Franchise term, Grantee shall apply for all necessary permits, licenses, certificates and authorizations which are required in the conduct of its business including, but not limited to, any joint use attachment agreement, microwave carrier licenses, or any other permits, licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of Cable Communications Systems, or their associated microwave transmission facilities. If after six (6) months from the commencement of Franchise term, Grantee has not received the permits, licenses, certificates and authorizations described in this paragraph, the City may assess penalties pursuant to the Franchise Agreement without regard to fault for delay in obtaining such permits, licenses, certificates and authorizations.
- C. Within thirty (30) days after obtaining all necessary permits, licenses, certificates and authorization, Grantee shall give written notice thereof to the City and commence construction and installation of the System.
- D. The Grantee shall promptly notify the City of all delays known or anticipated in the construction of the System. The City may extend the construction timetable in the event Grantee, acting in good faith, experiences delays by reason of circumstances beyond its control.

34. Construction Standards.

- A. Grantee shall not open or disturb the surface of any streets, or public property, without first obtaining a permit from the City for which permit the City may impose a reasonable fee to be paid by Grantee. The lines, conduits, cables and other property placed in the streets, and public property pursuant to such permit shall be located in such part of the street or public property as shall be determined by the City. Grantee shall, upon completion of any work requiring the opening of any streets or public property, restore the same including the pavement and its foundations to as good a condition as formerly and in a manner and quality approved by the City, and shall exercise reasonable care to maintain the same thereafter in good condition.
Such work shall be performed with diligence and due care, and if Grantee shall fail to perform the work promptly, to remove all dirt and rubbish and to put the street or public property back into the condition required hereby, the City shall have the right to put the streets or public property back into such condition at the expense of Grantee. Grantee shall, upon demand, pay to City the cost of such work done.
- B. All wires, conduits, cable and other property and facilities of Grantee shall be so located, constructed, installed and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic, and travel upon, or other use of, the streets and public property of the City. Grantee shall keep and maintain all of its property in good condition, order and repair so that the same shall not menace or endanger the life or property of any person. The City shall have the right to inspect and examine at all reasonable times and upon reasonable notice the property owned or used, in part or in whole, by Grantee. Grantee shall keep accurate maps and records of all of its wires, conduits, cables and other property and facilities located, constructed and maintained in

Chapter 63 - Cable Communications

the City. Further, Grantee shall furnish copies of such maps and records from time to time as requested by the City without charge.

- C. All wires, conduits, cables and other property and facilities of Grantee shall be constructed and installed in an orderly and workmanlike manner. All wires, conduits and cables shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.
- D. Grantee shall at all times comply with the following codes, rules, regulations, as amended, and any others supplemental to or in substitution thereof:
 - (1) National Electric Safety Code (National Bureau of Standards);
 - (2) National Electrical Code, NFPA 70-1981 (National Fire Protection Association);
 - (3) Bell System Code of Pole Line Construction; and
 - (4) Applicable FCC and other applicable Federal, State and local regulations and ordinances.

In any event, the installation, operation or maintenance of the System shall not endanger or interfere with the safety of persons or property in the City.

- E. Whenever the City shall undertake any public improvement which affects Grantee's equipment or facilities, the City may, with due regard to reasonable working conditions and with reasonable notice, direct Grantee to remove or relocate its wires, conduits, cables and other property located in streets, or public property. Grantee shall relocate or protect its wires, conduits, cables and other property at its own expense.
- F. Grantee's plans for constructing its System, and the construction of the System, shall be in accordance with its proposal as modified by the Franchise Agreement. However, Grantee shall comply with the following minimum requirements:
 - (1) Grantee shall construct underground in any area where both the electrical and telephone lines have been installed underground.
 - (2) Grantee shall change from aerial to underground, at its own expense, in any area where both the telephone and electric utilities are hereafter changed from aerial to underground.
 - (3) To enable Grantee reasonable opportunity to change its wiring from aerial to underground, and also to allow it to pre-wire all new subdivisions or new development areas, the City shall provide Grantee with written notice of the following (but without liability for failure to provide such notice):
 - (a) Any changes of which City has knowledge, or which the City may order, regarding a change from aerial to underground of any line (telephone or electrical) within its boundaries.
 - (b) Any underground trenching that may be pending.

Chapter 63 - Cable Communications

- (c) New subdivisions and development. All of such subdividers or developers shall be notified of the Franchise and the System.
- (d) All ordinance changes affecting the wiring of the System.
- G. Grantee shall, upon completion of any work on private property (or easements thereon), restore the same including any and all landscape features, plantings, turf, buildings, pipes, and wires (overhead and underground) pavements, sidewalks, foundations or other features whatsoever, to as good a condition as existed before construction.
- H. Grantee shall prior to construction make a clear video tape record of all underground construction and other specially designated areas. Such tapes are to be preserved for three (3) years after completion of the applicable construction.
- I. Grantee shall provide adequate identification of its lines and wires, as approved by the City Engineer, to distinguish among public utility, telecommunications and cable television companies lines and wires occupying the right-of-way.

(7-24-1995)

35. Conditions on Use.

- A. Grantee shall not place poles or other fixtures where the same will interfere with any gas, electric, or telephone fixture, water hydrant or main.
- B. Grantee, at the request of any person holding a building moving permit and with not less than five (5) days advance notice, shall temporarily remove, raise or lower its wires, conduits and cables. The expense of such temporary removal, raising or lowering of wires, conduits and cables shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance.
- C. Grantee shall have the authority, to the extent and in the manner provided in Chapter 28 of the Troy Tree Regulation Ordinance, Section 17(a) (the "Tree-Trimming Ordinance") to trim trees upon or overhanging any street or public property so as to prevent the branches of such trees from coming in contact with the wires, conduit and cables of Grantee. All trimming shall be done under the supervision and direction of the City and at the expense of Grantee, subject to the Tree-Trimming Ordinance.

(Rev. 04-08-1996)

ARTICLE VII - SYSTEM OPERATIONS

36. Information Availability.

- A. Annual Statements. Grantee shall file with the city clerk, within 90 days after the expiration of each of its fiscal years, a detailed revenue statement clearly showing, by service type and billing increment, the gross annual revenues received from its System operations within the city during the preceding year. Grantee shall not be required to have this revenue statement audited, provided that Grantee shall be required to have this statement certified either by, in Grantee's discretion, the president or chief financial officer of Grantee or a certified public accountant attesting in good faith to the accuracy, completeness and

Chapter 63 - Cable Communications

veracity of the revenue figures. The City shall in any event be entitled to arrange for its own audit of the revenue statement to the extent provided in the Franchise Agreement and the City shall be entitled to recover the costs of that audit as provided in the Franchise Agreement.

(Rev. 04-08-1996)

B. Records and Files.

- (1) Grantee shall keep complete and accurate books of accounts And records of the business and operations under, and in connection with, its System.
- (2) The City shall have the right to review (either by mail or at Grantee's local office) all records pertaining to Grantee's cable service operations on five (5) working days' written notice, unless specifically exempted by the City. Such review, unless mutually agreed upon, or judicially ordered, should occur within Grantee's normal business hours.
- (3) The City shall have the right to hire, at its own expense, and independent certified public accountant, or other business or financial expert, to review the books and records of Grantee. If after a financial audit it is determined that Grantee has materially underpaid amounts owed to the City, then the City may require Grantee to reimburse the City for the actual reasonable cost of the audit.
- (4) A false entry into the books and/or records of Grantee, made by Grantee, of a material and substantial fact shall constitute a material violation of this ordinance.
- (5) Grantee at the local office shall keep complete and accurate books and records of the key aspects of its system's operation for at least the preceding three (3) years in such a manner that all matters pertaining t the city shall be easily produced and/or verified at the City's request. Also, Grantee shall keep at its local office any other applicable records and information that may be required by any other Federal or State agency having jurisdiction over cable providers. For purposes of this Section, the works 'local office' refer to the place in Michigan where Grantee will provide access to its books and records relating to its System in the City.

(Rev. 04-08-1996)

- ### C. Governmental Reports. Grantee shall provide to the City, upon request, copies of all documents filed by Grantee with Federal or State agencies which relate to the Franchise, unless the documents have a potential material effect upon the Franchise, in which case, Grantee shall provide such documents to the City without request. However, unless specifically authorized by the State, Grantee shall not be required to submit State or Federal tax returns, or any information exempted under federal privacy laws, including Section 631 of the Federal Cable Act.

(Rev. 04-08-1996)

37. Service Contract.

- #### A. Grantee shall file with the City a copy of the service contract to be used by Grantee prior to

Chapter 63 - Cable Communications

entering into any such service contracts with subscribers, and Grantee shall make no changes in the latest service contract on file without first filing the revised contract with the City.

(Rev. 04-08-1996)

- B. Grantee shall have authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable Grantee to exercise its rights and perform its obligations under this Franchise and to assure an uninterrupted service to each and all of its subscribers; provided, such rules, regulations, terms and conditions shall not be in conflict with the provisions of the Franchise, ordinances of the City, and laws of the State of Michigan or the United States.
- C. Each subscriber shall be provided with instructions on filing complaints or otherwise obtaining information or assistance from Grantee.
- D. All items described in this Section shall be provided to each new subscriber at the time a contract is entered or service begun and to all existing subscribers forthwith upon any changes therein.
- E. The term of a subscriber contract shall not be for more than twelve (12) months duration unless after twelve (12) months the contract may be terminated by the subscriber at his option at any time without penalty.

38. Subscriber Practices.

- A. There shall be no charge for disconnection of any installment or outlet. If any subscriber fails to pay a properly due monthly subscriber fee or any other proper fee or charge when due, Grantee may discontinue service to such subscriber; provided, however, Grantee may not remove any of its equipment until after the later of (i) 30 days after the due date of said delinquent fee or charge, or (ii) ten (10) days after delivery to subscriber of written notice of the intent to disconnect. If a subscriber pays before expiration of the later of (i) or (ii), Grantee shall not disconnect. After disconnection, upon payment in full of the delinquent fee or charge and the payment of a reconnection charge, Grantee shall promptly reinstate the subscriber's cable service.
- B. Refunds to subscribers shall be made or determined in the following manner:
 - (1) If Grantee fails, upon request by a subscriber, to provide any service then being offered, Grantee shall promptly refund all deposits or advance charges paid for the service in question by said subscriber. This provision does not alter Grantee's responsibility to subscribers under any separate contractual agreement or relieve Grantee of any other liability.
 - (2) If any subscriber terminates any monthly service because of failure of Grantee to render the service in accordance with the Franchise, Grantee shall refund to such subscriber the proportionate share of the charges paid by the subscriber for the services not received. This provision does not relieve Grantee of liability established in other provisions of the Franchise.
- C. If any subscriber terminates any monthly service prior to the end of a prepaid period, a

Chapter 63 - Cable Communications

proportionate portion of any prepaid subscriber service fee, using the number of days as a basis, shall be refunded to the subscriber by Grantee.

39. Rates and Charges; Changes Therein and Procedures

A. Rates and Charges.

- (1) Limitations on Rates. The charges made for services of the Grantee shall be made in strict accordance with all applicable requirements of federal law, as amended from time to time.

(Rev. 04-08-1996)

- (2) Adjustments to Rates. The City Council shall have the power, authority and right to cause the Grantee's rates and charges to conform to the provisions of subsection (1) hereof, and for this purpose it may deny or institute changes in such rates and charges when it determines that, in the absence of such action on its part, the Grantee's rates and charges or proposed rates and charges will not conform to such subsection; provided, however, that the City Council shall not, in making such determination, act in contravention of the Franchise Agreement.

B. Rate Schedule.

To the extent required by federal law, as amended from time to time, the Franchise Agreement shall include a detailed schedule of all rates and charges applicable to the System. There shall be no charge for disconnection of any installation or connection and no charge for maintenance or repair service unless such service is required as a result of damage caused by the subscriber. The rates and charges set forth in Grantee's proposal shall not be exceeded during three and one half years from the date of the Franchise Agreement or two years after completion of construction of the System, whichever first occurs, subject only to preemption by state and federal law.

(Rev. 04-08-1996)

C. Rate Changes.

The criteria and standards relating to the establishment of rate changes shall include those certain criteria, if any, set forth in the Franchise Agreement.

(Rev. 04-08-1996)

D. Procedure for Rate Changes.

To the extent required by federal law, as amended from time to time, procedure for reviewing and establishing a proposed rate change shall be set forth in the Franchise Agreement.

(Rev. 04-08-1996)

E. No Change Required.

Nothing herein shall be deemed to require any proposed rate change initiated by Grantee.

Chapter 63 - Cable Communications

(Rev. 04-08-1996)

40. Subliminal Advertising. Grantee is expressly prohibited from transmitting any form of subliminal advertising at any time.
41. Tampering in Fraudulent Connections or Sales. No person, whether or not a subscriber to the Cable System, may intentionally or knowingly remove or damage or cause to be damaged any wire, cable, conduit, equipment, or apparatus of the Grantee, or to commit any act with an intent to cause such removal or damage, or tap, tamper with, or otherwise connect any wire or device to a wire, cable, conduit, equipment and apparatus, or appurtenances of the licensee with the intent to obtain a signal or impulse from the Cable System without authorization from or compensation to the Grantee, or obtain cable television or other communications, service or sell, rent, end, offer or advertise for sale, rental or use any instrument, apparatus, device or plans, specifications, or instructions for making or assembling the same to connect to the Grantee's cable System with intent to cheat or defraud the Grantee of any lawful charge to which it is entitled.
42. Landlord and Tenant Relationship.
- A. The City hereby declares that this ordinance has as one of its principal objectives, the lawful public purpose of rapidly developing and maximizing the educational, community service, cultural and public safety potential of cable television in order to benefit all of the residents of the City. The City further finds that the public interest and necessity require that no owner of any multiple unit residential dwelling (nor his agent or representative be permitted to directly or indirectly prevent any resident of such dwelling from receiving Cable Communications Service installation, maintenance, and services from a Grantee operating under a valid franchise issued by the City.
- B. In order to provide the opportunity for the residents of any multiple unit residential dwelling to obtain service from a Grantee, such Grantee may negotiate an agreement with the owner of that dwelling, or failing agreement, may request that the City exercise its power of eminent domain for the necessary public purpose of enabling the Grantee to serve residents of that multiple unit residential dwelling. Upon request of such Grantee, the City may commence condemnation proceedings in accordance with applicable law. In the event of such proceeding, in preparing its good faith offer of just compensation, the City may consider:
- (1) the amount and fair market value of space occupied by the Grantee's cable and related facilities. The fair market value of the space shall be assessed in light of the prior use, if any, of that space, together with any evidence of non-speculative alternative uses;
 - (2) the present value of any funds that the owner will reasonably expend over time in ensuring that the Grantee conforms to all laws, regulations and reasonable conditions necessary to assure the safety, convenient functioning, and appearance of the multiple unit residential dwelling;
 - (3) the continued physical availability of other space on the premises for the installation of alternative modes of television program reception or delivery;
 - (4) as an offset to the amounts set forth in paragraphs (1) and (2) hereof, any increase in the fair market value of the multiple unit residential dwelling attributable to the

Chapter 63 - Cable Communications

availability of the Grantee's service to the property's tenants; and

- (5) any other reasonable, non-speculative factors which the City may find relevant.

The requesting Grantee shall indemnify the City for all expenses and costs incurred by the City in the condemnation proceedings as well as for the full amount of the condemnation award made to the owner if such condemnation proceedings are completed or otherwise settled.

- C. Notwithstanding anything to the contrary set forth in this Ordinance or the Franchise Agreement, Grantee shall be permitted to charge each resident of a multiple unit residential dwelling an additional charge, above and beyond the service rate for a single family dwelling as specified in the Franchise Agreement, solely to defray the exact additional per-resident cost to the Grantee of compensating the owner for access to the multiple unit residential dwelling. Any such additional charge shall be subject to the approval of Grantor. Such additional charge shall not be included in the computation of franchise fees due to the City pursuant to this Ordinance or the Franchise Agreement.
- D. Notwithstanding any other language in this Section or elsewhere in this Ordinance, the Grantee shall not be obligated to provide service to any multiple unit residential dwelling so long as the owner of that dwelling demands compensation from the Grantee in an amount that is unreasonable or imposes financial or other conditions that would, in the Grantee's reasonable business judgment, render provision of service to that dwelling uneconomic. Should Grantee, subsequently, agree to render service to such multiple unit residential dwelling, there shall be no installation charges to the residents of such dwelling beyond those set forth in the Franchise Agreement. The Grantee shall not be obligated, in such circumstances, to request the City to institute condemnation proceedings.
- E. Neither the owner of any multiple unit residential dwelling nor his agent or representative shall penalize, charge, or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident or discriminate in any way against such tenant or resident who requests or receives Cable Communications Service from a company operating under a valid and existing cable communication franchise issued by the City. Any person convicted of violating any provision of this Section is subject to a fine of not more than \$300.00 for each offense.
- F. No person shall resell, without the express written consent of both the Grantee and the City, any cable service, program or signal transmitted by a Grantee operating under a franchise issued by the City.
- G. Nothing in this Section shall prohibit a person from requiring that Cable Communications System facilities conform to laws and regulations and reasonable conditions necessary to protect safety, functioning and appearance.
- H. Nothing in this Article shall prohibit a person from requiring a Grantee from agreeing to indemnify the owner, or his agents or representatives, for damages or for liability for physical damages caused by installation, operation, maintenance, or removal of cable television facilities.

ARTICLE VIII- CONSUMER PROTECTION

43. Customer Service.

A. Customer Service Standards. The Grantee shall maintain a local office or offices which provide the necessary facilities, equipment, and personnel to comply, under normal operating conditions, with the customer service standards set forth in subsections (1) through (5) of this section. For purposes of this section, "normal operating conditions" embrace all conditions which are within the control of the Grantee, including special promotions, pay-per-view events, rate increases, and maintenance or upgrade of the cable system, but excluding conditions outside the Grantee's control, such as, natural disasters, civil disturbances, power outages, telephone network outages, and extreme weather:

(Rev. 04-08-1996)

- (1) On a monthly basis, provide sufficient customer service representatives and toll-free telephone line capacity during normal business hours to assure that a minimum of ninety percent (90%) of all calls will be answered within thirty (30) seconds and ninety percent (90%) of all calls for service will not be required to wait more than thirty (30) seconds after such call has been answered before being connected to a service representative. All incoming customer service lines shall not be simultaneously busy more than three percent (3%) of the total time the cable office is open on any business day.
- (2) Staffed emergency toll-free telephone line capacity on a twenty-four (24) hour basis, including weekends and holidays.
- (3) Maintenance of an office in the franchise area of the Intergovernmental Cable Communications Authority (hereinafter "the Authority") with adequate office hours to meet public demand. The Authority may require the Grantee to alter or extend these hours if there is significant evidence through subscriber complaints that the posted hours are not adequate.
- (4) An emergency system maintenance and repair staff, capable of responding to and repairing system malfunctions on a twenty-four (24) hour basis.
- (5) An installation staff, capable of furnishing standard installation to any subscriber within seven (7) days after receipt of a request. "Standard installations" shall mean those located up to 175 feet from where trunk and feeder cable have been activated.
 - (a) Grantee shall, at its sole expense, cause all drops required to be buried to be properly buried within fifteen (15) days of installation of service unless conditions during such period make burial impracticable, in which case the drop shall be buried within fifteen (15) days after physical conditions reasonably allow for such burial. In the event of any dispute between Grantee and the subscriber as to when conditions permit burial of the drop, such dispute shall be resolved by the decision of the City's building official or other official designated by the City to resolve such disputes.
- (6) The Grantee shall provide written instructions and information at the time of

Chapter 63 - Cable Communications

installation and re-installation, and at least annually thereafter, to all subscribers on products and services, prices and options, installation and service maintenance policies, instructions for using the system, and billing and complaint procedures. Such instructions and information shall include the Grantee's business address, applicable phone number, and the name of the appropriate official or department of the Grantee to whose attention the subscriber should direct a request for service, request for billing adjustment or complaint. Such instructions and information shall also include the name, business address and telephone number of the Authority's Executive Director and the title, business address and telephone number of the designated City employee to whom the subscriber can call or write for information regarding the terms, conditions, and provisions governing the Grantee's franchise if the Grantee fails to respond within a reasonable period of time to the subscriber's complaint or request for installation, service or billing adjustment.

- (a) The Grantee shall promptly furnish revised written instructions and information to each subscriber whenever the instructions and information previously provided have been changed.
 - (b) The written instructions and information provided for herein shall be subject to the review and approval of the Authority which shall not withhold its approval unreasonably. The Authority shall have the power to compel changes in such material if the Authority deems the same to be misleading, incorrect, or inadequate in any material respect, and the Grantee shall promptly institute any changes so required by the Authority.
- B. Local Office. For purposes of this Section 43, the "office(s)" which Grantee is required to maintain may be a "virtual office" consisting of a toll-free telephone number which all subscribers in the City may access from their homes 24 hours a day, seven days a week to register complaints or questions concerning the Cable System.

(Rev. 04-08-1996)

44. Cable Service.

- A. The Grantee shall interrupt system service only with good cause and for the shortest time possible and, except in emergency situations, only after periodic cablecasting notice of service interruption for two (2) days prior to the anticipated interruption. Services may be interrupted between 1:00 a.m. and 5:00 a.m. for routine testing, maintenance and repair, without notification, any night except Friday, Saturday, Sunday, Holidays, or the night preceding a holiday.
- B. The Grantee shall maintain a written log, or an equivalent stored in computer memory and capable of access and reproduction in printed form, of all subscriber complaints. Such log shall list the date and time of such complaints, identifying the subscribers and describing the nature of the complaints and when and what actions were taken by the Grantee in response thereto. Such log shall be kept at the Grantee's local office, reflecting the operations to date for a period of at least three (3) years, and shall be available for public inspection during regular business hours. The Grantee shall submit a summary of such complaints monthly to the Authority for its review or a copy thereof if the Authority so requests. For purposes of this Subsection 44.B, the "local office" which Grantee is

Chapter 63 - Cable Communications

required to maintain may be a "virtual office" consisting of a toll-free telephone number which all subscribers in the City may access from their homes 24 hours a day, seven days a week to register complaints or questions concerning the Cable System, provided that, upon request, Grantee shall make available for public inspection at a location in or proximate to the City the log required to be maintained by Grantee pursuant to this Subsection 44.B.

(Rev. 04-08-1996)

- C. For purposes of this section "service interruption" shall mean any loss or distortion of picture and/or sound on one or more channels; "subscriber problem" shall mean a service interruption affecting a single subscriber; "outage" shall mean a service interruption affecting two or more subscribers. Under normal operating conditions as specified in section 2.248 above, the Grantee shall maintain a sufficient repair force of competent technicians so as to respond effectively to any subscriber problem or outage within the following time periods, unless the applicable period is extended at the request of the subscriber or extended pursuant to the requirements of any applicable law or regulation:
- (1) Subscriber Problem: "same day" service, seven (7) days a week for all requests for service received prior to 12:00 p.m. (noon) each day. In no event shall the response time for notice received after 12:00 p.m. (noon) exceed twenty-four (24) hours, including weekends and holidays, from the time Grantee receives notice of the problem.
 - (2) Outage: within two (2) hours, including weekends and holidays, from the time Grantee discovers or receives notice of the outage.
- D. Upon receipt of a request for service, the Grantee shall establish a four (4) hour appointment window with the subscriber (or adult representative of the subscriber). The Grantee shall respond to the request for service within such established appointment window. In the event access to the subscriber's home is not made available to the Grantee's technician when the technician arrives during the established appointment window, the technician shall leave written notification stating the time of arrival and requesting that the Grantee be contacted again to establish a new appointment window. In such case, the required response time for the request for service shall be twenty-four (24) hours from the time the Grantee is contacted to establish the new appointment window.
- (1) Notwithstanding the foregoing, if the Grantee's technician telephones the subscriber's home before or during the appointment window and is advised that the technician will not be given access to the subscriber's home during the appointment window, then the technician shall not be obliged to travel to the subscriber's home or to leave the written notification referred to above, and the burden shall again be upon the subscriber (or adult representative of the subscriber) to contact the Grantee to arrange for a new appointment window, in which case the required response time for the request for service shall again be twenty-four (24) hours from the time the Grantee is contacted to establish the new appointment window.
- E. Except as otherwise provided in subsection (D) above, the Grantee, under the provisions of this section 2.249 and section 2.248, shall be deemed to have responded to a request for service, a subscriber problem, or an outage only when sufficient technicians arrive at

Chapter 63 - Cable Communications

the service location, begin work on the request for service or remedial work, as the case may be, and proceed diligently to complete such work.

- F. No charge shall be made to the subscriber for any service call unless the problem giving rise to the service request can be demonstrated by the Grantee to have been:
 - (1) Caused by subscriber negligence, or
 - (2) Caused by malicious destruction of cable equipment, or
 - (3) A problem previously established as having been non-cable in origin.
- G. All service personnel of the Grantee or its contractors or subcontractors who have as part of their normal duties contact with the general public shall wear on their clothing a clearly visible identification card bearing their name and photograph. The Grantee shall account for all identification cards at all times. Every service vehicle of the Grantee shall be clearly identifiable by the public as such a vehicle.

45. Grantee's Billings.

- A. The Grantee's bills to its subscribers shall be clear, concise and understandable and shall be itemized as to each charge reflected thereon. The bill and any accompanying communication from the Grantee to its subscribers, and any other communication from the Grantee to its subscribers, shall not contain any false or misleading statement. Such other communication referred to above shall be deemed to be a "report" under all applicable provisions of the Franchise Agreement relating to "reports."

(Rev. 04-08-1996)

- B. Grantee shall file with the City a copy of the billing form to be used by Grantee prior to sending any such billing form to subscribers, and Grantee shall make no changes in the latest billing form on file without first filing the revised billing form with the City.

(Rev. 04-08-1996)

46. Disconnect and Downgrade Charges.

- A. The Grantee shall make no charge to any subscriber on account of either complete discontinuance of service or net downgrade of service whereby the subscriber requests a lower tier of basic service and/or a net reduction in premium service.
- B. The Grantee may only disconnect a subscriber if at least forty-five (45) days have elapsed after the due date for payment of the subscriber's bill and the Grantee has provided at least ten (10) days written notice to the subscriber prior to disconnection specifying the effective date after which cable services are subject to disconnection; provided, however, notwithstanding the foregoing, the Grantee may disconnect a subscriber at any time if the Grantee in good faith and on reasonable grounds determines that the subscriber has tampered with or abused the Grantee's equipment, or is or may be engaged in the theft of cable services.

Chapter 63 - Cable Communications

- C. The Grantee shall promptly disconnect any subscriber who so requests disconnection. No period of notice prior to requested termination of service may be required of subscribers by the Grantee. If the subscriber fails to specify an effective date for disconnection, the effective date shall be deemed to be the day following the date the disconnect request is received by the Grantee. No charge may be imposed upon the subscriber for any cable service delivered after the effective date of the disconnect request.

47. Late Payment Charges.

- A. Late payment charges imposed by the Grantee upon subscribers shall be fair and shall be reasonably related to the Grantee's cost of administering delinquent accounts. No late payment charge shall be imposed upon a subscriber, and a subscriber shall not be deemed to be in arrears on a bill, unless at least forty-five (45) days have elapsed after the due date specified on the bill; and, for purposes of this Section and the prior Section, the due date specified on the bill shall not be earlier than the first day of the monthly period to which the bill is attributable.

48. Notice of Programming or Channel Change.

- A. The Grantee shall provide at least forty-five (45) days written notice to subscribers prior to discontinuing any channel or programming service or to realigning any channel and shall provide written notice of the same to the Authority no later than the Grantee's notice to subscribers. This provision shall not preclude the right of the City, or the Authority on behalf of the City, to contest or prohibit any such action by the Grantee if, and to the extent, such right exists. The foregoing notice requirement shall not apply in cases in which a programming service is discontinued because a non-affiliated provider thereof discontinues furnishing the same to the Grantee on less than forty-five (45) days notice to the Grantee. In any such case the Grantee shall nevertheless furnish notice to its subscribers and the Authority promptly upon the Grantee receiving notice of the discontinuance of the programming service from such unaffiliated provider.

49. Notice of Price Increase or Reduction of Service.

- A. The Grantee shall provide at least forty-five (45) days written notice to subscribers prior to implementing any increase in subscriber rates or reduction in subscriber services and shall provide written notice of the same to the Authority no later than the Grantee's notice to subscribers. The provisions of this section shall not preclude the right of the City, or the Authority on behalf of the City, to contest or prohibit any such action by the Grantee if, and to the extent, permitted by law.

50. Grantee's Communications.

- A. Prior to or simultaneously with any communication made by the Grantee to the general public or to the Grantee's subscribers announcing or explaining any increase in subscriber rates or reduction in programming services, the Grantee shall furnish a copy of such communication to the Authority. The copy of the communication required to be furnished to the Authority hereunder shall be deemed to be a "report" under all applicable provisions of the Franchise Agreement relating to "reports," including, without limitation, the provisions of subsections (J) and (K) of Section 19 of the Franchise Agreement in effect as of the effective date of this Ordinance.

Chapter 63 - Cable Communications

51. Disclosure of Information on Grantee's Costs.

- A. In the event the Grantee, in any communication to the general public, to the City, to subscribers, or to the Authority, justifies a price increase or reduction in service on the basis of increased costs to which the Grantee has been or will be subjected, then the Grantee, on written request of the Authority, shall promptly furnish the Authority the underlying information on which such claim of increased costs is based in such form as the Authority may request. The information so furnished by the Grantee to the Authority hereunder shall also be deemed to be a "report" under all applicable provisions of the Franchise Agreement relating to "reports," including, without limitation, the provisions of subsections (J) and (K) of Section 19 of the Franchise Agreement in effect as of the effective date of this Ordinance.

52. Subscriber Rebates.

- A. Grantee shall provide a customer with a full-day credit or a rebate for a service outage exceeding four hours in duration beyond the time that the customer notified Grantee of such outage. No credit or rebate shall be required where the outage was due to matters beyond the immediate control of Grantee, such as (by way of example and not limitation), service outages caused by storms or other natural disasters. In no event shall the customer incur a charge for any outage exceeding 48 hours. The credit specified herein shall be equal to one-thirtieth of the subscriber's total monthly bill for all services and equipment other than pay-per-view; provided, however, if such monthly bill includes a charge for a pay-per-view program subject to such outage or significant impairment, then the credit shall be increased by the amount of such charge.

(Rev. 04-08-1996)

- B. In the event of a violation of the provisions of this Article by the Grantee which results in a subscriber not receiving cable programming service or receiving only significantly impaired service, the Authority may order and direct the Grantee to issue a rebate to such subscriber in an amount determined by the Authority to provide monetary relief to the subscriber substantially equal to the subscriber's unliquidated detriment or loss resulting from such violation, not to exceed the subscriber's monthly bill.
- C. Nothing in this section shall be deemed to preclude a subscriber from requesting and receiving from the Grantee a rebate greater than that provided in subsections (A) and (B) of this section.

53. Security Fund.

- A. Subsequent to the effective date of this Ordinance, within ten (10) days after the award of a new franchise or the transfer, extension or renewal of an existing franchise, the Grantee thereunder shall furnish the Authority, on behalf of all of the Authority's member communities, and thereafter maintain with the Authority, throughout the term of the franchise, a cash deposit of an amount reasonably related to the requirements of this Section as set forth in the Franchise Agreement as security for:

- (1) the faithful performance by it of all the provisions of this Ordinance and the franchise,

Chapter 63 - Cable Communications

- (2) compliance with all orders, permits and directions of any agency, commission, board or department of the City having jurisdiction over its acts or defaults under the franchise, and
- (3) the payment by the Grantee of any claims, liens and taxes due the City which arise by reason of the construction, operation or maintenance of the system.

(Rev. 7-24-95)

- B. Within ten (10) days after notice to it that any amount has been withdrawn from the Security Fund, the Grantee shall pay to or deposit with the Authority a sum of money in the full amount withdrawn.
- C. If the Grantee fails to pay to the City any fees within the time fixed herein; or fails, after ten (10) days written notice, to pay to the City any taxes due and unpaid; or fails to repay the City within such ten (10) days, any damages, costs, or expenses which the City shall be compelled to pay by reason of any act or default of the Grantee in connection with a franchise; or fails, after three (3) days notice of such failure, to comply with any provisions of the franchise which the City reasonably determines can be remedied by a withdrawal from the Security Fund, the Authority, on request of the City, may immediately withdraw the amount thereof, with interest and any additional charges, from the Security Fund. Upon such withdrawal, the Authority shall notify the Grantee of the amount and date thereof and shall remit to the City the amount so withdrawn.
- D. The Security Fund deposited pursuant to this section, including all interest thereon, if any, shall be held by the Authority, for the benefit of its member communities, in the event that the franchise is rescinded or revoked by reason of the default of the Grantee. The Grantee, however, shall be entitled to the return of such Security Fund, or such portion thereof as remains on deposit at the expiration of the term of the franchise, provided that there is then no outstanding default on the part of the Grantee. Any interest earned by the investment of the Security Fund shall become part of the Security Fund and unless consumed by the payment of liquidated damages, fees or other charges under this Ordinance, shall be returned to the Grantee at the expiration of the franchise term, provided that there is then no outstanding default on the part of the Grantee.
- E. The Authority shall maintain the Security Fund in a segregated account and shall not commingle the same with any other monies of the Authority. The Authority may, but shall not be required to, invest the Security Fund so as to earn interest thereon and shall not be liable to the Grantee on any claim based upon the lack or insufficiency of interest earned by such Fund.
- F. Payment from the Security Fund shall not constitute a cure of any violation or any act of non-compliance by the Grantee. The rights reserved to the City with respect to the Security Fund are in addition to all other rights of the City, whether reserved by this Ordinance or authorized by law, and no action, proceeding or exercise of a right with respect to such Security Fund shall affect any other right the City may have.
- G. The Security Fund provided for in this section shall not be required if the Franchise Agreement expressly required Grantee to provide a cash security fund, letter of credit or other security that is mutually agreeable to the City and Grantee.

Chapter 63 - Cable Communications

(Rev. 04-08-1996)

54. Liquidated Damages.

- A. The Authority may assess liquidated damages of up to one hundred (\$100.00) dollars per day against the Grantee for each day the Grantee is in violation of this Article. Such assessment may be levied against the Security Fund specified in Section 2.258 or any letter of credit, performance bond, or other security provided for in the Franchise Agreement.
- B. Assessment of liquidated damages shall not constitute a waiver by the City of any other right or remedy it may have under the Franchise Agreement or applicable law, including the right to recover from the Grantee any costs and expenses, including reasonable attorney's fees, which are incurred by the City on account of the Grantee's violation of this Article.

55. Evaluation of Violations.

- A. The violation of this Ordinance by the Grantee, the Grantee's agents, employees and/or independent contractors employed or retained by the Grantee shall be grounds for evaluating:
 - (1) the Grantee's compliance with any existing Agreement and with applicable law; and
 - (2) the quality of the Grantee's service and whether it has been reasonable in light of community needs; and
 - (3) the technical ability of the Grantee to provide the services, facilities, and equipment as set forth in an operator's proposal for future or renewed cable services; and
 - (4) the reasonableness of the Grantee's proposal to meet the future cable-related community needs and interests of the residents and cable television consumers of the City.
- B. These evaluations shall be proper and germane for the City to consider formally when reviewing a proposal for renewal of any Agreement to provide cable services within the City.

56. Remedies Available.

- A. If the Authority determines that the Grantee has violated this Article, the Authority may order appropriate rebates to subscribers as provided in Section 52 and/or assess liquidated damages against the Grantee as provided in Section 54. In addition, the City may pursue any additional or other legal or equitable remedies available to it under the Franchise Agreement or any applicable law.

57. Appeal Process.

- A. With respect to matters affecting the City individually, and excluding matters affecting all of the Authority's member communities equally, the Grantee may appeal any action of the

Chapter 63 - Cable Communications

Authority to the City by submitting a written appeal within twenty-one (21) days from the date of the Authority's action to which the Grantee objects. Upon such appeal, the City Commission shall conduct a de novo review of the action of the Authority being appealed and shall set a hearing date within sixty (60) days of the date of receipt of the Appeal. The Grantee may present any information, data or other evidence to the City Commission either prior to or at the time of the hearing. Hearings shall be open to the public and members of the public and representatives of the Authority may also present any evidence or information pertinent to the matter appealed. The City Commission shall then determine whether to uphold, reverse, or modify the action of the Authority. The appeal shall stay any further action on the matter appealed until the appeal has been decided by the City Commission.

58. [Repealed]

(04-08-1996)

Article IX - MISCELLANEOUS

59. Administrator. The City Council may appoint an Administrator who shall serve at the pleasure of the Council and who shall be responsible for the continuing administration of the Franchise on the part of the City. The City shall provide written notice to Grantee of the initial appointment of the Administrator and any subsequent appointments.

60. Advisory Body. The City Council may appoint a cable communications advisory committee to perform such duties and to have such powers as the City Council may determine. The composition and terms of office of the members of the committee, as well as the duties and powers of the Committee, shall be determined and established by resolution of the City Council.

61. Delegation of Authority by City. The City reserves the right to delegate from time to time any of its rights or obligations under the Franchise to any body or organization. Any such delegation shall be effective upon written notice thereof to Grantee. Upon receipt of such notice Grantee shall be bound by all terms and conditions of the delegation not in conflict with the Franchise. Any such delegation or revocation thereof, no matter how often made, shall not be deemed to be an amendment to the Franchise or require Grantee's consent.