

CHAPTER 15: TELECOMMUNICATIONS

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DIVISION 1 GENERALLY**§ 15-1 PURPOSE.**

(A) The city finds that the development of cable television and communications systems has the potential of having greater benefit and impact upon the people of the city. The city further finds that the public convenience, safety and general welfare can best be served by establishing certain regulatory powers; which may be vested in the city or such persons as the city shall designate.

(B) It is further recognized that cable communications systems have the capacity to provide entertainment and information services to the city's residents and individuals.

(C) For these purposes, the following goals underlie the regulations contained herein:

(1) When economically feasible, communication services should be available to the maximum number of city residents, as provided for herein;

(2) The cable television systems should be capable of accommodating both the present reasonably foreseeable future cable communications needs of the city;

(3) The cable television systems should be maintained as necessary during the franchise term so that the new facilities, if any, may be integrated to the maximum extent possible with existing facilities;

(4) The communications systems authorized by this chapter shall be responsive to the needs and interest of the local community;

(5) The public, educational and governmental needs for reasonable access to the cable system shall be met.

(Ord. passed 2-16-93)

§ 15-2 TITLE; EFFECTIVE DATE; SEVERABILITY.

(A) This chapter shall be known and may be cited as the *Eden Cable Television Ordinance*, and it shall become a part of the ordinances of the city.

(B) This chapter shall take effect and be in force from and after the date as established herein.

(C) All ordinances or parts of ordinances in conflict with the provisions of this chapter are hereby repealed.

(Ord. passed 2-16-93)

§ 15-3 DEFINITIONS.

For purposes of this chapter, the following terms, phrases, words and their derivations shall have the meanings 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. The word “shall” is mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meanings.

ADDITIONAL SERVICES. Programming or services for which an additional charge is made beyond the charge for basic subscriber services, including but not limited to movies, concerts, variety acts, sporting events, pay-per-view programs, and any other service utilizing any facility or equipment of a cable television system operating pursuant to a franchise granted under this chapter.

BASIC SUBSCRIBER RADIO SERVICE. Such audio services as the re-transmission of broadcast FM radio signals, weather, news, time and other similar audio services and the transmission of cablecast (nonbroadcast) radio signals as permitted by the FCC.

BASIC SUBSCRIBER TELEVISION SERVICES. All subscriber services provided by the grantee in one or more service tiers, including the delivery of broadcast signals, public, educational and government access channels, and local origination channels, covered by the regular monthly charge paid by all subscribers to a particular service tier including subscriber terminal charges and related deposits.

CABLE COMMUNICATIONS SYSTEM OR CABLE TELEVISION SYSTEM. A facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designated to provide cable service which includes video programming and which is provided to multiple subscribers within a community; but such term does not include:

(1) A facility that serves only to retransmit the television signals of one or more television broadcast stations;

(2) A facility that serves only subscribers in one or more multiple-unit dwellings under common ownership, control or management, unless such facility or facilities uses any public rights-of-way.

(3) A facility of a common carrier which is subject, in whole or in part, to the provision of Title II of the Cable Act, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or

(4) Any facilities of any electric utility used solely for operating its electric utility systems.

CHANNEL. A six Megahertz (Mhz) frequency band which is capable of carrying either one standard video signal, a number of audio, digital or other nonvideo signals or some combination of signals.

CLOSED-CIRCUIT OR INSTITUTIONAL SERVICES. Such video, audio, data and other services provided to institutional users on an individual application basis. These may include, but are not limited to, one-way video, two-way video, audio or digital signals among institutions to residential subscribers.

COMMENCE OPERATION. Time and date when operation of the cable communications system is considered to have commenced, which shall be when the system is fully constructed.

COMMERCIAL SUBSCRIBER. A subscriber who receives a service in a place of business where the service may be utilized in connection with a business, trade or profession.

COMMUNICATIONS POLICY ACT or CABLE ACT. The Cable Communications Policy Act of 1984 (Pub. L. 98-549, 47 USC 521 (Supp.)) as it may be amended or succeeded.

CONVERTER. An electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and any channel selector which permits a subscriber, and any channel selector which permits a subscriber to view all signals delivered at designated converter dial locations at the set.

COUNCIL. The City Council.

DEDICATED INSTITUTIONAL ACCESS CHANNELS. Broadband communications channels dedicated to serving city, county, state or federal governmental agencies, educational institutions, health care institutions or other nonprofit and profit-making organizations that may be qualified by the

Council.

DISCRETE CHANNEL. A channel which can only be received by the person and/or institution intended to receive signals on such channel.

DROP. A coaxial connection from feeder cable to the subscriber/user television set, radio or other terminal.

EDUCATIONAL CHANNEL OR EDUCATIONAL ACCESS CHANNEL. Any channel where educational programs are the only designated use.

FAIR MARKET VALUE. The price that a willing buyer would pay to a willing seller for a going concern.

FCC. The Federal Communications or any legally appointed or elected successor.

FRANCHISE. The nonexclusive rights, granted pursuant to this chapter, to construct, operate and maintain a cable communications system along the public ways within all or a specified area in the city. Any such authorization, in whatever form granted, shall not mean or include any license or permit required for the privilege of transacting and carrying on a business within the city, as required by other ordinances and laws of the city.

FRANCHISE AGREEMENT. A contract entered into voluntarily between the city and the grantee, containing the specific provisions of the franchise granted including applicable referenced specifications, franchise proposals, applications and other related material.

FRANCHISE AREA. The entire city, or portions thereof, for which a franchise is granted under the authority of this chapter. If not otherwise stated in the franchise agreement, the franchise area shall be the corporate limits of the city, including all territory thereafter annexed to the city.

FRANCHISE FEE. An amount not to exceed 5%, as negotiated by the city, of the grantee's gross receipts from the operation of the system pursuant to the franchise agreement.

FRANCHISEE or GRANTEE. The natural person, partnership, domestic and foreign corporation, association, joint venture, or organization of any kind which has been legally granted a franchise by the city, and its lawful successor, transferee or assignee.

GOVERNMENT CHANNEL or GOVERNMENT ACCESS CHANNEL. Any channel specifically designated or dedicated for government use.

GRANTOR. The city as represented by the City Council acting within the scope of its jurisdiction.

GROSS ANNUAL REVENUES. All revenue received directly by the grantee, for services rendered within the city.

INSTALLATION. The connection of the system from feeder cable to subscribers' terminals.

LEASED ACCESS CHANNEL or **COMMERCIAL LEASED CHANNEL**. Any channel designated or dedicated for use by persons unaffiliated with the grantee in accordance with the Cable Act.

MONITORING. Observing a communications signal, or the absence of a signal, where the observer is not a party to the communications, whether the signal is observed by visual or electronic means, for any purpose whatsoever.

PERSON. An individual, partnership, association, organization, corporation or any lawful successor, or transferee of said individual, partnership, association, organization or corporation.

PLANT MILE. A linear mile of strand-bearing cable as measured on the street or easement from pole to-pole or pedestal to pedestal.

PROGRAMMER. Any person or entity who or which produces or otherwise provides program material or information for transmission by video, audio, digital or other signals, either live or from recorded traces or other storage media, to users or subscribers by means of the cable communications system.

PUBLIC ACCESS CHANNEL or **COMMUNITY ACCESS CHANNEL**. Any channel designated or dedicated for use by the general public or noncommercial organizations which is made available for use without charge on a first-come, first-served, nondiscriminatory basis.

PUBLIC PROPERTY. Any real property owned by the city, other than a street.

PUBLIC WAY or **PUBLIC RIGHT-OF-WAY**. The surface, the air space above the surface, and the area below the surface of any public street, highway, lane path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkways, waterways, utility easements or other public right-of-way hereafter held by the city, which shall entitle the city and the grantee to the use thereof for the purpose of installing and maintaining a cable television system. No reference herein, or in any franchise, to the "public way" shall be deemed to be a representation or guarantee by the city that its title to any property is sufficient to permit its use for such purpose, and the grantee shall, by its use of such terms, be deemed to gain only such rights to use property in the city as the city may have the undisputed right and power to give.

REASONABLE NOTICE. Written notice addressed to either city or grantee at its respective principal office within the city or such other office as the party has designated to the other as the address to which notice shall be transmitted to it, which notice shall be certified and postmarked not less than seven days prior to that day in which the party giving such notice shall commence any action which requires the giving of notice. In computing said seven days, holidays recognized by the city shall be excluded.

RESIDENT. Any person residing in the city, as otherwise defined by applicable law.

RESIDENTIAL SUBSCRIBER. A subscriber who receives a service in an individual dwelling unit where the service is not to be utilized in connection with a business, trade or profession.

SALE. Any sale, exchange, barter or offer for sale.

SCHOOL. Any public educational institution, including primary and secondary schools colleges and universities.

SERVICE AREA. The entire geographic area within the franchise territory.

STATE. The State of North Carolina.

STREET. Shall include each of the following, which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the city limits; streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public ways and extensions and additions thereto, together with such other public property and area that the city shall permit to be included within the definition of street from time to time.

SUBSCRIBER. Any person, firm, corporation or other entity who or which elects to subscribe to, for any purpose, a service provided by the grantee by means of or in connection with a cable communications system.

SYSTEM FACILITIES. The cable communications system constructed for use within the city, without limitation, the headend, antenna, cables, wires, lines, towers, amplifiers, converters, health and property security systems, equipment or facilities located within the corporate limits of the city, designed, constructed or wired for the purpose of producing, receiving, amplifying and distributing by coaxial cable, fiber optics, microwave or other means, audio and visual radio, television and electronic signals to and from subscribers in the city, and any other equipment or facilities located within the corporate limits of the city intended for the use of the system; provided, however, such system facilities exclude buildings, contracts, facilities and equipment where primary use is for providing service to other system facilities located outside the city limits.

TRANSFER. The disposal by the grantee, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, except publicly traded issue, not in control of the grantee, of 5% or more at one time of the ownership or controlling interest in the system, or 20% cumulatively over the term of the franchise of such interests to a corporation, partnership, limited partnership, trust or association, or person or group of persons acting in concert. Affiliate transfers accepted.

TRUNK LINE. The major distribution cable used in cable communications, which divides into feeder lines which are tapped for service to subscribers.

USER. A person or organization utilizing channel or equipment and facilities for the purpose of production and/or transmission of material, as contrasted with receipt thereof in a subscriber capacity. (Ord. passed 2-16-93)

DIVISION 2 GRANT OF FRANCHISE**§ 15-10 GRANT OF FRANCHISES; TERRITORY.**

(A) In the event that the city shall grant to the grantee a nonexclusive, revocable-for-cause as provided herein, franchise to construct, operate and maintain a cable communication system within the city, said franchise shall constitute both a right and an obligation to provide the services of a cable communications system, as regulated by the provisions of this chapter and the franchise agreement. The franchise agreement shall include by reference those provisions of the grantee's "application for franchise" that are finally negotiated and agreed to by the city and grantee.

(B) The franchise shall be granted under the terms and conditions contained herein, consistent with the city charter and/or other applicable statutory requirements. In the event of conflict between the terms and conditions of this chapter, the franchise agreement, or the terms and conditions on which the city may grant a franchise, the charter and/or statutory requirements shall control.

(C) Any franchise granted by the city is hereby made subject to the applicable general ordinance provisions of the city now in effect and hereinafter made effective. Nothing in the franchise shall be deemed to waive the requirements of the various codes and ordinances of the city regarding permits, fees to be paid or manner of construction.

(D) The franchise territory shall be the entire city for which a franchise is granted under authority of this chapter. The service area shall be the entire territory defined in the franchise agreement.
(Ord. passed 2-16-93)

§ 15-11 USE OF PUBLIC STREETS AND WAYS, GRANTEE FACILITIES.

(A) *Public streets and ways.* For the purpose of operating and maintaining a cable communications systems in the city, the grantee may erect, construct, repair, replace, reconstruct and/or retain in, on, over, under, upon, across and along the public streets and ways within the city such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary to the operation of the cable communication system; provided however, that the grantee complies with all design, construction, safety and performance provisions contained in this chapter, the franchise agreement and other applicable regulations, including the City Code, as amended.

(B) *City facilities.* Reserved.

(C) *Grantee facilities.* No poles shall be erected by the grantee without prior approval of the city with regard to location, height, type and any other pertinent aspect. However, no location of any pole of the grantee shall be a vested right, and such poles shall be removed or modified by the grantee at its own expense whenever the city determines the public convenience would be enhanced thereby. The grantee shall utilize existing police and conduits, where possible. The city shall have the right, during the life of the franchise, to install and maintain upon the poles owned by the grantee, at fair market

value, any wire and pole fixtures that do not reasonably interfere with the cable system operations of the grantee.

(Ord. passed 2-16-93)

§ 15-12 FRANCHISE REQUIRED; TERM; ACCEPTANCE, ETC.

(A) *Required.* No cable communication system shall be allowed to occupy or use the streets of the city or be allowed to operate without a franchise.

(B) *Term.* The maximum term of any franchise granted pursuant to this chapter shall be 15 years.

(C) *Acceptance.*

(1) Following approval by the city, any franchise granted pursuant to this chapter, and the rights, privileges and authority granted thereunder, shall take effect and be in force from and after the date on which the grantee accepts, signs and affixes its corporate seal to the franchise agreement, as applicable.

(2) By accepting the franchise, the grantee agrees to be bound by all the terms and conditions contained in this chapter and said franchise. The grantee also agrees to provide all services within the confines of the city by its acceptance of the franchise.

(3) By accepting the franchise, the grantee acknowledges that it does so relying upon its own investigation and understanding of the power and authority of the city in connection with the system and the franchise.

(4) By accepting the franchise, the grantee acknowledges that it has not been induced to enter into the franchise by any understanding or promise or other statement not expressed therein, whether oral or written, concerning any term or condition of the franchise, regardless of whether such statement was made by or on behalf of the city.

(5) By accepting the franchise, the grantee acknowledges that it has carefully read the terms and conditions of the franchise agreement.

(D) *Nonexclusive.* Any franchise granted hereunder shall be nonexclusive. The city specifically reserves the right to grant at any time such additional franchises containing equivalent standards, terms and conditions to those previously granted hereunder for a cable communications system as it deems appropriate.

(E) *Time of the essence.* Reserved.

(F) *State law governs.* In any controversy or dispute under this chapter, the law of the state shall apply to the extent such law has not been superseded or preempted.

(G) *Severability.* If any section, subsection, sentence, clause, phrase or portion of this chapter is

for any reason held invalid or unconstitutional by any court of competent jurisdiction, or by any federal, state or local statute or regulations, such portion shall be deemed a separate, distinct and independent provision and shall be excised as such; and such holding shall not affect the validity of the remaining portions hereof.

(Ord. passed 2-16-93)

§ 15-13 TRANSFER OF OWNERSHIP.

(A) Any franchise granted hereunder cannot in any event be sold, transferred, leased, assigned or disposed of, including but not limited to by force or voluntary sale, receivership or other means, without the prior consent of the city, which consent shall be not be unreasonably withheld, and then under such reasonable conditions as the city may establish.

(B) The grantee shall promptly notify the city of any actual or proposed change in, transfer of, or acquisition by any other party of control of the grantee. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the disposal by the grantee, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, of 5% or more at one time of the ownership or controlling interest in the system, or 20% cumulatively over the term of the franchise, of such interests to a corporation, partnership, limited partnership, trust or association, or person or group of persons acting in concert.

(C) Every change, transfer or acquisition of control, as defined above, of the grantee shall make the franchise subject to cancellation unless and until the city shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the city may inquire into the legal, financial, character, technical and other public interest qualifications of the prospective controlling party, and the grantee shall assist the city in any such inquiry. Failure to provide all information reasonably requested by the city as part of said inquiry shall be grounds for denial of the proposed change, transfer or acquisition of control.

(D) The city agrees that any financial institution having a pledge of the franchise or its assets for the advancement of money for the construction and/or operation of the franchise shall have the right to notify the city that it, or its designees satisfactory to the city, will take control and operate the cable television system. Further, said financial institution shall also submit a plan for such operation that will ensure continued service and compliance with all franchise obligations during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the system for a period exceeding one year, unless extended by the city at its discretion, and during said period of time it shall have the right to petition for transfer of the franchise to another grantee. If the city finds that such transfer, after considering the legal, financial, character, technical and other public interest qualifications of the applicant, is satisfactory, the city will transfer and assign the rights and obligations of such franchise as are in the public interest. The consent of the city to such transfer shall not be unreasonably withheld.

(E) The consent or approval of the city to any transfer of the grantee shall not constitute a waiver or release of the rights of the city in and to the streets and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this chapter and the franchise agreement.

(F) In the absence of extraordinary circumstances, the city will not approve any transfer or assignment of the franchise prior to completion of construction of the proposed system, excluding annexation.

(G) Any approval by the city of transfer of ownership or control shall be contingent upon the prospective controlling party becoming a signatory to the franchise agreement, as provided in § 15-12(C) herein.

(Ord. passed 2-16-93)

§ 15-14 FRANCHISE RENEWAL; POLICE POWERS.

(A) *Renewal.* Upon completion of the term of any franchise granted under this chapter, the city may grant or deny renewal of the franchise of the grantee in accordance with the provisions of the Cable Act. The grantee shall have no property right in the franchise upon the completion of the franchise term.

(B) *Police powers.*

(1) In accepting the franchise, the grantee acknowledges that its rights hereunder are subject to the powers of the city to adopt and enforce reasonable general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and ordinances enacted by the city pursuant to such power.

(2) Any conflict between the provisions of this chapter or the franchise and any other present or future lawful exercise of the city's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the jurisdiction, or applies exclusively to the grantee or cable communications systems, which contains provisions inconsistent with this chapter shall prevail only if, upon such exercise the city finds an emergency exists constituting a danger to health, safety, property or general welfare and such exercise is mandated by law.

(Ord. passed 2-16-93)

§ 15-15 FRANCHISE FEES.

(A) A grantee of any franchise hereunder shall pay to the city an annual fee in an amount as designated in the franchise agreement. The franchise payment shall commence as of the effective date of the franchise. The city shall be furnished an annual statement of said quarterly payments by a certified public accountant, reflecting the total amounts of annual gross revenues and the above charges and computations for the period covered by the payment.

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(B) This payment shall be in addition to any other tax or payment owed to the city or other taxing jurisdiction by the grantee.

(C) No acceptance of any payment by the city shall be construed as a release or as an accord and satisfaction of any claim the city may have for further or additional sums payable as a franchise fee under this chapter.

(D) In the event that any undisputed franchise payment is not made on or before the dates specified herein, the grantee shall pay an interest charge, computed from such due date, at the annual rate equal to the commercial prime interest rate in effect upon the due date.

(E) The franchise fee and any other cost or damages assessed shall be payable quarterly to the city finance office, payable to the city. Payment date is the last day of the month following the date in which payment is due.

(F) The city shall have the right upon reasonable notice to inspect the grantee's income records and the right at the city's expense to audit and to recompute any amounts determined to be payable under this chapter. Any undisputed additional amount due to the city as a result of the audit shall be paid within 30 days following written notice to the grantee by the city, which notice shall include a copy of the audit report; provided, that the grantee shall not be required to pay an interest charge in accordance with subsection (D) herein in such an event.

(Ord. passed 2-16-93)

§ 15-16 FORFEITURE OR REVOCATION.

(A) The Council reserves the right to revoke any franchise granted hereunder and rescind all rights and privileges associated with the franchise in the following circumstances, each of which shall represent a default and breach under this chapter or the franchise agreement.

(1) If the grantee shall default in the performance of any of the material obligations under this chapter or under such documents, contracts and other terms and provisions entered into by and between the city and the grantee;

(2) If the grantee shall fail to provide or maintain in full force and effect the liability and indemnification coverage or the performance bond as required herein pursuant to the franchise agreement;

(3) If the grantee's construction schedule is delayed later than the schedule contained in the franchise agreement, if any, or beyond any extended date set by the City Council;

(4) If the grantee becomes insolvent or unable to pay its debts or is adjudged bankrupt;

(5) If the grantee fails to restore service after 96 consecutive hours of interrupted "system-wide" service, except when such service interruption is caused by forces beyond the grantee's control (including but not limited to subscribers), or when approval of such interruption is obtained

from the City Manager or his designee;

(6) If there has been intentional material misrepresentation of fact in the application for or negotiation of the franchise or any extension of renewal thereof.

(B) The grantee shall not be declared at fault or be subject to any sanction under any provision of this chapter in any case in which performance of any such provision is prevented for reasons beyond the grantee's control. A fault shall not be deemed to be beyond the grantee's control if committed by a corporation or other business entity in which the grantee holds a controlling interest, whether held directly or indirectly.

(C) Procedure prior to revocation.

(1) The city shall make written demand, by certified mail, return-receipt requested, that the grantee comply with any such requirement, limitation, term, condition, rule or regulation or correct any action deemed cause for revocation. If the failure, refusal or neglect of the grantee continues for a period of 30 days following such written demand, the city shall place its request for revocation of the franchise upon a regular Council meeting agenda. The city shall cause to be served upon the grantee, at least seven days prior to the date of such Council meeting, a written notice of this intent to request such revocation, and the time and place of the meeting, notice of which shall be published by the City Clerk at least twice, seven and 14 days respectively, before such meeting, in a newspaper of general circulation within the city.

(2) The Council shall hear any persons interested therein, including the grantee, and shall determine in its discretion whether or not any failure, refusal or neglect by the grantee was with just cause.

(3) If such failure, refusal or neglect by the grantee was with just cause, as defined by the city, the Council shall direct the grantee to comply within such time and manner and upon such terms and conditions as are reasonable.

(4) If the Council shall determine such failure, refusal or neglect by the grantee was without just cause, then the Council shall, by resolution, declare that the franchise of the grantee shall be revoked, unless there is compliance by the grantee within 90 days.

(D) In the event a franchise is revoked or otherwise terminated, a city may, in its sole discretion, do any of the following:

(1) Purchase the system under the procedures set forth in § 15-20 of this chapter;

(2) Effect a transfer of ownership of the system to another party for good and sufficient consideration, which shall be an amount at least equal to the fair market value of the system under the original grantee's operation, in accordance with the Cable Act;

(3) Order the removal of all system facilities from the city within a reasonable period of time.

(E) In removing its system facilities, the grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good a condition, normal wear and tear excepted, as was prevailing prior to the grantee's removal of system facilities. The city shall inspect and approve the condition of the public ways and public places and cables, wires, attachments and poles after removal. The liability, indemnity, insurance and performance bond as provided herein shall continue in full force and effect during the period of removal and until full compliance by the grantee with the terms and conditions of this paragraph, this chapter and the franchise agreement is reached.

(F) In the event of a failure by the grantee to complete any work required by §§ 15-11(A), (C) and/or subsection (E) above or any other work required by the city law or ordinance, and upon reasonable notice to the grantee, the city may cause such work to be done and the grantee shall reimburse the city the reasonable costs thereof within 30 days after verification of an itemized list of such costs. The city shall be permitted to seek legal and equitable relief to enforce the provisions of this section.

(G) Upon either the expiration or revocation of a franchise, the city may contract with the grantee to continue to operate the system for a period of six months from the date of such expiration or revocation, or until such time as is mutually agreed upon. The grantee shall, as a subcontractor of the city, continue to operate the cable communications system under the applicable terms and conditions of this chapter. The city shall be permitted to seek legal and equitable relief to enforce the provisions of this section.

(Ord. passed 2-16-93)

§ 15-17 RECEIVERSHIP AND FORECLOSURE.

(A) The franchise shall, at the option of the city, cease and terminate 120 days after the appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of the grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days, or unless:

(1) Such receiver or trustees shall have, within 120 days after their election or appointment, fully complied with all the terms and provisions of this chapter and the franchise granted pursuant hereto, and the receivers or trustees, within said 120 days, shall have remedied all defaults under the franchise agreement; and

(2) Such receivers or trustees shall, within said 120 days, execute an agreement, duly approved by the court having jurisdiction of the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provisions and limitations of this chapter and the franchise agreement.

(B) In the case of a foreclosure or other judicial sale of the plant, property and equipment of the grantee or any part thereof, including or excluding the franchise, the city may serve notice of termination upon the grantee and the successful bidder at such sale, in which event the franchise and

all rights and privileges of the grantee granted hereunder shall cease and terminate 30 days after service of such notice unless:

(1) The city shall have approved the transfer of the franchise in the manner this chapter provides, and

(2) Such successful bidder shall have covenanted and agreed with the city to assume and be bound by all the terms and conditions of the franchise.

(Ord. passed 2-16-93)

§ 15-18 EQUAL OPPORTUNITY.

The grantee shall be an equal opportunity/affirmative action employer, adhering to all federal, state or municipal laws and regulations related thereto. Unless otherwise required by current or future rules and regulations upon cable communication system operators all copies of which shall be provided the city upon request, the grantee shall comply with the following requirements:

(A) The grantee shall establish and maintain equal opportunity in employment, and no person shall be discriminated against in employment by the grantee because of race, religion, color, sex, national origin, age, physical disability or marital status.

(B) The grantee's affirmative action plan shall provide that the grantee shall utilize best efforts to achieve a representative work force so that, within three years from the effective date of the granted franchise and throughout the franchise term, the percentage of each minority/sex group within each level of employment reasonably approximates or is equal to percentage levels reflective of those of the municipality's population. Each level of employment, as used in the preceding sentence, includes the following specific job categories as defined by the Cable Communications Policy Act of 1984:

- Officials and managers;
- Professionals;
- Technicians;
- Salespersons;
- Office and clerical personnel
- Skilled crafts persons;
- Semiskilled operatives;
- Unskilled laborers; and
- Service workers.

(C) Implementation, administration and review of all EEO and affirmative action policies and programs shall be the direct responsibility of the chief executive officer of the cable communications system. All officers, executives, managers, and administrative and supervisory personnel of the grantee shall be directed to participate in the grantee's affirmative action efforts.

(D) Any significant subcontractor of the grantee or a parent, subsidiary or affiliate of the grantee which does not already have an affirmative action plan which would cover its activities in the city shall

submit to the city a plan for its operations on behalf of the grantee, consistent with the spirit of this section.

(E) The grantee shall prepare and maintain records of promotions, demotions, terminations and transfers.

(F) The grantee agrees that if the city establishes an affirmative action goal for the handicapped, the grantee shall make reasonable and good-faith efforts to achieve an appropriate goal.

(G) The grantee shall make a good-faith effort to construct its Eden office so that it is accessible to the disabled.

(H) The grantee shall make a good-faith effort to utilize minority/women business enterprises in construction and purchase contracts and shall prepare an annual report to the city on these efforts.
(Ord. passed 2-16-93)

§ 15-19 LOCAL OFFICE; ENFORCEMENT, WAIVER OF PROVISIONS.

(A) *Local office.* The grantee shall maintain within the city a local office and telephone number for the conduct of business related to the franchise during normal business hours. The grantee shall be required to advise the city of such address and telephone numbers and any charges thereof.

(B) *Failure of city to enforce franchise, no waiver of the terms thereof.* The grantee shall not be excused from complying with any of the terms and conditions of this chapter or the granted franchise by any failure of the city upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.
(Ord. passed 2-16-93)

§ 15-20 RIGHTS RESERVED TO THE GRANTOR.

The city shall have the right, at its expense, to inspect all construction or installation work performed subject to the provisions of the franchise and to make such tests as it shall find necessary to ensure compliance with the terms of this chapter, the franchise agreement, and other pertinent provisions of the law.
(Ord. passed 2-16-93)

DIVISION 3 REGULATION OF THE FRANCHISE

§ 15-30 REGULATORY AUTHORITY.

(A) The city may exercise appropriate regulatory authority under the provisions of this chapter and

applicable law. This authority shall be vested in the Council and administered through the City Manager or his designee in order to provide day-to-day administration of this chapter and any franchise granted hereunder.

(B) Notwithstanding any other provisions of this chapter to the contrary, the grantee shall at all times comply with all applicable laws and regulations of the local, state and federal government. In the event that any actions of the state or federal government or any agency thereof, or any court of competent jurisdiction upon final adjudication, substantially reduce in any way the power or authority of the city under this chapter or the franchise, or if in compliance with any local, state or federal law or regulation, the grantee finds conflict with the terms of this chapter, the franchise, or any law or regulation of the city, then as soon as possible following knowledge thereof, the grantee shall notify the city of the point of conflict believed to exist between such law or regulation and the laws or regulations of the city, this chapter and the franchise. The city shall have the right to modify any provisions of this chapter to such reasonable extent as may be necessary to carry out the intent and purpose of this chapter.

(C) The city reserves the right to exercise the maximum plenary authority, as may at any time be lawfully permissible, to regulate the cable communications system, the franchisee and the grantee. Should applicable legislative, judicial or regulatory authorities at any time permit regulation not presently permitted to the city, the city may, without the approval of the grantee, legislate any such additional regulation as may then be permissible, whether or not contemplated by this chapter.
(Ord. passed 2-16-93)

§ 15-31 REGULATION OF THE FRANCHISE.

(A) The city shall have the following regulatory responsibility:

- (1) Administration and enforcement of the provisions of this chapter and any franchise granted hereunder:
- (2) Award renewal, extension or termination of a franchise pursuant to the provisions of this chapter, the franchise, and other applicable law;
- (3) Consent prior to sale or transfer of any franchise granted hereunder;
- (4) Performance evaluations pursuant to this chapter and the franchise.

(B) The city also reserves the right to perform the following functions:

- (1) Develop objectives and coordinate activities related to the operation of government channels;
- (2) Provide technical, programming and operational support to public agency users such as city departments, schools and public health care institutions;

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- (3) Analyze the possibility of integrating cable communications with other city, state or regional telecommunications networks;
- (5) Formulate and recommend long-range telecommunications policy -for the city and provide for the determination of future cable-related needs and interests of the community;
- (6) Provide the administrative effort necessary for the conduct of performance evaluations pursuant to this chapter and the franchise, and any other activities required for the administration of the franchise;
- (7) Monitor the grantee's process for handling citizen complaints and periodically inspect and analyze the records related to such complaints;
- (8) Monitor the grantee's adherence to operational procedure and line-extension policies;
- (9) Assure compliance with applicable laws and ordinances;
- (10) Arrange tests and analyses of equipment and performance, pursuant to this chapter and the franchise, to ensure compliance with this chapter and the franchise;
- (11) Provide for reasonable continuity in service;
- (12) Receive for examination all data and reports required by this chapter.
(Ord. passed 2-16-93)

§ 15-32 RATES AND CHARGES.

The grantee shall file with the city schedules which shall describe all services offered, all rates and charges of any kind, and all terms and conditions relating thereto.
(Ord. passed 2-16-93)

§ 15-33 PERFORMANCE EVALUATION.

(A) Special evaluation sessions may be held at any time during the term of the franchise at the request of the city.

(B) All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with public notice, as provided in § 15-82. The grantee shall notify subscribers of all such evaluation sessions by announcement on the designated local-origination channel on the system at such various times and frequencies so as to ensure comprehension between the hours of 11:00 a.m. and 9:00 p.m. for five consecutive days preceding each session.

(C) Topics which may be discussed at any scheduled or special evaluation session may include, but not limited to, system performance, grantee compliance with this chapter and the franchise,

customer service and complaint response, subscriber privacy, franchise fees, penalties, applications of new technologies, judicial and FCC filings, and line extensions.

(D) During the review and evaluation by the city, the grantee shall cooperate with the city and shall provide such information and documents as the city may need to reasonably perform its review.
(Ord. passed 2-16-93)

DIVISION 4 BONDS, INSURANCE, INDEMNIFICATION

§ 15-40 PERFORMANCE BOND.

(A) *Performance bond.* No later than 45 days after the effective date of the franchise, the grantee shall obtain and maintain during the entire term of the franchise and any extensions and renewals thereof, at its cost and expense, and file with the city a corporate surety bond or letter of credit, in an amount specified in the franchise agreement, to guarantee the faithful performance of the grantee of all its obligations provided under this chapter and the franchise. Failure to timely obtain, file and maintain said bond shall constitute a substantial violation of this chapter.

(B) *Conditions.* The performance bond shall provide the following conditions:

(1) There shall be recoverable by the city, jointly and severally from the principal and surety, and all fines and penalties due to the city and any and all damages, losses, costs and expenses suffered or incurred by the city resulting from the failure of the grantee to: faithfully comply with the provisions of this chapter and the franchise; comply with all applicable orders, permits and directives of any city agency or body having jurisdiction over its acts or defaults; pay any claims, liens or taxes due the city which arise by reason of the construction, operation, maintenance or repair of the cable system.

(2) The total amount of the bond shall be forfeited in favor of the city in the event:

(a) The grantee abandons the cable system at any time during the term of the franchise or any extension thereto;

(b) The grantee assigns the franchise without the express written consent of the city not including affiliate transfers as defined in this chapter.

(c) Upon written application by the grantee, the city may, at its sole option, permit the amount of the bond to be reduced or waive the requirements for a performance bond subject to the conditions set forth below. Reductions granted or denied upon application by the grantee shall be without prejudice to the grantee's subsequent applications or to the city's right to require the full bond at any time thereafter. However, no application shall be made by the grantee within 90 days of any prior application.

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(d) Prior to drawing upon the performance bond for the purposes described in this section the city shall notify the grantee in writing that payment is due, and the grantee shall have ten days from the receipt of such written notice to make a full and complete payment of undisputed amounts. If the grantee does not make the payment within ten days, the city may withdraw the amount thereof from the performance bond.

(e) Within three days of a withdrawal from the performance bond, the city shall send to the grantee, by certified mail, return receipt requested, written notification of the amount, data and purpose of such withdrawal.

(f) No later than 30 days after receipt by the grantee of certified mail notification of a withdrawal pursuant to paragraph (E) above, the grantee shall replenish the performance bond in an amount equal to the amount so withdrawn. Failure to make timely replenishment of such amount to the performance bond shall constitute a substantial violation of this chapter.

(g) Nonrenewal, alteration or cancellation of performance bond. The performance bond required herein shall be in a form satisfactory to the city and shall require 30 days written notice of any nonrenewal, alteration or cancellation to both the city and the grantee. The grantee shall in the event of any such cancellation notice, obtain, pay all premium for, and file with the city, written evidence of the issuance of a replacement bond within 30 days following receipt by the city or the grantee of any notice of cancellation.

(Ord. passed 2-16-93)

§ 15-41 LIABILITY AND INSURANCE.

(A) As of the effective date of this chapter, the grantee shall file with the city a certificate of insurance and thereafter maintain in full force and effect at all times for the full term of the franchise, at the expense of the grantee, comprehensive general liability insurance policy, naming the city as additional insured, written by a company authorized to do business in the state, protecting the city against liability for loss or bodily injury and property damage occasioned by the installation, removal, maintenance or operation of the cable communications system by the grantee in the following minimum amounts:

(1) One million dollars combined single limit, bodily injury and for the property damage in any one occurrence;

(2) One million dollars aggregate.

(B) The grantee shall also file with the city a certificate of insurance for a comprehensive automobile liability policy written by a company authorized to do business in the state for all owned, nonowned, hired and leased vehicles operated by the grantee, with limits no less than \$1,000,000 each accident, single limit, bodily injury and property damage combined, or evidence of self-insurance.

(C) Worker's compensation and employer's liability insurance. The grantee shall maintain, and by its acceptance of any franchise granted hereunder specifically agrees that it will maintain throughout

the term of the franchise, worker's compensation and employer's liability, valid in the state, in the minimum amount of the statutory limit for worker's compensation, and \$500,000 for employer's liability.

(D) All liability insurance required in this section shall be kept in full force and effect by the grantee during the existence of the franchise and until after the removal of all poles, wires, cables, underground conduits, manholes, and other conductors and fixtures installed by the grantee incident to the maintenance and operation of the cable communications system as defined in this chapter. All policies shall be endorsed to give the city 30 days written notice of the intent to amend, cancel or nonrenew by either the grantee or the insuring company.

(E) The grantee agrees and binds itself to indemnify, keep and hold free and harmless the city from any and all liability or costs, including attorneys' fees and court costs pertaining thereto, arising from any activities herein authorized, in that the grantee shall pay, and by its acceptance of the franchise the grantee specifically agrees that it will pay, all damages and penalties which the city may be legally required to pay as a result of the franchise. These damages or penalties shall include but shall not be limited to damages arising out of copyright infringements and all other damages arising out of installation, operation or maintenance of the cable communications system authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this chapter.

(Ord. passed 2-16-93)

DIVISION 5 DESIGN AND CONSTRUCTION

§ 15-50 AUTHORITY TO CONSTRUCT.

(A) *Authorization to commence new construction and application procedures.* Within 30 days of the acceptance by the grantee of a franchise, the grantee shall register the system with the FCC (if required by law or FCC regulations) and apply for contracts for use of poles. Within 30 days after completion of the make-ready survey identifying the routes of the system facilities, the grantee shall apply for all additional licenses from the state, city or other necessary parties, such as the railroads, for crossing under or over their property. In any event, all necessary applications for permits, licenses, certificates and authorizations shall be applied for in a timely fashion so that such filing and processing shall not interfere with or cause delay with the construction schedule as outlined in the franchise. Failure to make such timely application and timely filing shall constitute a substantial violation of this chapter.

(B) *Power to contract.* Upon grant of the franchise and in order to construct, operate and maintain a cable system in the city, the grantee may enter into contracts with any public utility companies or any other owner or lessee of any poles or underground areas located within or without the city; obtain right-of-way permits from appropriate city, state, county and federal officials necessary to cross or otherwise use highways or roads under their respective jurisdiction; obtain permission from the Federal Aviation Administration to erect and maintain antennas; and obtain whatever other permits a city,

county, state or federal agency may require.
(Ord. passed 2-16-93)

§ 15-51 CONSTRUCTION AND TECHNICAL STANDARDS.

(A) The grantee shall construct, reconstruct, install, operate and maintain its system in a manner consistent with all applicable laws, ordinances, construction standards, governmental requirements, FCC technical standards, and detailed technical standards submitted by the grantee as part of its application, which standards are incorporated by reference herein. The system shall be designed, constructed, operated and maintained for 24 hours-a-day continuous operation.

(B) The grantee shall construct, install, operate and maintain its system in accordance with, but not limited to, the following: The grantee shall maintain its system facilities in a manner which will continue to enable it to add new services and associated equipment as they are developed, available, and when proved economically feasible and marketable to subscribers.

(C) Prior to the erection or installation by the grantee of any towers, poles, underground conduits, or major fixtures for use in connection with the installation, construction, maintenance or operation of the cable communications system under this chapter, the grantee shall first submit to the city and other appropriate parties for approval a concise description of the facilities proposed to be erected or installed, including engineering drawings, if required, together with a map and plans indicating the proposed location of all such facilities.

(D) Any contractor proposed for work on construction, reconstruction, installation, operation, maintenance and repair of system equipment must be properly licensed under the laws of the state and all local ordinances.

(E) The city does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing subcontractors. In public rights-of-way, where necessary, the location may be verified by excavation.

(F) Construction, reconstruction, installation, operation and maintenance of the cable communications system shall be performed in an orderly and workmanlike manner in accordance with then-current technological standards. All cables and wires 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.

(G) Grantee shall at all times comply with:

- (1) Occupational Safety and Health Administration (OSHA) Regulations;
- (2) National Electric Code;
- (3) National Electrical Safety Code (NESC);

(4) National Cable Television Standards Code;

(5) AT & T Manual of Construction Procedures (Blue Book);

(6) Bell Telephone Systems Code of Pole Line Construction;

(7) All federal, state, and municipal construction requirements including FCC rules and regulations for utility construction and requirements;

(8) All building and zoning codes, and all land use restrictions as the same exist or may be amended hereafter.

(H) Any antenna structure used in the cable communications system shall comply with construction, marking, and lighting of antenna structure standards as required by federal and state laws and regulations.

(I) All worker facilities, conditions, and procedures that are used during construction, installation, operation and maintenance of the cable system shall comply with the standards of the Occupational Safety and Health Administration.

(J) Reserved.

(K) The grantee shall maintain equipment capable of providing portable standby power for a minimum of either four hours for the headend and two hours for transportation and any one trunk amplifier.
(Ord. passed 2-16-93)

§ 15-52 SYSTEM CONSTRUCTION SCHEDULE.

(A) Within three years from the date of the award of a franchise, the grantee must make cable television service available to every dwelling unit within the franchise service area in accordance with the terms of the franchise agreement and this chapter.

(B) Reserved.
(Ord. passed 2-16-93)

§ 15-53 EXTENSION OF SERVICE.

(A) The grantee shall provide service to any new residential dwelling units or commercial subscribers within the initial service area and any additional areas annexed to the city where there are at least 30 subscribers per proposed cable plant mile for residentially zoned areas, and at least 50 subscribers per proposed cable plant mile for commercially zoned areas, except where served by another cable company.

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(B) In other areas with less than 30 residential dwelling units or 50 commercial subscribers per proposed cable plant mile, the grantee shall offer a cost-sharing arrangement with residents. The cost-sharing arrangement shall consist of the following:

(1) On the request of five or more potential subscribers desiring service, the grantee shall prepare, at its cost, an engineering survey and cost analysis to determine the cost of plant extension required to provide service to each subscriber from the closest point where available quality signals exist.

(2) The cost of construction shall be allocated based on the following formula: If a request for extension of service into a residential area requires the construction of cable plant which does not pass at least 35 potential subscribers per strand or trench mile, the grantee and subscribers will each bear their proportionate share of construction costs. For example, if there are 25 subscribers per strand mile or trench mile, the grantee's share will equal 25/50th or one-half of construction cost. The remaining cost will be shared equally by each subscriber. After completion of the project, should additional subscribers request cable television service, the pro-rata shares shall be recalculated. Each new subscriber shall pay the new pro-rata share, and all prior subscribers shall receive pro-rata refunds. At such time as there are 35 potential subscribers per mile, the subscribers shall receive their pro-rata share of construction costs. In any event, at the end of two years from the completion of a project, the subscribers are no longer eligible for refunds, and the amounts paid in construction costs will be credited to the plant account of the grantee.

(3) The average cost of line extension shall be recalculated annually and based upon then-current costs for labor and materials.

(4) Subscribers utilizing the cost-sharing plan for extensions shall be reimbursed pro-rata for their contribution or a proportional share thereof, if additional subscribers are connected to the respective network extension.

(C) In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give the grantee reasonable notice of such construction or development and of the particular date on which open trenching will be available for the grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at the grantee's expense. The grantee shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner. Except for the notice of the particular date on which trenching will be available to the grantee, any notice provided to the grantee by the city of a preliminary plant request shall satisfy the requirement of reasonable notice if sent to the local general manager or system engineer of the grantee prior to approval of the preliminary plant request.

(Ord. passed 2-16-93)

§ 15-54 USE OF STREETS.

(A) *Underground installations.* All installations shall be underground in those areas of the city where public utilities providing telephone and electric service are underground at the time of

installation. In areas where either telephone or electric utility facilities are above ground at the time of installation, the grantee may install its device above ground, provided that, at such time as those facilities are required to be placed underground by the city or are placed underground, the grantee shall likewise place its services underground without additional cost to the city or to the individual subscriber so served. Where not otherwise required to be placed underground by this chapter or the franchise agreement, the grantee's system shall be located underground at the request of the adjacent property owner, provided that the excess cost over the aerial location shall be borne by the property owner making the request. All new cable passing under the roadway shall be installed in conduit no less than 18 inches from the top of the conduit to the surface of the ground.

(B) *Interference with persons, improvements, public and private property and utilities.* The grantee's system and facilities, including poles, lines, equipment and all appurtenances, shall be located, erected and maintained so that such facilities shall:

- (1) Not endanger or interfere with the health, safety or lives of persons;
- (2) Not interfere with any improvements the city, county or state may deem proper to make;
- (3) Not interfere with the free and proper use of public streets, alleys, bridges, easements or other public ways, places or property, except to the minimum extent possible during actual construction or repair;
- (4) Not interfere with the rights and reasonable convenience of private property owners, except to the minimum extent possible during actual construction or repair; and
- (5) Not obstruct, hinder or interfere with any gas, electric, water or telephone facilities or other utilities located within the city.

(C) *Restoration to prior condition.* In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the grantee shall, at its own cost and expense and in a manner approved by the city, replace and restore all paving, sidewalk, driveway, landscaping or surface of any street or alley disturbed, in as good a condition as, or better than, before said work was commenced and in a good workmanlike, timely manner in accordance with standards for such work set by the city. Such restoration shall be undertaken within no more than ten days after the disturbance is incurred and shall be completed as soon as possible thereafter.

(D) *Relocation of the facilities.* In the event that at any time during the period of this franchise the city, county or state shall lawfully elect to alter or change the grade of any street, alley or other public ways, the grantee, upon reasonable notice by the proper authority, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and the fixtures at its own expense.

(E) *Cooperation with building movers.* The grantee shall, on the request of any person holding a building moving permit issued by the Codes Inspector, temporarily raise or lower its wire to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the grantee shall have the authority to require such payment in advance. The grantee shall be given not less than 15 working days advance notice to arrange for such

temporary wire changes.

(F) *Tree trimming.* The grantee shall have the authority, except when in conflict with existing city ordinance, to trim any trees upon and overhanging public right-of-way so as to prevent the branches of such trees from coming in contact with system facilities, except that at the option of the city, such trimming may be done by it or under its supervision and direction, at the expense of the grantee.

(G) *Easements.* All necessary easements over and under private property shall be arranged for by the grantee.

(H) *Work within rights-of-way.* Consistent with the city's policy for temporary street closings, the closing of any part of a publicly maintained street or right-of-way must be approved by the city and shall be prohibited during peak travel hours, 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m., Monday through Friday. During repairs or improvements, traffic on streets must be maintained. Where full closing of the street is required, the request for approval must be submitted to the city at least ten days in advance. Closings will not be permitted in the business districts during the holiday shopping season. Where emergency closings are necessary the city is to be notified as soon as possible. All closings are to be protected and signed in accordance with the city's ordinances and policies for such.

(I) *Removal of city property.* No city property is to be removed from a right-of-way, including signing on utility poles, without proper permission from the city.
(Ord. passed 2-16-93)

§ 15-55 ERECTION, REMOVAL AND COMMON USE OF POLES.

(A) No poles shall be erected by the grantee without prior approval of the city with regard to location, height, types and any other pertinent aspect. However, no location of any pole or wire-holding structure of the grantee shall have rise to a vested interest, and such poles or structures shall be removed or modified by the grantee at its own expense whenever the city determines that the public convenience would be enhanced thereby.

(B) Where poles already in existence for use in serving the city are available for use by the grantee, the city may require the grantee to use such poles and structures, if it determines that the public convenience would be enhanced thereby and the terms of the use available to the grantee are just and reasonable.

(C) Where a public utility serving the city desires to make use of the poles or other wire-holding structures of the grantee, but agreement thereof with the grantee cannot be reached, the city may require the grantee to permit such use for such consideration and upon such terms as the city shall determine to be just and reasonable, if the city determines that the use would enhance the public convenience and would not unduly interfere with the grantee's operation.

(Ord. passed 2-16-93)

§ 15-56 CONSTRUCTION REPORTING REQUIREMENTS.

(A) Within 30 days of the granting of a franchise pursuant to this chapter, the grantee shall provide the city with a written progress report detailing work completed, if any, to date. Such report shall include a description of the process in applying for any necessary agreements, licenses or certifications and any other information the City Manager may deem necessary.

(B) Such written progress reports shall be submitted to the city on a monthly basis throughout the entire construction process. The City Manager may require more frequent reporting, if he determines it is necessary to better monitor the grantee's progress.

(C) Prior to the commencement of any system construction, the grantee shall produce an informational document to be distributed to all residents of the area to be under construction, which shall describe the activity that will be taking place.

(Ord. passed 2-16-93)

§ 15-57 TESTS AND PERFORMANCE MONITORING.

The grantee will comply with all FCC rules and regulations regarding tests and performance monitoring of its cable tv system providing copies of its results to the city and in the absence of such rules and regulations the grantee shall comply with the following:

(A) Not later than 90 days after any new or substantially rebuilt portion of the system is made available for service to subscribers, and thereafter on the third anniversary of the effective date of the franchise, the grantee shall conduct technical performance tests to demonstrate substantial compliance with all technical standards contained in this chapter and the franchise agreement and the applicable technical standards and guidelines of the FCC.

(B) Such tests shall be performed by or under the supervision of a qualified registered professional engineer or an engineer with proper training and experience. A copy of said engineer's report shall be submitted to the city, describing test results, instrumentation, calibration and test procedures and the qualification of the engineer responsible for the tests.

(C) System monitor test points shall be established at or near the output of the last amplifier in the longest feeder line, at or near trunk line extremities. Such periodic tests shall be made at the test points as shall be required by the FCC and/or the franchise agreement.

(D) In addition to the performance test reports required herein, a copy of any performance test reports required by the FCC shall be submitted to the city within 60 days of completion.

(E) Whenever there have been similar complaints from more than 10% of the subscribers to the grantee's system made, or when there exists other substantial evidence which, in the judgement of the city, casts doubt on the reliability or quality of the grantee's system, the city shall have the right and authority to compel the grantee to test, analyze and report on the performance of its system. Reports on such tests shall be delivered to the city no later than 14 days after the city reasonably notifies the

grantee and shall include the following information: the nature of the complaints which precipitated the special tests; what system component was tested; the equipment used and procedures employed in said testing; the results of such tests; and methods by which said complaints were resolved. Said tests and analyses shall be supervised by a professional engineer, who shall sign all records of the special tests and forward same to the city with a report interpreting the results of the tests and recommending what actions, if any, should be taken by the grantee or city.

(F) The city shall have the right to employ, at the city's expense, qualified consultants if necessary or desirable to assist in the administration of this or any other section of this chapter or the franchise agreement.

(Ord. passed 2-16-93)

DIVISION 6 SERVICE

§ 15-65 SERVICES TO SUBSCRIBERS AND USERS.

(A) Concurrently with the activation of the cable communications system in the city, the grantee shall provide those services to subscribers as described in the franchise agreement or services of similar mix, quality and level.

(1) Should the grantee desire to change the selection of programs or services offered on any of its tiers, it shall use its best efforts to maintain the mix, quality and level of services provided over the system. Any such change in programs or services offered shall comply with the conditions and procedures contained in the franchise agreement and shall be reported to the city at least 30 days prior to the proposed implementation when possible. The grantee shall use its best efforts to ensure diversity of programming.

(2) A basic service tier shall be offered to subscribers throughout the term of this franchise.

(3) The grantee shall provide and maintain, at a minimum, the following access channels, which may be combined into one or more existing channels, whose purposes are outlined below:

(a) Reserved.

(b) "Educational channel," which shall be a specifically designated channel for use by local public school authorities.

(c) A "public access channel," which shall be a specifically designated channel available on a first come, first served, nondiscriminatory basis to qualified users.

(4) Reserved.

(5) The grantee shall provide, when normal installation is possible, basic service and one free outlet to each of the following public facilities located within 300 feet of existing service lines of the grantee: all courthouses, prisons, libraries, detention centers, police and fire stations, municipal office buildings and public schools. The grantee shall notify the city in writing when normal installation is not possible. No monthly service fee shall be charged for any such outlet. The grantee shall provide service to new construction hereafter for the above public facilities, provided they are within 300 feet of the existing service lines of the grantee. The city reserves the right to provide service to public facilities outside of the franchised area at its own expense.

(B) *Emergency override.* The grantee shall, without charge, provide service and maintain public emergency transmission capabilities, as described in the franchise agreement.
(Ord. passed 2-16-93)

§ 15-66 INSTALLATIONS, CONNECTIONS, OTHER GRANTEE SERVICES.

(A) *Standard installations.* Standard installation shall consist of a subscriber connection not exceeding 200 feet from a single point or pedestal attachment to the customer's residence. Service in excess of 200 feet and concealed wiring shall be charged not to exceed additional installation costs before installation begins. The desire of the subscriber as to the point of entry into the residence shall be observed whenever possible, subject to the grantee's good-faith judgment in regard to, but limited to, safety, efficiency and system performance. The grantee shall use due care in the process of installation and shall repair any damage to the subscriber's property caused by said installation. Such restoration shall be undertaken within a reasonable time after the damage is incurred and shall be completed as soon as possible thereafter, said time not to exceed 15 days, weather permitting.

(B) *Antennas and antenna switches.* The grantee shall not, as a condition to providing cable communications service, require any subscriber or potential subscriber to remove any existing antenna structures for the receipt of over-the-air television signals.

(C) *Lockout devices.* The grantee shall provide to the potential subscriber, as part of its promotional literature, information concerning the availability of a lockout device for use by a subscriber. The grantee reserves the right to require a reasonable deposit for the use of this device. The lockout device described herein shall be made available to all subscribers requesting it, beginning on the first day that any cable service is provided or, in the case of a renewed or extended franchise, on the effective date of such renewal or extension.

(D) *Reconnection.* The grantee shall restore service to customers wishing restoration of service, provided the customer shall first satisfy any previous obligations owed. Further, any such reconnection may be on terms and conditions established by the grantee.

(E) *Free disconnections.* Subscribers shall have the right to have cable service disconnected or deauthorized without charge therefor. Such disconnection or deauthorization shall be made as soon as practicable and not to exceed five days. A refund of unused service charges shall be paid to the customer within 30 days from the date of termination of service.

(F) *Delinquent accounts.* The grantee shall use its best efforts to collect delinquent subscriber accounts. Whenever possible, the grantee shall provide the customer with at least seven working days written notice prior to disconnection.

(Ord. passed 2-16-93)

§ 15-67 SERVICE CALLS AND COMPLAINT PROCEDURES.

(A) The company shall establish, operate and maintain in the city a business office and maintenance and repair facility for the purpose of receiving inquiries, requests and complaints concerning all aspects of the construction, installation, operation and maintenance of the system and for the payment of subscribers' service charges.

(B) The grantee shall have a listed, toll-free, telephone number for service calls, and such telephone service shall be answered 16 hours per day (8:00 a.m. to 12:00 midnight), seven days a week. The remaining eight hours of each day (12:00 midnight to 8:00 a.m.) such telephone service shall be mechanically answered with the caller's inquiry or repair call information mechanically recorded with response dispatched at the beginning of the following day.

(C) The grantee shall respond to and resolve subscribers' complaints or requests for service in connection with repairs and maintenance and malfunctions of system facilities. The grantee shall respond as quickly as possible to such complaints and requests. Complaints or requests which may pose a potential health and safety hazard will be responded to immediately. In connection with billing complaints, the grantee shall respond within five business days.

(D) The grantee shall prepare and file with the city copies of all of its rules and regulations in connection with the handling of inquiries, requests and complaints. The grantee shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the name, address and local telephone number of the office or agent to whom such inquiries or complaints are to be addressed, and furnish information concerning the city office responsible for the administration of the franchise, including, but not limited to, the address and telephone number of said office.

(E) The grantee shall keep full records in connection with all complaints and requests in the nature of complaints in connection with the system. Such records shall identify the person contacting the grantee and the person responding on behalf of the grantee, the subject matter of the contract, the date and time it was received, the resolution of the matter in question or the action taken by the grantee in connection with the contact, and the date and time thereof, and such other information as may be deemed pertinent by the grantee. These records shall be made available for periodic inspection by the city after 48 hours' notice to grantee.

(F) The grantee shall service or replace without charge all equipment provided by it to the subscriber, provided, however, that the grantee may charge a subscriber for service to or replacement of any equipment damaged directly or indirectly by a subscriber.

(G) The city may review and monitor unresolved customer complaints.

(H) In the event that any subscriber is interrupted for 24 or more consecutive hours due to causes within the grantee's control, the grantee shall provide a prorated rebate of monthly fees to the affected subscriber upon the subscriber's request.

(Ord. passed 2-16-93)

§ 15-68 PROTECTION OF SUBSCRIBER PRIVACY.

The grantee shall comply with all present and future FCC rules and regulations, as applicable, regarding subscriber privacy, and in the absence of such the grantee shall comply with the following;

(A) At the time of entering into an agreement to provide any cable service or other service to a subscriber, and at least once a year thereafter, the grantee shall provide notice, in the form of a separate written statement to each subscriber, which clearly and conspicuously informs the subscriber of:

(1) The nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information;

(2) The nature, frequency and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;

(3) The period during which such information might be maintained by the cable operator.

(4) The times and places at which the subscriber may have access to such information in accordance with this chapter and other applicable federal, state and local law.

(B) The grantee shall not use the cable system to collect personally identifiable information concerning any subscriber, except as necessary to render a cable service or other service provided by the cable operator to the subscriber, or to detect unauthorized reception of cable communications, without the prior written or electronic consent of the subscriber concerned.

(C) The grantee shall not, without the specific written or electronic consent of the subscribers concerned, sell, disclose or otherwise make available to any party any list of the names and addresses of individual subscribers, any list which identifies the viewing habits of individual subscribers, or any personal data, social security number, income and other data the grantee may have on file about individual subscribers, except as necessary to render or conduct a legitimate business activity related to a cable service or other service provided by the cable operator to the subscriber, or pursuant to a court order, or if the grantee has provided the subscriber the opportunity to prohibit or limit such disclosure and the disclosure does not reveal directly or indirectly the extent of viewing or other use by the subscriber of a cable service or other service provided by the cable operator, or the nature of any transaction made by the subscriber over the cable system.

(D) The grantee shall not predicate regular subscriber service on the subscriber's grant or denial of permission to collect, maintain or disclose personally identifiable information. A subscriber may at any time revoke any permission previously given by delivering to the grantee a written statement of that intent.

(E) Each subscriber shall be provided access to all personally identifiable information regarding such subscriber that the grantee collects or maintains. Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by the grantee. The subscriber shall be provided the reasonable opportunity to correct any error in such information.

(F) The grantee shall destroy personally identifiable information, if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under division (B) pursuant to a court order.

(G) This section is not intended to prohibit the use or transmission of signals useful only for the control or measurement of system performance.
(Ord. passed 2-16-93)

§ 15-69 RIGHTS OF INDIVIDUALS.

(A) *Nondiscrimination required.* The grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, religion, national origin, age, sex, or physical or mental handicaps, provided the subscriber shall pay all applicable fees for the service desired. The grantee shall comply at all times with all other applicable federal, state and local laws and regulations relating to nondiscrimination which may hereafter be incorporated and made part of this chapter by reference.

(B) *Fairness of accessibility.* The entire system of the grantee shall be operated in a manner consistent with the principles of fairness and equal accessibility of its facilities, equipment, channels, studios and other services to all citizens, businesses, public agencies and other entities having a legitimate use for the network; and no one shall be arbitrarily excluded from its use; provided, however, that allocation of use of said facilities shall be made according to the rules or decisions of the grantee and any regulatory agencies affecting the same.

(C) *Information accessibility.*

(1) Each individual shall have the right to information concerning the provisions of this chapter and the rules and regulations formulated pursuant to it by the Council, agent or entity created hereunder or pursuant to this chapter. The location and hours of operation for the delivery of such information shall be published in the newspaper of the greatest circulation within the city and in such other media as the Council may determine.

(2) Each individual subscribing to the services of the cable communications system or leasing channels thereof or using the access channels shall be provided with a memorandum setting forth all rules and regulations specifically outlining such individual rights, duties and obligations pertinent to such use.

(3) Such information as may herein be prescribed will be made available to the public and individual subscribers in such form required for understanding; including the deaf and blind, and in such languages as may be specified by the Council.

(4) Each document required to be maintained, prepared, filed or submitted under the provisions of this chapter or pursuant to it, except those required and designated confidential by the grantee or the Federal Communications Commission, shall be a public document, available for public inspection and copying at the requestor's expense, at the office of the grantee or the city during normal business hours. The charge for such copying shall approximate the cost of mechanical reproduction and shall not include a charge for labor.

(5) Each individual shall have the right to representation on such boards, commissions, agencies or other entities created hereunder or hereafter by the Council pursuant to the provisions of this chapter. Such representation by citizens of the city shall be in the manner and form as the Council may determine, ensuring equal participation of all protected groups.
(Ord. passed 2-16-93)

DIVISION 7 BOOKS, RECORDS, REPORTS, MISCELLANEOUS PROVISIONS

§ 15-80 BOOKS AND RECORDS AVAILABLE TO THE CITY.

The grantee shall manage all of its operations in accordance with a policy of open books and records as such may pertain to the operation of the system in the city. The city shall have the right to inspect upon 24 hours' written notice, at any time during normal business hours, books, records, maps, plans, service complaint logs, performance test results and other like materials of the grantee which relate to the operation of the system.
(Ord. passed 2-16-93)

§ 15-81 REPORTS REQUIRED.

The grantee shall file with the city:

(A) *Regulatory communications.* All reports required by the Federal Communications Commission (FCC) including, but not limited to, annual proof of performance tests and results and Equal Employment Opportunity (EEO) reports.

(B) *Facilities report.* An annual report setting forth the physical miles of plant construction and plant in operation during the fiscal year.

(C) *Grantee rules.* The grantee's schedule of charges, contract or application forms of regular subscriber policy regarding the processing of subscriber complaints, delinquent subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the grantee's policy in connection with its system subscribers, shall be filed with the city.

(D) *Proof of bonds and insurance.* The grantee shall submit to the city the required performance bond, or a certified copy thereof, and written evidence of payment of required premium, and certificates

of policies of insurance required by this chapter, and written notice of payment of required premium.

(E) *Financial reports.* The financial reports for the grantee shall be submitted annually to the city.

(F) *Operational reports.* The following system and operational reports shall be submitted annually to the city:

(1) A report on the system's technical tests and measurements as set forth herein and in the franchise agreement;

(2) A summary of the previous year's activities including, but not limited to, new services offered;

(3) A summary of complaints received and handled;

(4) A summary of the number of outages (five or more service calls in one area).

(G) *Additional reports.* The grantee shall prepare and furnish to the city, at the times and in the form prescribed, such additional reports with respects to its operation, affairs, transactions or property as may be reasonably necessary and appropriate to the performance of any of the functions or duties of the city in connection with the system.

(Ord. passed 2-16-93)

§ 15-82 RECORDS REQUIRED.

(A) The grantee shall at all times maintain and make available to the city upon request:

(1) A record of all complaints received and interruptions or degradation of service experience for the preceding period prior to a performance review.

(2) A full and complete set of plans, records and "as-built" maps showing the exact location of all cable communication system equipment installed or in use in the city, exclusive of subscriber service drops.

(3) A reasonable effort of maintaining a comprehensive record of all personnel transactions and utilization of contractors, subcontractors, vendors and suppliers by race and sex.

(B) The city may impose reasonable requests for additional information, records and documents from time to time.

(Ord. passed 2-16-93)

§ 15-83 MISCELLANEOUS PROVISIONS - PUBLIC NOTICES; EXCEPTIONS; FRANCHISE APPLICATIONS.

(A) *Public notice.* Minimum public notice of any public meeting relating to this chapter or the franchise shall be by publication in a newspaper of general circulation in the area at least seven days prior to the meeting, posting at city hall, and by announcement on at least one local origination channel of the grantee's cable communications system between the hours of 11:00 a.m. and 9:00 p.m. for five consecutive days prior to the meeting.

(B) *Captions.* Captions to sections throughout this chapter are intended solely to facilitate reading and reference to the sections and provisions of this proposal. Such captions shall not affect the meaning or interpretation of this chapter.

(C) *Franchise applications.* Applicants for a franchise shall submit to the city written applications utilizing the appropriate standard format provided by the city, at the time and place designated by the city for accepting applications and including the designated application fee, if any.
(Ord. passed 2-16-93)

