

City of Scottsbluff, Nebraska

Tuesday, September 3, 2019

Regular Meeting

Item Resolut.5

Council to consider an Ordinance updating Cable Television Systems including Franchise Procedures and guidelines for Rights-of Way. (third reading)

Staff Contact: Nathan Johnson, City Manager

11-5-1- Purpose.

The purpose of this Article is to:

- ~~1.~~ (a) establish a local policy concerning cable television;
- ~~2.~~ (b) establish Franchise procedures and standards which encourage the growth and development of Cable Systems which assure that Cable Systems are responsive to the needs and interests of the City;
- ~~3.~~ (c) establish guidelines for the exercise of local authority with respect to the regulation of Cable Systems;
- ~~4.~~ (d) establish an orderly process for Franchise renewal which protects Cable Operators against unfair denials of renewal where an Operator's past performance and proposal for future performance meet the standards set by the FCC and this Article;
- ~~5.~~ (e) promote competition in cable communications and minimize unnecessary regulations that would impose undue burdens on Cable Systems;
- ~~6.~~ create a set of regulations, standards and procedures for Cable Operators;
- ~~7.~~ create a comprehensive customer service and consumer protection policy for Cable Operators;
- ~~8.~~ (f) provide for access and inspection of a Cable Operator's books and Operator's records in order to monitor compliance with local, State and Federal laws, and any franchise agreement;
- ~~9.~~ (g) enforce customer service standards;
- (h) provide a construction and installation policy for a Cable Operator's system;
- ~~10.~~ (i) provide for the health, safety and welfare of the citizens of the City in light of the Cable Operator's construction, operation and maintenance;
- ~~11.~~ (j) provide for emergency override capability, so that citizens of the City may be warned of a potential, imminent, or actual Emergency situation that exists in the area;
- ~~12.~~ (k) create a procedure for collecting and monitoring Franchise Fees; and
- ~~13.~~ (l) create a default and revocation procedure for Cable Operators.

11-5-2- Definitions.

As used in this Article or in any Franchise issued pursuant to this Article, the following terms shall have the following definitions:

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(a) "Affiliate" means another person or Entity who owns or controls, is owned or controlled by, or is under common ownership or control with, the person or Entity.

~~3.~~ "Applicant"

(b) "Applicant" means a person or Entity submitting an application or proposal to the City for a Franchise to operate a Cable System under the terms and conditions of this Article and any State or Federal regulations.

4. "Auxiliary(c) "Auxiliary Equipment" means equipment supplied by a Cable Operator which enhances or assists in the reception or provision of Cable Service.

5. "Basic(d) "Basic Cable Service" means any Service Tier which includes the retransmission of local television broadcast signals, ~~the PEG Channels, and any other signals required by Federal Law or the FCC.~~

6. "Cable Act" =

(e) "Cable Act" means the Cable Communications Policy Act of 1982~~4~~, as amended, which is codified as 47 U.S.C. §§ 521-521, et. seq., or corresponding legislation in any future Federal communications legislation.

7. Except as otherwise any future federal legislation concerning the subject matter provided for in this Article, "Cable the Cable Act.

(f) "Cable Operator" means any person or Entity which:

- a. (1) provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in that Cable System; or
- b. (2) otherwise controls or is responsible for, through any arrangement, the management and operation of a Cable System.

8. Unless otherwise defined in the Cable Act, "Cable Service" means: a.

(g) "Cable Service" means:

(1) the one-way transmission to Subscribers of: (i) Video Programming or (ii) Other Programming Service; and

b. (2) Subscriber interaction, if any, which is required for the selection or use of Video Programming or Other Programming Service.

9. "Cable(h) "Cable System" means a facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service which includes ~~v~~Video ~~p~~Programming, and which is provided to multiple Subscribers within the ~~C~~ommunity ~~C~~ity; provided, however, this shall not include:

a.

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

b. (2) a facility that serves Subscribers without using any Public Way;

c. (3) a facility of a common carrier which is subject-, in whole or in part, to the provisions of title II of the Cable Act, except that the facility shall be considered a Cable System (other than for purposes of § 621(c) of the Cable Act) to the extent the facility is used in the transmission of ~~v~~Video ~~p~~Programming directly to Subscribers;

~~10. "Channel" (i) "Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel (as defined by the FCC); provided, however, if the definition of Channel is modified by Federal law or the FCC, then such revised definition shall apply.~~

~~e. unless the extent of such use is solely to provide interactive on-demand services. 3~~

(4) an open video system that complies with § 653 of the Cable Act.

(5) any system exempted under the Cable Act.

~~10. "Channel" (i) "Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel (as defined by the FCC); provided, however, if the definition of Channel is modified by Federal law or the FCC, then such revised definition shall apply.~~

~~11. "Charge" =~~

(j) "Charge" means a one-time or non-regularly occurring cost paid by the Subscriber, and which is associated with the installation, maintenance, service or repair of the Cable Service.

~~12. "Community" =~~

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~~1. "City" (k) "City" means the City of Scottsbluff, Nebraska and includes any areas annexed to the City after this date. "Council" "Council" means the City Council of the City of Scottsbluff. "Mayor" "Mayor" means the Mayor of the City of Scottsbluff. "City" "City Manager" =~~
means the City Manager of the City of Scottsbluff.

~~2. "Affiliate" means~~
another person or entity

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(l) "Community" shall mean the geographic area within the municipal limits of Gering, Nebraska, Terrytown, Nebraska and Scottsbluff, ~~and Terrytown~~, Nebraska and any portions of Scotts Bluff County, Nebraska, which are served by a Cable System serving any portion of those municipalities:

~~13. "Converter" means any device, separate and apart from a Subscriber's receiver, that is necessary for a Subscriber to view or otherwise use signals delivered by a Cable System.~~

~~14. "Emergency" or county.~~

(m) "Emergency" means an imminent, impending, or actual natural or humanly induced situation where the health, safety or welfare of all, or a representative portion, of the residents of the City is threatened. An Emergency (by illustration) may include a snowstorm, flood, tornado, severe thunderstorm, hazardous waste infiltration, petroleum, munitions or nuclear explosion, or aircraft crash.

~~15. "Easement" (n) "Easement" means and shall include any public easement or other compatible use created by dedication or by other means, to the City for public utility or other purposes including cable television. "Easement" "Easement" shall include a private easement used for the provision of Cable Service.~~

~~16. "Entity"~~

~~(o) "Entity" shall mean a partnership, joint venture, corporation, limited liability company or such other form of conducting business authorized by State law.~~

~~17. "FCC" (p) "FCC" means the Federal Communications Commission or any successor governmental entity.~~

~~18. "Franchise" (q) "Franchise" means the authorization issued by the City which authorizes the construction and operation of a Cable System.~~

~~19. "Franchise Fee" a non-exclusive right to construct, operate and maintain a Cable System within the City.~~

~~(r) "Franchise Fee" includes any tax, fee, or assessment of any kind imposed by the City on a Cable Operator or Subscriber, or both, solely because of their status as such.~~

~~"Franchise" "Franchise Fee" does not include:~~

~~(1) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Cable Operators or their services but not including a tax fee, or assessment which is unduly discriminatory against Cable Operators or Subscribers);~~

~~(2) Agreed upon capital costs which are required by a Franchise to be incurred by the Cable Operator for PEG, or governmental access facilities;~~

~~(3) requirements or charges incidental to the awarding or enforcing of a Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages; or~~

~~(4) any fee imposed under title 17, United States Code.~~

~~20. "Gross Revenue" means:~~

~~a. all revenues the copyright laws of the United States.~~

~~(s) "Gross Revenue" means any revenue, as determined in accordance with generally accepted accounting principles, received by a Cable Operator from the operation of a Cable System attributable to Subscribers within the City including but not limited to revenues received from Subscriber Rates, Service Tiers, installations, and the sale or lease of Auxiliary Equipment ("Subscriber Revenues"); and~~

~~b. any and all compensation in whatever form (except as exempted by this definition or otherwise by law), exchange or otherwise derived from all Cable Services, cable operations, and Cable Service related activities within the City including but not limited to revenues received from advertising, rebates or commissions received from services carried or provided on the Cable System, or commercial access ("Non-Subscriber Revenues").~~

within the City Gross Revenue does not, however, mean (i) any taxes, fees or assessments ~~of general applicability~~ collected by a Cable Operator from ~~imposed and/or assessed collected by law on~~ Subscribers for pass-through to a government agency (including sales taxes, Franchise Fees or FCC user fees); (ii) unrecovered bad debt or bona fide credits, refunds and deposits paid to Subscribers; ~~and (iii)~~ revenues from activities exempted under the Cable Act or by the FCC, and (iv) PEG Channel Support recovered from Subscribers.

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— 21. — "~~Other~~(t) "Other Programming Service" means information that a Cable Operator makes available to all Subscribers generally.

— 22. — "PEG(u) "PEG Channel" means a public, educational or governmental Channel which is carried on a Cable System.

— 23. — "Permit"(v) "Permit" means a written authorization issued to a Cable Operator by the City, other than a Franchise.

— 24. — "Public(w) "Public Way" means any public street, public place, public Easement or ~~right-of-right-of-way~~ dedicated to the public use.

— 25. — "Rate" means ~~the periodic price paid by a Subscriber in order to receive Cable Service.~~

— 26. — "Reporting

(x) "Reporting Quarter" shall mean a Cable Operator's fiscal quarter as reported to the City. If a Cable Operator does not report to or notify the City concerning the dates of its fiscal quarters, then the "Reporting Reporting Quarters" for a Cable Operator shall be considered to be the periods ending on the last day of March, June, September and December of each calendar year.

— 27. — "Service Tier"

(y) "School" shall mean any K-12 school operated within the City by any public school system.

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(z) "Service Tier" means a category of Cable Service or Other Services provided by a Cable Operator, and for which a separate Rrate is charged.

— 28. — "State"(aa) "State" means the State of Nebraska. 5

— 29. — "Subscriber"(bb) "Subscriber" means a person lawfully receiving Cable Service delivered by a Cable Operator.

— 30. — "User" means ~~a person or organization utilizing a Cable System and/or its equipment for purposes of production and/or transmission.~~

— 31. — "Video

(cc) "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

~~11-5-3.~~

~~(dd) "Video Programming Provider" means a provider of Video Programming which is authorized by the City or applicable law to utilize the Public Way to provide video programming to residents of the City.~~

~~It is intended that the definitions of any of the terms which are also defined in the Cable Act be consistent with the corresponding Cable Act definitions. In the event that it is determined that any of the above definitions are inconsistent with the Cable Act, then the definitions contained in the Cable Act shall control.~~

11-5-3 Administration; delegation of powers and authority.

Unless prohibited by Federal or State law, the Council may delegate its powers and authorities with respect to a Cable Operator to one or more duly authorized representatives of the City, including the Mayor, the City Manager, a Cable Advisory Committee or an outside consultant; provided, however, the Council may never delegate its power to franchise or to revoke a franchise to another person.

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~~11-5-4- Cable Operator; applicability.~~

Unless exempted entirely or in part from this Article or any of its provisions; or granted relief by the Council from any of its provisions, then this Article shall be applicable to all Cable Operators.

~~11-5-5. Same; exemptions. In recognition of the inherent technological differences between various types of providers of~~

11-5-5 Video Programming, and taking into account legal, financial, operational and maintenance considerations, the following providers; exemptions.

A provider of Video Programming are exempted from complying with this Article: 1. a person or Entity which provides Cable Service to fewer than 50 Subscribers; or 2. a person or Entity which provides Cable Service to, or in conjunction with operating one hotel, motel, time-share facility, or recreational vehicle park (but not including service to a mobile home or manufactured home park), and which does not use any Public Way; or 3. a person or Entity which does not cross a Public Way in providing Cable Service to Subscribers; or 4. a person or Entity which is exempted from this Article as a result of an applicable judicial ruling.

shall not be considered as a Cable Operator and subject to this Article if the provider does not use or cross any Public Way. An exempted person or Entity remains exempted only as long as it meets one or more of the specifications of this section. In addition, the extent of the exemption is only for this Article the above criteria. An exempted person or Entity is, however, expected to

abide by, and comply with, any other applicable City, County, State and Federal laws and regulations, including any applicable Federal or State consumer protection or consumer service laws and regulations.

~~11-5-6- Same; request for relief by non-exempt cCable oOperator.~~

Any Cable Operator may file a written petition, at any time, with the City requesting relief from one or more provisions of this Article. The relief requested may specifically include the delay in implementation (as to the petitioning Cable Operator only) of one or more provisions of this Article. In order to receive any relief from one or more of the provisions of this Article, a Cable 6 Operator must satisfactorily demonstrate to the Council that at least one of the following facts exist: ~~1.~~

(a) the provision and/or requirement is expressly prohibited by Federal law, the FCC or State law; or ~~2.~~

(b) that the provision in question materially affects, and is in conflict with an expressed right that is specifically noted in an existing Franchise agreement (but only for the term of the existing Franchise); or ~~3.~~

(c) that the imposition of the provisions and/or requirements will create an undue economic hardship on the Cable Operator so as to imperil or eliminate the Cable Operator's ability to provide Cable Service to a majority of current Subscribers.

~~4.~~ (d) As an alternative to requesting relief, a Cable Operator may petition for clarification as to the precise intent and effect that one or more provisions or sections of this Article has on the petitioning Cable Operator.

~~The Council may charge the petitioning Cable Operator with the actual costs for processing the petition, including any costs incurred by outside consultants who are retained by the City to review a Cable Operator's petition; provided, however, such costs shall not exceed the total amount that the City may charge to a Cable Operator considering the Federal limit on Franchise Fees.~~

If the Council grants relief to a Cable Operator, then the Franchise agreement shall be amended to reflect the extent of the relief.

~~11-5-7. Noncompliance not excused for failure to enforce. A Cable Operator shall not be excused from complying with any of the requirements of this Article by any failure of the City on any one or more occasions to seek, or insist upon compliance with this Article.~~

~~11-5-8. Compliance with law. Any Cable Operator, its assignee, or transferee shall be subject to, and expected to comply with ~~1.~~ all ordinances in effect within the City including this~~

Article, to the extent that the Cable Operator has not received exemption or relief:

~~2. all Federal and State Laws, and all rules and regulation issued by all applicable regulatory agencies;~~

~~3. all lawful exercise of the City's police power.~~

Nothing contained in this section shall prevent a Cable Operator from exercising any, and all, of its administrative and legal rights as to the constitutionality, applicability, and enforceability of this Article or any later amendments:

~~11-5-9.~~

11-5-7 Inconsistencies with fFederal or sState lLaw.

If any provision or section of this Article is inconsistent with any provision or section of a Federal or State rule, regulation, or law, then the Federal or State rule, regulation, or law shall control.

~~11-5-10. Retained rights and authorities. Subject to preemption by the FCC or any other Federal or State governmental entity or agency, the City retains the authority for: 1. the regulation of any Cable System within the geographical limits of the City, and within the limits prescribed by applicable law; 2. the award and grant of a Franchise subsequent to review of an application or proposal by the Council; 3. subject to the provisions of this Article entitled "Compliance with Law" and any relief or exemption granted with respect to those provisions, the amendment or repeal of all or part of this Article; and 4. the amendment of a Franchise by mutual agreement of the Council and the holder of the Franchise; 5. the regulation of Rates and Charges as permitted by law; 6. the enforcement of all laws and regulations relating to cable customer service practices and consumer protection.~~

~~11-5-11. Notices:~~

11-5-8 Notices.

Each Franchise shall designate the City's and the Cable Operator's contact person to receive notices, filings, reports, records, documents and other correspondence. All notices shall be delivered to each party's contact person either by personal service with signed receipt of delivery, certified or registered mail, return receipt requested, or by recognized overnight delivery service with receipt verification. All other filings, reports, records, documents, and other correspondence may be delivered by any permissible means including, but not limited to: PPersonal service, overnight mail, email or facsimile. Delivery shall be deemed to have occurred at the time of receipt.

~~11-5-12.~~

11-5-9 Indemnity.

Each Cable Operator shall defend, indemnify, and hold harmless the City, its officials, authorized agents and employees from any and all penalty, damage, or loss arising out of claims, suits, demands, causes of action, or award of damages which might be claimed now or in the future, which arise out of, or are caused by, the construction, erection, location, products performance, operation, maintenance, repair, installation, replacement, removal or restoration of the Cable System within the City by a negligent act or omission of the Cable Operator, its 7 authorized agents or employees, contractors, or authorized representatives; provided, however, the Cable Operator shall not be obligated to indemnify the City for any penalty, damage or loss resulting from the willful misconduct or negligence of the City or from any use of the Cable System by the City (to include the use of PEG channels). Reasonable attorney's fees, consultant's fees, expert witness fees and other expenses of litigation are included except as set forth in subsection (d) below as those costs which may be recovered by the City. With respect to any request for indemnification made to a Cable Operator by the City: ~~1.~~

(a) The City shall give the Cable Operator written notice of its obligation to indemnify the City at least 10 calendar days prior to the deadline for responding to the claim or action, and if no such deadline exists, within 30 days of receipt of written notification of a claim or action.

~~2.~~ (b) The Cable Operator shall then have the right to defend, settle or compromise any such claims at the Cable Operator's expense and with the assistance of counsel of the Cable Operator's choice. The City shall provide reasonable cooperation in connection with the defense subject to the Cable Operator's obligation to reimburse the City for actual out-of-pocket expenses incurred by the City as the result of a request by the Cable Operator.

~~3.~~ (c) If the Cable Operator fails to defend a claim within a reasonable time, the City shall be entitled to assume the defense and the Cable Operator shall be bound by the results and shall be liable to the City for the damages incurred by the City to include the costs referred to above as recoverable by the City.

~~4.~~ (d) If a Cable Operator obtains counsel for the City, and/or its officials, agents and employees, then any one of them shall have the right to approve counsel, which approval shall not be unreasonably withheld. The City, its officials, agents and employees shall have the right to retain counsel of their own at their own expense.

~~11-5-13. Liability i0 Insurance.~~

A Cable Operator shall secure and maintain, for as long as it provides Cable Service, insurance coverage (the "Insurance" "Insurance") as follows: ~~1.~~ The coverage shall provide for in at least the following limits:

2.

(a) A construction/completion bond shall be furnished prior to the time that a Cable Operator commences a construction, upgrade, rebuild, or repair/maintenance project that has a capital construction cost or outlay exceeding \$50,000 in value where the construction takes place in one or more Easements or in the Public Way; provided, however, the following shall not be considered in determining whether a project exceeds \$50,000: (i) ~~the~~ the cost attributable to any portion of the construction that utilizes aerial facilities consisting of existing poles owned by the Cable Operator or other utilities, or (ii) ~~construction~~ construction within a new subdivision where the construction of facilities is coordinated with the developer of the subdivision. The amount of the bond shall equal at least 90% of the projected capital construction cost or outlay, but shall not exceed \$250,000. The construction/completion bond shall remain in force at all times until one year after completion of construction as determined by the City, unless relief is granted, or a reduction schedule is detailed in an agreement between the City and the Cable Operator.

3.

(b) Any construction/completion bond shall specifically guarantee that a Cable Operator will timely abide by its construction, upgrade, rebuild, or repair/maintenance schedule for the Cable System and/or any time table for technical and service improvements or additions to the Cable System as may be committed to, or agreed upon, from time to time by the City and the Cable Operator.

4.

(c) If the City draws on a bond as a result of a Cable Operator's failure to timely discharge its obligations, or failure to construct and activate the Cable System, or failure to complete a Cable System upgrade or rebuild or repair/ maintenance project, then the Cable Operator shall replenish the bond within 30 days to the level required in this section.

5.

(d) The Council may authorize a Cable Operator to substitute a Cash Deposit, Letter of Credit, or a Guaranty of another person or Entity for any of the bonds provided for in this section; provided, however, the person or Entity providing a Letter of Credit or Guaranty, and the form of the Letter of Credit or Guaranty, shall be subject to the approval of the City Council in its sole discretion.

11-5-15-2 ~~Furnishing of reports:~~ Reports.

(a) A Cable Operator's schedule of charges for regular Subscriber service, its policy regarding the processing of Subscriber complaints, delinquent Subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Cable Operator's policy in connection with its Subscribers shall be filed with the City upon request.

(b) Upon written request of the City, a Cable Operator shall furnish, at no cost to the City, copies

of any or all non-confidential filings with the FCC and the United States Copyright Office within 30 days of the request.

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11-5-16. ~~Books and~~ Records.

A Cable Operator shall keep complete and accurate ~~books of accounts and~~ records concerning the business and operations of the Cable System. In addition: ~~1.~~

(a) The City by its authorized representatives shall have the right, on reasonable advance written notice, to review ~~at the Cable Operator's local office~~ all records pertaining to a Cable Operator's cable operations with respect to the City ~~which are necessary to the enforcement of this Article or the~~ as are reasonably necessary to determine a Cable Operator's compliance with the Franchise. Such notice shall specifically reference the section(s) of the Franchise or the Cable Ordinance for which the review is requested. The Cable Operator's Franchise. Any review, ~~unless mutually agreed upon or judicially ordered,~~ should occur within the Cable Operator's regular office hours. Operator agrees that it will furnish the information requested electronically or make it available for the City's review, to the City within 30 days of the request.

(b) Non-revenue financial records will only be requested in the aggregate on a summary prepared by the Cable Operator.

(c) The City acknowledges the sensitivity of ~~these~~ a Cable Operator's records; and will request this information only on as needed basis; and will treat this information as confidential and proprietary to the fullest extent allowed by law. The Cable Operator shall not be required to produce any records in violation of the Cable Act or any other applicable law. Until otherwise ordered by a court or agency of competent jurisdiction, the City agrees that, to the extent permitted by State and federal law, it shall deny access to any of a Cable Operator's records marked confidential to any person.

~~2.~~ (d) The City shall have the right to hire, at its own expense, an independent certified public accountant, or other business or financial expert, to review the ~~books and~~ records of a Cable Operator pertaining to revenue information.

~~3.~~ A false entry in the books and/or records of a Cable Operator of a material and substantial fact shall constitute a material violation of this Article. Erroneous entries shall not constitute a material violation if made in good faith.

~~4.~~

(e) If after a review or audit of a Cable Operator's records, it is discovered that the Cable Operator has underpaid the City by an amount that exceeds the greater of (i) ~~\$500~~ \$2500, or (ii) 3% of the total amount paid for any Reporting Quarter, then the City may require the Cable Operator to reimburse the City for the actual cost of the audit, in addition to the amount of underpayment.

~~11-5-17. Local office; office hours; telephone availability.~~ In order to facilitate the needs of Subscribers, ~~a~~¹⁰ underpayment, provided, however, no such reimbursement shall be required if the reason for the underpayment is due to the annexation of additional areas into the City, for which notification of the annexation was not provided to a Cable Operator.

(f) A cable Operator shall not be required to maintain any records for Franchise compliance purposes longer than 4 years, except for written service complaints, which shall be kept for 1 year.

(g) A Cable Operator shall maintain a customer service office which is easily accessible to Subscribers, and is located within the Community. The customer service office should have an adequate and knowledgeable staff in order to handle the vast majority of Subscriber service inquiries, including but not limited to billing inquiries, refunds, service outages, equipment service and repair, payment of bills and other Charges, and inquiries from disabled or physically impaired Subscribers. In addition:

1. The Cable Operator will maintain a local, toll-free telephone access line which will be available to its Subscribers 24 hours a day, seven days a week:
 - a. Trained company representatives will be available to respond to Subscriber telephone inquiries during normal business hours which must include some evening or weekend hours:
 - b. After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day:
2. Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed 30 seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed 30 seconds. These standards shall be met no less than 90 percent of the time under normal operating conditions, measured on a quarterly basis:
3. A Cable Operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply:
4. Under normal operating conditions, the Subscriber will receive a busy signal less than 3 percent of the time:

~~The customer service office shall be open during regular hours as published to Subscribers:~~

~~11-5-18. Installations, outages, and service calls.~~ Under normal operating conditions, each of the following four standards will be met no less than 95 percent of the time measured on a quarterly basis:

- ~~1. Standard installations will be performed within 7 business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system:~~
- ~~2. Excluding conditions beyond its control, a Cable Operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes~~

known. A Cable Operator must begin actions to correct other service problems the next business day after notification of the service problem. Once begun, a Cable Operator shall diligently pursue the necessary repairs:

3. The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. A Cable Operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of a Subscriber:

4. Except for conditions beyond its control, a Cable Operator may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment:

5. If a Cable Operator representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the Subscriber:

11-5-19. Notifications to subscribers: full and complete set of plans, records and strand maps showing the location of the Cable System.

11-5-14 Customer Service.

A Cable Operator shall comply with the following customer service requirements:

(a) A Cable Operator shall comply with the customer service standards as provided for in the FCC Regulations, as may be amended from time to time. This Section shall be considered as notice to Cable Operators of the City's election to enforce those standards.

(b) A Cable Operator shall (i) maintain a customer service facility within the boundaries of the City staffed by customer service representatives that have the capacity to accept payment, adjust bills, respond to repair, installation, reconnection, disconnection, or other service calls; distribute or receive converter boxes, remote control units, or other equipment related to the provision of cable or video service; or (ii) provide written information to Subscribers as follows: 1. Subscribers will be notified of any changes in Rates, programming services or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of 30 days in advance of such changes if the change is within the control of the Cable Operator. In addition, customers with bill payment facilities through retail, financial, or other commercial institutions located within the boundaries of the City; or (iii) provide an address, toll-free telephone number or electronic address to accept bill payments and correspondence, and provide secure collection boxes for the receipt of bill payments and the return of equipment, provided that if a Cable Operator provides secure collection boxes, it shall provide a printed receipt when items are deposited, or (iv) provide an address, toll-free telephone number or electronic address to accept bill payments and correspondence, and provide a method for customers to return equipment to the Cable Operator shall notify subscribers 30 days in advance of any significant changes in the other information required by Section 76.1602 of the FCC Rules; 2. In addition to the requirement of subparagraph (1), a Cable Operator shall give 30 days advance written notice to both Subscribers and the City before implementing any change in Rate or

Charge. Such notice shall state the precise amount of any change. When the change involves the addition or deletion of Channels, each Channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, the operator need only identify for Subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts;

3. A Cable Operator shall provide written notice to a Subscriber of any increase in the price to be charged for Basic Cable Service or associated equipment at least 30 days before any proposed increase is effective. The notice should include the name and address of the City;
4. To the extent a Cable Operator is required to provide notice of Cable Service and Rate changes to Subscribers, the Cable Operator may provide such notice using any reasonable written means;
5. Notwithstanding any other provision of the FCC Rules, a Cable Operator shall not be required to provide prior notice of any change in Rate or Charge that is the result of a regulatory fee, Franchise Fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or the City on the transaction between a Cable Operator and a Subscriber.

11-5-20. Billing practices. Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to basic, tiered and premium service Charges and equipment Charges. Bills will also clearly delineate all activity during the billing period, including optional Charges, rebates and credits:

1. In case of a billing dispute, the Cable Operator must respond to a written complaint from a Subscriber within 30 days:

2. Refund checks will be issued promptly, but no later than either:

- a. the Subscriber's next billing cycle following resolution of the request or 30 days;

- whichever is earlier, or
 - b. the return of the equipment supplied by the Cable Operator if service is terminated.

3. Credits for service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted:

11-5-21. Billing credit or refunds for service outages, interruptions, or unsolicited service: at no cost to the customer.

(c) A Cable Operator shall provide a Subscriber with a credit or rebate where the Subscriber's entire Cable Service suffers a service outage or interruption exceeding eight hours in duration beyond the time that the Subscriber notified the Cable Operator of the outage. The credit for purposes of determining the amount of the credit or rebate, shall be deemed to be equivalent to or the same as a twenty-four hour service outage. No credit or rebate shall be required where the outage was due to matters beyond the reasonable control of the Cable Operator. In addition:

1. For notifications by a Subscriber after hours, these credit refund requirements shall only apply if three Subscribers have provided notice in a given area:

2. In the case of a regional or area outage, all affected Subscribers shall be due a credit or refund if the Cable Operator is able to reasonably determine the Subscribers affected. If the Cable Operator is not able to reasonably determine the Subscribers affected by a regional or area outage, a credit or refund shall be given to all Subscribers affected by the outage who make a claim for credit or refund within 30 days of the outage:

3. In the case of a Charge for unsolicited service, a Cable Operator shall provide a

~~Subscriber with an adjustment or billing credit on the next available billing statement, and the Subscriber shall not be considered delinquent for failure to pay a Charge for unsolicited service; provided, however, no such adjustment shall be made where the service was not authorized by the Cable Operator.~~

~~11-5-22. Special service requirements: maintain a toll-free telephone number and a phone service operated such that complaints and requests for repairs or adjustments may be received at any time.~~

~~(d) A Cable Operator shall comply with all Federal and State laws and regulations concerning special service requirements for disabled, sight or hearing impaired or ambulatory impaired Subscribers.~~

~~(e) A Cable Operator shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth information concerning the procedures for making inquiries or complaints, including the Cable Operator's name, address and local or toll-free telephone number. To the extent required by applicable law, a Cable Operator shall give the City 30 days' prior notice of any rate increases, channel lineup or other substantive service changes. 11~~

~~(f) A Cable Operator shall abide by any, and all, Subscriber privacy rules or regulations under Federal or State law.~~

~~11-5-23-11-5-15~~ **Preferential or discriminatory pactices Prohibited.**

A Cable Operator shall not deny Cable Service, deny access, or otherwise discriminate, nor subject any person to prejudice or disadvantage on the basis of age, race, creed, color, sex, national origin, handicap, or religious affiliation ~~or location of residence~~. Cable Operators shall not deny Cable Service, or the extension of Cable Service, to any group of potential residential cable Subscribers because of the income of the residents of the local area in which such group resides. The provisions of this section shall not, however, prohibit a Cable Operator from:

~~1.~~ (a) offering a bulk rate discounts or promotional or incentive discount Rate or Charge.

~~2.~~ (b) denying service based on location of residence, if that residence is outside the parameters for line extension, or standard installations, as provided for in this Article or the Cable Operator's Franchise.

~~3.~~ making agreements or entering into Cable Service agreements with multiple dwelling unit owners, including hotel, motel, and mobile park owners, to provide Cable Service under a bulk billing or other type of arrangement.

~~11-5-24. Service inquiry logs.~~ In order to assist the City in assessing the resolution of Subscriber service requests, inquiries and complaints, a Cable Operator shall be required to keep and maintain service logs, subject to any limitations imposed by State or Federal law (including any Subscriber privacy limitations). At a minimum, the service inquiry logs should contain the date and time of the initial receipt of a service request, inquiry or complaint, together with the date and time of the initial response; the nature of the matter; and the precise action taken by a Cable Operator in order to resolve the matter. In addition to any other right of inspection that the City may possess, it shall have the right to review and inspect a compilation of the logs. The City shall not have the right of review or inspection for any logs or any information contained within the logs that are otherwise protected by State or Federal law.

~~11-5-25. Restoration of a subscriber's property.~~ At any time a Cable Operator disturbs the property of a Subscriber, the Cable Operator shall ensure that the Subscriber's property is returned, replaced and/or restored to a substantially similar condition as that in existence prior to the disturbance by the Cable Operator. The costs associated with both the disturbance and the return, replacement and/or restoration shall be borne by the Cable Operator. The requirements imposed upon the Cable Operator extend to any subcontractor or independent contractor employed by the Cable Operator.

~~11-5-26. Voluntary disconnection and downgrades.~~ A Subscriber may at any time request that a particular Service Tier or the entire Cable Service be disconnected. In addition, where different levels of service are offered by a Cable Operator, a Subscriber may request a downgrade from a particular level of service to a less comprehensive or less expensive level of service. Disconnections or downgrades shall be effective as per the Cable Operator's policies, to include any applicable charges for the change in service. Any refund due a Subscriber after downgrade or disconnection (both for non-payment and voluntary) shall be made within 45 days after the downgrade or disconnection.

~~11-5-27. Protection of subscriber privacy.~~ A Cable Operator shall abide by any, and all, Subscriber privacy rules or regulations of the Federal or State governments.

~~11-5-28. Use of public ways.~~

11-5-16 Construction and Use of Public Ways.

All facilities of a Cable Operator shall be located, installed and maintained so as not to endanger or unnecessarily interfere with usual and customary use, traffic and travel upon Public Ways and Easements, and according to any Public Way or Easement use standards established by the City. In addition: —t.—

(a) A Cable Operator shall construct, operate, maintain and repair its Cable System in compliance with all current technical codes adopted by the City, the State and the FCC, as are customary to the cable television industry. To the extent that these are inconsistent with other provisions of a Franchise, or State or local law, then the more stringent shall govern in order to protect the public health, safety and welfare.

(b) A Cable Operator shall obtain all required Permits from the City before commencing any work requiring a Permit, including the opening or disturbance of any Public Way.

2. (c) All facilities of a Cable Operator shall be installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The Cable Operator shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public, to include barricades, flags, lights or other devices as are reasonably required for public safety.

3. (d) A Cable Operator shall use existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on Public Ways without obtaining all Permits required by the City. Any poles or other fixtures placed in any public way by the Cable Operator shall be placed in such a manner as not to interfere with the usual travel on such public way.

4. (e) The Cable Operator shall, at its own expense, restore any damage or disturbance caused to the Public Way as a result of its operation, construction, or maintenance of the Cable System to a condition reasonably comparable to the condition of the Public Way immediately prior to such damage or disturbance.

5. (f) If a Cable Operator's system creates a hazardous or unsafe condition or an unreasonable interference with property, then the Cable Operator shall at its own expense voluntarily, or upon request of the City, remove or move, as appropriate, that part of the system that creates the hazardous condition.

6. (g) A Cable Operator shall not place equipment where it will interfere with the rights of property owners or with other public utility services or any other service facility that benefits the City or its residents' health, safety or welfare.

7. (h) A Cable Operator shall, at its expense, protect Public Ways and Easements, and support or temporarily disconnect or relocate in the same Public Way, any property of the Cable Operator when necessitated by reason of: traffic conditions, public safety, a street closing, street construction or resurfacing, change or establishment of a street grade, installations of other City utility services, or any improvement, construction or repair related to health, safety or welfare. Except in case of Emergency, the City shall provide at least 10 days written notice to the Cable Operator of the need for a relocation or temporary disconnection. In addition, the City shall have the right to remove any of the Cable Operator's facilities in the event of Emergency, and no charge shall be made by the Cable Operator to the City for restoration and repair, unless such acts amount to gross negligence by the City.

8.

(i) If the City elects to alter or change the grade of any Public Ways, the Cable Operator upon reasonable notice from the City, shall relocate any portions of its Cable System impacted by the

City's Public Way alterations, at the Cable Operator's expense.

~~(j) A Cable Operator shall, at the request of any person holding a building moving Permit, temporarily remove, raise or lower the cable wires to allow the moving of the building. The expense of temporary removal shall be lawful permit issued by the City, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Street as necessary any property of the Cable Operator, provided that the expense of doing so is paid by the person requesting it making the request and the Cable Operator is given reasonable advance written notice to prepare for such changes. The Cable Operator may require such payment in advance. The affected Cable Operator shall be given not For purposes of this subsection, "reasonable advance written notice" shall be no less than 10 business days notice of a contemplated move to arrange for temporary wire changes.~~

~~9. in the event of a temporary relocation and no less than 120 days for a permanent relocation.~~

~~(k) A Cable Operator shall have the authority to trim trees in the Public Way at its own expense as may be necessary to protect its wires and facilities.~~

~~10. The City shall have the right to make additional use, for any public purpose, of any poles or conduits controlled or maintained exclusively by or for the Cable Operator in any street or right of way, provided the use by the City does not interfere with the Cable Operator's use. The City shall indemnify and hold the Cable Operator harmless from all claims, demands, causes of action, suits, actions, proceedings, damages, costs or liabilities of every kind whatsoever arising out of the City's such use of the Cable Operator's poles or conduits.~~

~~11. =~~

~~(l) In those areas of the City where transmission or distribution of both telephone and power companies are underground or are later placed underground, a Cable Operator's feeder and s Subscriber drops shall also be placed underground. To the extent reasonably possible, a Cable Operator shall coordinate the joint use of facilities with the telephone and power companies.~~

~~11-5-29. Construction standards. Subscriber drops shall be buried within a reasonable time period, subject to weather conditions.~~

11-5-17 Technical Standards.

A Cable Operator shall comply with any rules and regulations of the FCC concerning technical operation, signal quality, consumer electronics equipment compatibility and performance monitoring.

11-5-18 Emergency Alert System.

~~A Cable Operator shall construct, operate, maintain and repair its Cable System in compliance with all current technical codes adopted by the City, the State and the FCC, as are customary to the cable television industry. Methods of construction, installation or maintenance and repair of any Cable System shall comply with the most current editions of the National Electrical Safety~~

Code, and the National Electric Code, as affects the construction, installation and maintenance of electrical supply and communications line and attachments and supports. To the extent that these are inconsistent with other provisions of a Franchise, or State or local law, then the more stringent shall govern in order to protect the public health, safety and welfare.

~~11-5-30. System expansion.~~ Each Franchise may provide for a build-out and density standard under which the comply with all applicable federal statutes, rules and regulations with respect to Emergency Alert Systems.

11-5-19 Service Area and Expansion.

Cable Service shall be provided as follows:

(a) A Cable Operator shall ~~extend~~make Cable Service ~~within the City~~distributed over its Cable System available, at a charge which does not exceed the Cable Operator's normal rate for standard installations, ~~so long as the installation is~~to every residence within any area within the City where there is a minimum density of at least 30 residences per lineal strand mile of cable as measured from the Cable Operator's closest trunk line or distribution cable that is actively delivering Cable Service as of the date of such request for service; provided, however, (i) such installation shall be financially and technically feasible. ~~The Cable Operator may extend service to~~ Subscribers which do not meet the density standard if the Subscriber(s) are willing to pay or share the capital costs of expanding the Cable System along with, (ii) the Cable Operator's normal rate for standard installations.

~~11-5-31. Emergency alert system; standby power.~~ In order that Subscribers may be alerted in the event of an impending, imminent or actual Emergency, and in addition to the Federal emergency alert standards Operator shall have legal access to the Subscriber's location, and (iii) the Subscriber shall be within 125' of the Cable Operator's existing distribution system.

(b) Notwithstanding the above, a Cable Operator shall ensure that its system is designed to permit the override of the audio portion of all Channels by authorized personnel at the Central Communications Center operated by Scotts Bluff County. In addition, a Cable Operator shall: — 1. — maintain all Channel video blanking ability to facilitate the needs of hearing and sight-impaired Subscribers; — 2. — test the Subscriber override system at the request of the Central Communications Center which shall not be more frequent than once a month, and — 3. — cooperate with the City on the use and operation of the emergency override system.

~~11-5-32. Franchise required.~~ have the right, but not the obligation, to extend the Cable System into any other area of the City and to make Cable Service available to residential subscribers or to businesses, upon such terms and conditions as determined by the Cable Operator.

11-5-20 Franchise.

No person or Entity, other than the City, shall be permitted to construct, operate or maintain a Cable System where any part of the Cable System's facilities to occupy or cross Public Ways

without first having entered into a Franchise. With respect to all Franchises:

1. (a) The City may award one or more non-exclusive Franchises; provided, however, anytime (i) a Franchise is issued, (ii) the City otherwise grants a permit to a Video Programming Provider, which contains terms that are more favorable to a particular Cable Operator or Video Programming Provider, or (iii) the City constructs, operates, or maintains its own Cable System within the City limits, then the City shall, within 30 days of a written request from another Cable Operator or Video Programming Provider, modify that Cable Operator's Franchise or Video Programming Provider authorization to insure that the obligations applicable to any one Cable Operator or Video Programming Provider are no more burdensome than those imposed on one or more competing Cable Operators or Video Programming Providers or the City's own Cable System. If the City fails to make modifications consistent with this requirement, the requesting Cable Operator's Franchise or Video Programming Provider's authorization shall be deemed so modified 30 days after the initial written request.

2. (b) An Applicant shall be selected as part of a public proceeding and hearing which affords due process to both the City and the Cable Operator. If the Applicant is selected as a Cable Operator, then the Applicant will enter into a Franchise agreement with the City.

3. (c) Unless prohibited by law, the City reserves the right to construct, operate or maintain its own Cable System within the City limits. ~~The City shall not be required to submit a proposal for, or receive, a Franchise in order to do so.~~

11-5-33. Franchise agreement. provided the city shall regulate all Cable Operators, Video Programming Providers, and its own Cable System in a competitively neutral and nondiscriminatory manner.

(d) If the Council awards a Franchise to an Applicant ~~in all or part of the City~~, or approves a proposal for renewal of a Franchise, then a Franchise agreement shall be ~~entered into~~ signed. A newly franchised Cable Operator may not lay any cable until the Franchise agreement is executed by the Cable Operator and the City. At a minimum, a Franchise agreement shall contain provisions for the following: —

(1. —) the term or duration of the Franchise; —

(2. —) an agreement to comply with this Article; —

(3. —) any applicable construction, upgrade or rebuild schedule; and —

(4. —) any applicable build-out and density standard.

=

11-5-34. Extent of grant of franchise. (e) Upon entering into a Franchise, a Cable Operator may construct, install, maintain, operate, repair, replace, remove, or restore a Cable System within the City. In so doing: —

~~(1. —) The Cable Operator may utilize the Public Ways and those Easements dedicated to the public use.~~

~~(2. —) The Cable Operator shall be responsible for obtaining its own Easements for private property and pole attachment agreements with other utilities.~~

~~11-5-35.~~

~~Franchise term and renewal:~~

~~(f) The term of a Franchise may be for a period not to exceed 10 years from the date that a Franchise, or a Franchise renewal, is approved by the Council. Proceedings for the renewal of a Franchise shall be governed by the applicable provisions of the Cable Act.~~

~~11-5-36. Franchise application. The City may develop rules and regulations with respect to the submission and processing of applications for a Franchise. The rules and regulations shall primarily be aimed at determining the legal, financial, technical and character qualifications of the applicant.~~

~~11-5-37. Franchise fees.~~

11-5-21 Franchise Fees.

Each Cable Operator shall pay to the City a Franchise Fee equal to ~~4%~~5% of the Gross Revenues of the Cable Operator. The City reserves the right at any time, upon 90 days' notice to all Cable Operators, to amend this section so as to increase the Franchise Fee to the maximum rate allowable under Federal law, in the event that the maximum rate is increased. It is intended that the Franchise Fees will promote the health, safety and welfare of the citizens of the City. Accordingly, the Franchise Fee shall be deposited into the general revenues of the City, unless otherwise specified.

~~1. (a) The Franchise Fees may be passed through to Subscribers as a line item on Subscriber bills or otherwise, consistent with Federal law.~~

~~2. (b) Within 45 days after the end of each Reporting Quarter, a Cable Operator shall file with the City a detailed financial and revenue report showing the Gross Revenues received by the Cable Operator for operations within the City during the preceding Reporting Quarter. The report shall be in a form approved by the City. The report shall include Gross Revenue from all sources upon which a Franchise Fee is payable, directly or indirectly derived from the operation of the Cable System, or the provision of any Cable Service by or to the Cable System. Gross Revenue may be reported in the aggregate by general service type or source.~~

~~3. (c) In the event that payment is not made within 60 days after the end of a Reporting Quarter, then the Cable Operator may be declared in default of the Franchise, and the City may take action against the Cable Operator as authorized in this Article.~~

~~4. (d) The acceptance of any payment shall not be construed as a release of, or an accord or satisfaction of, any claim that the City might have for further or additional sums payable~~

under the terms of this Article, or for any other performance or obligation of a Cable Operator.

~~5.~~ (e) Payments of compensation made by a Cable Operator to the City pursuant to this Article shall be considered in addition to any and all taxes of general applicability owed to the City by the Cable Operator that are not included as Franchise Fee under Federal law.

~~6.~~ (f) A Franchise Fee shall not be payable on any Gross Revenue source(s) which are excluded by Federal law.

~~11-5-38.~~

11-5-22 Assignment of Franchise.

A Cable Operator's Franchise may not be assigned in whole or in part without the City's prior written approval. For purposes of this paragraph, "Assigned" "Assigned" or "Assignment" "Assignment" shall mean the transfer, sale, or any other form of assignment of a Cable System, to include any transaction or action which effectively or actually changes ownership from one person or Entity to another to include the transfer of 50% or more of the ownership interest of an Entity or the parent of an Entity. Any attempted Assignment without prior written approval shall constitute a default in the Franchise. A proposed Assignment shall be subject to the following:

~~1.~~

(a) At least 120 days before a proposed Assignment is scheduled to become effective, the Cable Operator shall make a written request to the Council for the City's approval of the proposed Assignment. ~~2.~~

(b) The City will not unreasonably withhold its consent to an Assignment. However, in making its determination, the Council ~~may~~ shall consider the following criteria:

- ~~a.~~ legal, financial and technical qualifications of the proposed assignee;
- ~~b.~~ financial ability and stability of the proposed assignee;
- ~~c.~~ the experience of the proposed assignee which may include conducting an investigation of the proposed assignee's service record in other communities;
- ~~d.~~ legal integrity of the proposed assignee or transferee;
- ~~e.~~ if requested by the Council, submittals from the proposed assignee concerning any changes it intends to make in the operation and maintenance of the present Cable System;
- ~~f.~~ the corporate connection, if any, between the Cable Operator and the proposed assignee;
- ~~g.~~ the economic viability or non-viability of the Cable System in the future; based upon certain factors including the impact of the purchase price on the City and/or the proposed assignee; and
- ~~h.~~ any other aspect of the proposed assignee's background which could affect the health, safety and welfare of the citizenry of the City as it relates to the operation of the Cable System.

~~3.~~

(c) Nothing in this section shall restrict the City from considering ~~other criteria, and in particular,~~ any criteria established under State or Federal law, rule or regulation.

~~4.~~ (d) Before an Assignment is approved by the City, the proposed assignee shall sign a statement indicating that it has read, understands, and intends to abide by any existing Franchise agreement.

~~5.~~ (e) The City may include certain amendment(s) to the Franchise or this Article as a condition to the Assignment; provided, however, any such amendment(s) shall either (i) be by mutual agreement between the City and the proposed assignee, or (ii) shall not have a material adverse effect on the rights and obligations of the Cable Operator under the Franchise.

~~6.~~ (f) In the event of any approved Assignment, the assignee shall assume all obligations and liabilities of the former Cable Operator.

~~7.~~ (g) The City's consent to an Assignment shall not relieve the former Cable Operator of its liability under the Franchise agreement until the Assignment actually takes place unless specifically relieved by Federal or State law or by the Council at the time an Assignment is approved. In the event of an Assignment, the former Cable Operator shall remain liable for any Franchise Fees incurred as of the time that the Assignment is effective for the period governed by the applicable statute of limitations.

~~8.~~ (h) If the Cable Operator has provided the City with all information as required by this section or the FCC in a timely manner, and the City has not taken action on the Cable Operator's request for transfer within 120 days after receiving such request, consent by the City shall be deemed given.

Consent shall not be required for an Assignment to a wholly-owned subsidiary Entity of a Cable Operator or the current parent Entity of a Cable Operator, whether the ownership is direct or indirect, such as through other wholly-owned intermediate subsidiaries. In addition, consent shall not be required for the granting of a security interest in the Cable Operator's system including its Franchise. However, if the holder of the security interest repossesses, forecloses or takes other action concerning its collateral, it shall dispose of the Cable System within a reasonable period of time and the disposition by the holder of the security interest shall be considered an Assignment subject to the provisions of this section.

~~11-5-39.~~

11-5-23 Educational and governmental Access.

To the extent permitted by law, and in order to fulfill a public, educational and governmental access policy that will facilitate the long range needs of the Community City, each Cable Operator shall 17

provide at its own expense PEG Channels as follows: ~~1. Two twenty-four hour per day educational Channels shall be provided within the Community, one for the use of the City of~~

Scottsbluff schools and one for the City of Gering schools:

~~2. One twenty-four hour per day PEG Channel shall be provided within the Community for use by various governmental subdivisions. If at any time, 90% of the total time allocated for this PEG Channel is consistently used 5 days a week for a period of 6 months, then the one PEG Channel under the control of the City. The following shall apply to the PEG Channel:~~

~~(a) The City is solely responsible for the content it provides over the PEG Channel. The Cable Operator shall provide and not exercise any editorial control over any programming of the PEG Channel and shall also not be subject to any civil or criminal liability for any programs carried on the PEG Channel.~~

~~(b) The PEG Channel may be placed on any tier of service available to all Subscribers, including the digital tier. The City shall provide programming on the PEG Channel to occupy 70% of the hours between 11 a.m. and 11 p.m. for any twelve consecutive week period. In the event that the above the programming levels are not maintained or if the City does not adequately use the channel, the Cable Operator reserves the right to have the channel returned to the Cable Operator for the Cable Operator's use. If at any later time, which must be at least one year from the return of the PEG Channel to the Cable Operator, the City desires to utilize the PEG Channel, it may notify the Cable Operator of its desire to do so, and the PEG Channel shall be made available to the City within 30 days of the request. The above programming requirements shall apply with respect to continuance of the PEG Channel by the City.~~

~~(c) If the City is utilizing the PEG Channel and is also using any of the following locations for signal input, signal input locations shall be provided at City Hall. Only those signal input locations actually being used shall be required.~~

~~(d) Cable Operators may interconnect their cable systems for the purpose of sharing PEG access programming, provided that the Cable Operators are able to reach agreement for the interconnection. Nothing in this paragraph should be construed as requiring a Cable Operator to add additional PEG Channel. The use of this additional Channel may be reviewed every 6 months at the request of the Cable Operator. If after any 6 month period, the combined use of the original and added PEG Channel has dropped so that if the two Channels were combined, the usage would not justify more than one Channel under this subsection, the requirement for the additional PEG Channel shall cease until the criteria for the additional PEG Channel is met once again.~~

~~3. A Cable Operator shall provide up to six hours of technical assistance within a calendar year for each school or political subdivision without charge. Additional technical assistance shall be provided at the Cable Operator's cost.~~

~~The provision of PEG Channels shall include the installation of one modulator per each governmental User of a PEG Channel. Installation shall be considered as complete when the governmental User's system is operational.~~

~~11-5-40. Public service. Channels.~~

~~11-5-24 Public Service.~~

A Cable Operator shall furnish, upon request, ~~one outlet for each public school building, municipal office building, public library, fire station, police station and courthouse which is passed by the Cable Operator's Cable System. Basic Cable Service and the next additional Service Tier shall be provided at no charge. An initial connection will be made at no charge with additional connections to be made for the cost of time and materials only. If necessary for a television with a standard digital tuner to receive the service level provided at no charge, then one Converter shall be provided for each such television within these~~ and subject to applicable law, one outlet for public buildings, up to as identified in a maximum of five Converters per building Cable Operator's Franchise. With respect to this service: ~~1.~~

(a) The Cable Service provided pursuant to this section shall not be used for commercial purposes and shall not generally be available for public viewing. The City shall take reasonable precautions to prevent any use of the Cable System that results in the inappropriate use or any loss or damage to the Cable System.

~~2.~~ (b) The City shall hold the Cable Operator harmless from any and all liability or claims arising out of the provision and use of Cable Service to City buildings.

~~3.~~ The Cable Operator shall not be required to provide an outlet to any such building where a standard drop of more than 125 feet is required, unless the City or building owner/occupant agrees to pay the incremental cost of any necessary extension or installation.

~~11-5-41. Technical standards. A Cable Operator shall comply with any rules and regulations of the FCC concerning technical operation, signal quality and consumer electronics equipment compatibility. Unless a Cable Operator can demonstrate that it is both technologically and economically unfeasible, programming services shall be delivered by the use of addressable technology allowing Cable Service levels to be changed without the expense (either to the Operator or a Subscriber) of a separate trip or call.~~

~~11-5-42. Default.~~ 18

11-5-25 Default.

When a Cable Operator violates a provision of this Article, or acts so as to compromise the ~~or~~ legal, financial or technical integrity and/or stability of the Cable System or the Cable Operator itself, in either case, to a degree that the interests of the Subscribers ~~and Users~~ are negatively affected, then a Cable Operator shall be considered in default of this Article.

1. (a) Examples of a default shall include, but are not limited to: bankruptcy (except for a reorganization as long as the Cable Operator is in compliance with an approved plan or other court order), insolvency, failure to pay taxes or Franchise Fees, failure to receive written City approval for an Assignment, or failure to substantially abide by the terms and conditions of the Franchise agreement or this Article: to include the failure to operate its Cable System. Provided:

(1) It is not the City's intention to subject a Cable Operator to penalties, fines, forfeitures or revocation of a Franchise for violations where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the City, or where strict performance would result in practical difficulties and hardship to a Cable Operator which outweighs the benefit to be derived by the City and/or Subscribers.

(2) Events in the nature of force majeure or conditions which cannot be corrected because they are matters reasonably beyond the immediate controlability of the affected Cable Operator to anticipate and control shall not be considered a default. This provision includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, work delays caused by failure of utility providers to service, maintain or monitor their utility poles to which a Cable Operator's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary; provided, however, such noncompliance shall only be excused for as long as the Cable Operator is reasonably pursuing compliance.

2. (b) In the event that a default occurs, the City shall provide written notice of the default to the affected Cable Operator. The notice of default shall specify the violation(s).

3. (c) The Cable Operator shall have 30 days from the receipt of the written notice to bring itself into compliance so that it is no longer in default of its Franchise or this Article, as the case may be; provided, however, if by the nature of default, the default cannot be cured within this 30 day period, the Cable Operator shall initiate reasonable steps to remedy the default and notify the City of the steps being taken and the projected date that they will be completed.

4. (d) If the Cable Operator fails to cure its default within the time period provided for above, the matter shall be set for public hearing before the Council to be held within 75 days after the notice of default was mailed to the Cable Operator. Written notice of the time and place of the public hearing shall be sent to the Cable Operator at least ~~15~~20 days prior to the date of the hearing.

5. (e) At the hearing, the Cable Operator shall have an opportunity to state its position on the

matter, present evidence and question witnesses. If the Cable Operator fails to attend the hearing where a continuance of the hearing has not been granted by the Council, then the Cable Operator may be declared in default of the Franchise agreement.

6. (f) If the default has not been resolved by the time of or as a result of the hearing, the Council may, after the public hearing, direct the Cable Operator to take corrective action within a specified period of time, or may declare the Cable Operator in default of the Franchise agreement, and revoke or terminate the Franchise. The Council's action shall be delivered to the Cable Operator in writing within 15 days of the Council's action.

7. (g) If the Council directs corrective action to be taken and the Cable Operator does not rectify the default within the time specified, then the Council may without further notice declare the Cable Operator to be in default and revoke or terminate the Franchise.

8. (h) If the Cable Operator fails to comply with any determination by the Council, which determination is not stayed or overturned by order of an appropriate court, then the City shall have any and all remedies available to it by law, provided the Cable Operator may continue to operate the Cable System until all legal appeals procedures have been exhausted.

~~11-5-43. Federal legislation, rules and regulations, franchise subject to amendment.~~

11-5-26 Removal of Cable System.

(a) In the event of termination or forfeiture of the a Franchise Agreement or abandonment of a Cable Operator's Cable System, the City may require the Cable Operator to remove all or any portion of its Cable System from all Public Ways, provided, however, that the Cable Operator will not be required to remove those portions of its Cable System required to provide telecommunications services or other non-cable service to the extent that the Cable Operator lawfully provides telecommunications services or other non-cable service over the Cable System.

(b) If a Cable Operator has failed to commence removal of its Cable System, or such part as designated by the City, within 120 days after written demand for removal is given, or if the Cable Operator has failed to complete such removal within twelve months after written demand for removal is given, the City may apply funds secured by the Franchise agreement toward removal.

11-5-27 Federal Legislation, Rules and Regulations; Franchise Subject to Amendment.

In addition to any requirements contained within this Article, all Cable Operators shall be expected to comply with all applicable provisions of the Cable Act and all other federal laws directed at controlling or regulating Cable Operators, and any rules and regulations issued pursuant to those laws. In addition, any Franchise issued pursuant to this Article shall be subject to amendment by mutual agreement of the parties to incorporate any applicable Federal legislation, rules or regulations which become effective after the date of the Franchise.

~~11-5-44.~~

11-5-28 Inter-Governmental Cooperation.

In the event that a Cable System serves areas outside the jurisdiction of the City (to include the Community), then the various jurisdictions or governmental subdivisions shall have the right to enter into one or more agreements concerning the matters covered by this Article. By way of example, it is contemplated that the members of the Community may enter into one or more agreements to assist them in regulating ~~Cable Operators~~administering Franchises. These agreements may include, but shall not be limited to, the following general areas:—

- 1.— Allocation of the total Franchise Fee collected from the Cable System between the various governmental subdivisions.
- 2.— The Review and evaluation of (i) proposals to provide Cable Television Service, or (ii) requests for renewal of existing Franchises.
- 3.— Evaluations of a Cable Operator's performance.
- 4.— PEG Channel use.

~~Except as may be prohibited by law, a Cable Operator shall honor any agreements entered into pursuant to this section.~~

~~11-5-45.~~

11-5-29 Tampering and unauthorized reception of certain signals.

No person shall intercept or receive, or assist in intercepting or receiving, any communications service offered over a Cable System, unless specifically authorized to do so by a Cable Operator, or as may otherwise be specifically authorized by law.

1.— (a) For purposes of this section, the term "~~assist~~assist in intercepting or receiving" shall include the manufacture or distribution of equipment intended by the manufacturer or distributor for the unauthorized reception of Cable Service.

2.— (b) Without securing permission from a Cable Operator, or making payment to a Cable Operator, then no person shall be authorized to make any connection with any part of a Cable System for the purpose of receiving or intercepting; or assisting others to receive or intercept any Cable Service provided lawfully by a Cable Operator.

3.— (c) No person shall be authorized to willfully tamper with, remove or damage any facilities used for the distribution of Cable Service.

4. (d) Any violation of this section ~~is a Class I violation.~~

~~11-5-46. Severability.~~ shall constitute a misdemeanor and upon conviction shall be subject to a fine of up to \$100. Each day that the violation continues shall be considered a separate offense.

11-5-30 Severability.

The provisions of this Article will be deemed severable, and if any provision of this Article is held illegal, void, or invalid under applicable law, that provision may be changed to the extent reasonably necessary to make the provision legal, valid and binding. If any provision of this Article is held illegal, void or invalid in its entirety, the remaining provisions of this Article will not be affected.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SCOTTSBLUFF, NEBRASKA, AMENDING THE MUNICIPAL CODE BY AMENDING CHAPTER 11, ARTICLE 5, DEALING WITH CABLE TELEVISION SYSTEMS AND THE ISSUANCE OF FRANCHISES TO OPERATORS OF CABLE TELEVISION SYSTEMS, ALLOWING FOR THE USE OF RIGHTS-OF-WAY FOR CABLE TELEVISION SYSTEMS, AND REPEALING PRIOR PROVISIONS OF THE MUNICIPAL CODE WHICH ARE INCONSISTENT WITH THIS ORDINANCE, PROVIDING FOR PUBLICATION IN PAMPHLET FORM AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SCOTTSBLUFF, NEBRASKA:

Section 1. Chapter 11 of the Scottsbluff Municipal Code is amended by revising a new Article 5 Cable Television, as follows:

“11-5-1 Purpose.

The purpose of this Article is to:

- (a) establish a local policy concerning cable television;
- (b) establish Franchise procedures and standards which encourage the growth and development of Cable Systems which assure that Cable Systems are responsive to the needs and interests of the City;
- (c) establish guidelines for the exercise of local authority with respect to the regulation of Cable Systems;
- (d) establish an orderly process for Franchise renewal which protects Cable Operators against unfair denials of renewal where an Operator’s past performance and proposal for future performance meet the standards set by the FCC and this Article;
- (e) promote competition in cable communications and minimize unnecessary regulations that would impose undue burdens on Cable Systems;
- (f) provide for access and inspection of a Cable Operator’s records in order to monitor compliance with local, State and Federal laws, and any Franchise agreement;
- (g) enforce customer service standards;
- (h) provide a construction and installation policy for a Cable Operator’s system;
- (i) provide for the health, safety and welfare of the citizens of the City in light of the Cable Operator’s construction, operation and maintenance;

- (j) provide for emergency override capability, so that citizens of the City may be warned of a potential, imminent, or actual Emergency situation that exists in the area;
- (k) create a procedure for collecting and monitoring Franchise Fees; and
- (l) create a default and revocation procedure for Cable Operators.

11-5-2 Definitions.

As used in this Article or in any Franchise issued pursuant to this Article, the following terms shall have the following definitions:

- (a) "Affiliate" means another person or Entity who owns or controls, is owned or controlled by, or is under common ownership or control with, the person or Entity.
- (b) "Applicant" means a person or Entity submitting an application or proposal to the City for a Franchise to operate a Cable System under the terms and conditions of this Article and any State or Federal regulations.
- (c) "Auxiliary Equipment" means equipment supplied by a Cable Operator which enhances or assists in the reception or provision of Cable Service.
- (d) "Basic Cable Service" means any Service Tier which includes the retransmission of local television broadcast signals.
- (e) "Cable Act" means the Cable Communications Policy Act of 1984, as amended, which is codified as 47 U.S.C. §§ 521, et. seq., or any future federal legislation concerning the subject matter provided for in the Cable Act.
- (f) "Cable Operator" means any person or Entity which:
 - (1) provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in that Cable System; or
 - (2) otherwise controls or is responsible for, through any arrangement, the management and operation of a Cable System.
- (g) "Cable Service" means:
 - (1) the one-way transmission to Subscribers of: (i) Video Programming or (ii) Other Programming Service; and
 - (2) Subscriber interaction, if any, which is required for the selection or use of Video Programming or Other Programming Service.

(h) "Cable System" means a facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service which includes Video Programming, and which is provided to multiple Subscribers within the City; provided, however, this shall not include:

- (1) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations;
- (2) a facility that serves Subscribers without using any Public Way;
- (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the Cable Act, except that the facility shall be considered a Cable System (other than for purposes of § 621(c) of the Cable Act) to the extent the facility is used in the transmission of Video Programming directly to Subscribers; unless the extent of such use is solely to provide interactive on-demand services.
- (4) an open video system that complies with § 653 of the Cable Act.
- (5) any system exempted under the Cable Act.

(i) "Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel.

(j) "Charge" means a one-time or non-regularly occurring cost paid by the Subscriber, and which is associated with the installation, maintenance, service or repair of the Cable Service.

(k) "City" means the City of Scottsbluff, Nebraska and includes any areas annexed to the City after this date. "Council" means the City Council of the City of Scottsbluff. "Mayor" means the Mayor of the City of Scottsbluff. "City Manager" means the City Manager of the City of Scottsbluff.

(l) "Community" shall mean the geographic area within the municipal limits of Gering, Nebraska, Terrytown, Nebraska and Scottsbluff, Nebraska and any portions of Scotts Bluff County, Nebraska, which are served by a Cable System serving any portion of those municipalities or county.

(m) "Emergency" means an imminent, impending, or actual natural or humanly induced situation where the health, safety or welfare of all, or a representative portion, of the residents of the City is threatened. An Emergency (by illustration) may include a snowstorm, flood, tornado, severe thunderstorm, hazardous waste infiltration, petroleum, munitions or nuclear explosion, or aircraft crash.

(n) "Easement" means and shall include any public easement or other compatible use created by dedication or by other means, to the City for public utility or other purposes including cable television. "Easement" shall include a private easement used for the provision of Cable Service.

(o) "Entity" shall mean a partnership, joint venture, corporation, limited liability company or such other form of conducting business authorized by State law.

(p) "FCC" means the Federal Communications Commission or any successor governmental entity.

(q) "Franchise" means the authorization issued by the City which authorizes a non-exclusive right to construct, operate and maintain a Cable System within the City.

(r) "Franchise Fee" includes any tax, fee, or assessment of any kind imposed by the City on a Cable Operator or Subscriber, or both, solely because of their status as such. "Franchise Fee" does not include:

(1) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Cable Operators or their services but not including a tax fee, or assessment which is unduly discriminatory against Cable Operators or Subscribers);

(2) Agreed upon capital costs incurred by the Cable Operator for PEG, or governmental access facilities;

(3) requirements or charges incidental to the awarding or enforcing of a Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages; or

(4) any fee imposed under the copyright laws of the United States.

(s) "Gross Revenue" means any revenue, as determined in accordance with generally accepted accounting principles, received by a Cable Operator from the operation of a Cable System within the City. Gross Revenue does not, however, mean (i) any taxes, fees or assessments collected by a Cable Operator from Subscribers for pass-through to a government agency (including sales taxes, Franchise Fees or FCC user fees); (ii) unrecovered bad debt or bona fide credits, refunds and deposits paid to Subscribers; (iii) revenues from activities exempted under the Cable Act or by the FCC, and (iv) PEG Channel Support recovered from Subscribers.

(t) "Other Programming Service" means information that a Cable Operator makes available to all Subscribers generally.

(u) "PEG Channel" means a public, educational or governmental Channel which is carried on a Cable System.

(v) "Permit" means a written authorization issued to a Cable Operator by the City, other than a Franchise.

(w) "Public Way" means any public street, public place, public Easement or right-of-way dedicated to the public use.

(x) "Reporting Quarter" shall mean a Cable Operator's fiscal quarter as reported to the City. If a Cable Operator does not report to or notify the City concerning the dates of its fiscal quarters, then the "Reporting Quarters" for a Cable Operator shall be considered to be the periods ending on the last day of March, June, September and December of each calendar year.

(y) "School" shall mean any K-12 school operated within the City by any public school system.

(z) "Service Tier" means a category of Cable Service or Other Services provided by a Cable Operator, and for which a separate rate is charged.

(aa) "State" means the State of Nebraska.

(bb) "Subscriber" means a person lawfully receiving Cable Service delivered by a Cable Operator.

(cc) "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

(dd) "Video Programming Provider" means a provider of Video Programming which is authorized by the City or applicable law to utilize the Public Way to provide video programming to residents of the City.

It is intended that the definitions of any of the terms which are also defined in the Cable Act be consistent with the corresponding Cable Act definitions. In the event that it is determined that any of the above definitions are inconsistent with the Cable Act, then the definitions contained in the Cable Act shall control.

11-5-3 Administration; delegation of powers and authority.

Unless prohibited by Federal or State law, the Council may delegate its powers and authorities with respect to a Cable Operator to one or more duly authorized representatives of the City, including the Mayor, the City Manager, a Cable Advisory Committee or an outside consultant; provided, however, the Council may never delegate its power to franchise or to revoke a Franchise to another person.

11-5-4 Cable Operator; applicability.

Unless exempted entirely or in part from this Article or any of its provisions or granted relief by the Council from any of its provisions, then this Article shall be applicable to all Cable Operators.

11-5-5 Video Programming; exemptions.

A provider of Video Programming shall not be considered as a Cable Operator and subject to this Article if the provider does not use or cross any Public Way. An exempted person or Entity remains exempted only as long as it meets the above criteria. An exempted person or Entity is, however, expected to abide by, and comply with, any other applicable City, County, State and Federal laws and regulations, including any applicable Federal or State consumer protection or consumer service laws and regulations.

11-5-6 Same; request for relief by Cable Operator.

Any Cable Operator may file a written petition, at any time, with the City requesting relief from one or more provisions of this Article. The relief requested may specifically include the delay in implementation (as to the petitioning Cable Operator only) of one or more provisions of this Article. In order to receive any relief from one or more of the provisions of this Article, a Cable Operator must satisfactorily demonstrate to the Council that at least one of the following facts exist:

- (a) the provision and/or requirement is expressly prohibited by Federal law, the FCC or State law; or
- (b) that the provision in question materially affects, and is in conflict with an expressed right that is specifically noted in an existing Franchise agreement (but only for the term of the existing Franchise); or
- (c) that the imposition of the provisions and/or requirements will create an undue economic hardship on the Cable Operator so as to imperil or eliminate the Cable Operator's ability to provide Cable Service to a majority of current Subscribers.
- (d) As an alternative to requesting relief, a Cable Operator may petition for clarification as to the precise intent and effect that one or more provisions or sections of this Article has on the petitioning Cable Operator.

If the Council grants relief to a Cable Operator, then the Franchise agreement shall be amended to reflect the extent of the relief.

11-5-7 Inconsistencies with Federal or State Law.

If any provision or section of this Article is inconsistent with any provision or section of a Federal or State rule, regulation, or law, then the Federal or State rule, regulation, or law shall control.

11-5-8 Notices.

Each Franchise shall designate the City's and the Cable Operator's contact person to receive notices, filings, reports, records, documents and other correspondence. All notices shall be delivered to each party's contact person either by personal service with signed receipt of delivery, certified or registered mail, return receipt requested, or by recognized overnight delivery service with receipt verification. All other filings, reports, records, documents, and other correspondence may be delivered by any permissible means including, but not limited to: personal service, overnight mail, email or facsimile. Delivery shall be deemed to have occurred at the time of receipt.

11-5-9 Indemnity.

Each Cable Operator shall defend, indemnify, and hold harmless the City, its officials, authorized agents and employees from any and all penalty, damage, or loss arising out of claims, suits, demands, causes of action, or award of damages which might be claimed now or in the future, which arise out of, or are caused by, the construction, erection, location, products performance, operation, maintenance, repair, installation, replacement, removal or restoration of the Cable System within the City by a negligent act or omission of the Cable Operator, its authorized agents or employees, contractors, or authorized representatives; provided, however, the Cable Operator shall not be obligated to indemnify the City for any penalty, damage or loss resulting from the willful misconduct or negligence of the City or from any use of the Cable System by the City (to include the use of PEG channels). Reasonable attorney's fees, consultant's fees, expert witness fees and other expenses of litigation are included, except as set forth in subsection (d) below, as those costs which may be recovered by the City. With respect to any request for indemnification made to a Cable Operator by the City:

- (a) The City shall give the Cable Operator written notice of its obligation to indemnify the City at least 10 calendar days prior to the deadline for responding to the claim or action, and if no such deadline exists, within 30 days of receipt of written notification of a claim or action.
- (b) The Cable Operator shall then have the right to defend, settle or compromise any such claims at the Cable Operator's expense and with the assistance of counsel of the Cable Operator's choice. The City shall provide reasonable cooperation in connection with the defense subject to the Cable Operator's obligation to reimburse the City for actual out-of-pocket expenses incurred by the City as the result of a request by the Cable Operator.
- (c) If the Cable Operator fails to defend a claim within a reasonable time, the City shall be entitled to assume the defense and the Cable Operator shall be bound by the results and shall be liable to the City for the damages incurred by the City to include the costs referred to above as recoverable by the City.
- (d) If a Cable Operator obtains counsel for the City, and/or its officials, agents and employees, then any one of them shall have the right to approve counsel, which approval

shall not be unreasonably withheld. The City, its officials, agents and employees shall have the right to retain counsel of their own at their own expense.

11-5-10 Insurance.

A Cable Operator shall secure and maintain, for as long as it provides Cable Service, insurance coverage (the "Insurance") in at least the following limits:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$2,000,000 per occurrence, Combined Single Liability (C.S.L.) \$2,000,000 General Aggregate
Auto Liability including coverage on all owned and non-owned hired autos	\$1,000,000 per occurrence C.S.L.
Umbrella Liability	\$1,000,000 per occurrence C.S.L.

- (a) The Insurance shall specifically include the City as an additional insureds with respect to any liability arising out of the Cable Operator's performance.
- (b) The Insurance shall be issued by one or more companies licensed to do business in the State.
- (c) The Insurance shall contain an endorsement obligating the insurance company to furnish the City with reasonable written advance notice of the cancellation of the insurance.
- (d) Before a Cable Operator provides Cable Service, the Cable Operator shall deliver the policies or certificates representing the Insurance to the City. Renewal or replacement policies or certificates shall be delivered to the City prior to the expiration of the then existing Insurance.

11-5-11 Performance Bond.

A Cable Operator shall comply with the following bonding requirements:

- (a) A construction/completion bond shall be furnished prior to the time that a Cable Operator commences a construction, upgrade, rebuild, or repair/maintenance project that has a capital construction cost or outlay exceeding \$50,000 in value where the construction takes place in one or more Easements or in the Public Way; provided, however, the following shall not be considered in determining whether a project exceeds \$50,000: (i) the cost attributable to any portion of the construction that utilizes aerial facilities consisting of existing poles owned by the Cable Operator or other utilities, or (ii) construction within a new subdivision where the construction of facilities is coordinated with the developer of the subdivision. The amount of the bond shall equal at least 90% of the projected capital construction cost or outlay, but shall

not exceed \$250,000. The construction/completion bond shall remain in force at all times until one year after completion of construction as determined by the City, unless relief is granted, or a reduction schedule is detailed in an agreement between the City and the Cable Operator.

(b) Any construction/completion bond shall specifically guarantee that a Cable Operator will timely abide by its construction, upgrade, rebuild, or repair/maintenance schedule for the Cable System and/or any time table for technical and service improvements or additions to the Cable System as may be committed to, or agreed upon, from time to time by the City and the Cable Operator.

(c) If the City draws on a bond as a result of a Cable Operator's failure to timely discharge its obligations, or failure to construct and activate the Cable System, or failure to complete a Cable System upgrade or rebuild or repair/ maintenance project, then the Cable Operator shall replenish the bond within 30 days to the level required in this section.

(d) The Council may authorize a Cable Operator to substitute a Cash Deposit, Letter of Credit, or a Guaranty of another person or Entity for any of the bonds provided for in this section; provided, however, the person or Entity providing a Letter of Credit or Guaranty, and the form of the Letter of Credit or Guaranty, shall be subject to the approval of the City Council in its sole discretion.

11-5-12 Furnishing of Reports.

(a) A Cable Operator's schedule of charges for regular Subscriber service, its policy regarding the processing of Subscriber complaints, delinquent Subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Cable Operator's policy in connection with its Subscribers shall be filed with the City upon request.

(b) Upon written request of the City, a Cable Operator shall furnish, at no cost to the City, copies of any or all non-confidential filings with the FCC and the United States Copyright Office within 30 days of the request.

11-5-13 Records.

A Cable Operator shall keep complete and accurate records concerning the business and operations of the Cable System. In addition:

(a) The City by its authorized representatives shall have the right, on reasonable advance written notice, to review all records pertaining to a Cable Operator's cable operations with respect to the City as are reasonably necessary to determine a Cable Operator's compliance with the Franchise. Such notice shall specifically reference the section(s) of the Franchise or the Cable Ordinance for which the review is requested. The Cable Operator agrees that it will furnish the information requested electronically or make it available for the City's review, to the City within 30 days of the request.

(b) Non-revenue financial records will only be requested in the aggregate on a summary prepared by the Cable Operator.

(c) The City acknowledges the sensitivity of a Cable Operator's records and will request this information only on as needed basis and will treat this information as confidential and proprietary to the fullest extent allowed by law. The Cable Operator shall not be required to produce any records in violation of the Cable Act or any other applicable law. Until otherwise ordered by a court or agency of competent jurisdiction, the City agrees that, to the extent permitted by State and federal law, it shall deny access to any of a Cable Operator's records marked confidential to any person.

(d) The City shall have the right to hire, at its own expense, an independent certified public accountant, or other business or financial expert, to review the records of a Cable Operator pertaining to revenue information.

(e) If after a review or audit of a Cable Operator's records, it is discovered that the Cable Operator has underpaid the City by an amount that exceeds the greater of (i) \$2500, or (ii) 3% of the total amount paid for any Reporting Quarter, then the City may require the Cable Operator to reimburse the City for the actual cost of the audit, in addition to the amount of underpayment; provided, however, no such reimbursement shall be required if the reason for the underpayment is due to the annexation of additional areas into the City, for which notification of the annexation was not provided to a Cable Operator.

(f) A cable Operator shall not be required to maintain any records for Franchise compliance purposes longer than 4 years, except for written service complaints, which shall be kept for 1 year.

(g) A Cable Operator shall maintain a full and complete set of plans, records and strand maps showing the location of the Cable System.

11-5-14 Customer Service.

A Cable Operator shall comply with the following customer service requirements:

(a) A Cable Operator shall comply with the customer service standards as provided for in the FCC Regulations, as may be amended from time to time. This Section shall be considered as notice to Cable Operators of the City's election to enforce those standards.

(b) A Cable Operator shall (i) maintain a customer service facility within the boundaries of the City staffed by customer service representatives that have the capacity to accept payment, adjust bills, respond to repair, installation, reconnection, disconnection, or other service calls; distribute or receive converter boxes, remote control units, or other equipment related to the provision of cable or video service; or (ii) provide customers with bill payment facilities through retail, financial, or other commercial institutions located within the boundaries of the City; or (iii) provide an address, toll-free telephone number or electronic address to accept bill payments and correspondence, and provide secure collection boxes for the receipt of bill

payments and the return of equipment, provided that if a Cable Operator provides secure collection boxes, it shall provide a printed receipt when items are deposited; or (iv) provide an address, toll-free telephone number or electronic address to accept bill payments and correspondence, and provide a method for customers to return equipment to the Cable Operator at no cost to the customer.

(c) A Cable Operator shall maintain a toll-free telephone number and a phone service operated such that complaints and requests for repairs or adjustments may be received at any time.

(d) A Cable Operator shall comply with all Federal and State laws and regulations concerning special service requirements for disabled, sight or hearing impaired or ambulatory impaired Subscribers.

(e) A Cable Operator shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth information concerning the procedures for making inquiries or complaints, including the Cable Operator's name, address and local or toll-free telephone number. To the extent required by applicable law, a Cable Operator shall give the City 30 days' prior notice of any rate increases, channel lineup or other substantive service changes.

(f) A Cable Operator shall abide by any, and all, Subscriber privacy rules or regulations under Federal or State law.

11-5-15 Preferential or Discriminatory Practices Prohibited.

A Cable Operator shall not deny Cable Service, deny access, or otherwise discriminate, nor subject any person to prejudice or disadvantage on the basis of age, race, creed, color, sex, national origin, handicap, or religious affiliation. Cable Operators shall not deny Cable Service, or the extension of Cable Service, to any group of potential residential cable Subscribers because of the income of the residents of the local area in which such group resides. The provisions of this section shall not, however, prohibit a Cable Operator from:

(a) offering bulk rate discounts or promotions.

(b) denying service based on location of residence, if that residence is outside the parameters for line extension, or standard installations, as provided for in this Article or the Cable Operator's Franchise.

11-5-16 Construction and Use of Public Ways.

All facilities of a Cable Operator shall be located, installed and maintained so as not to endanger or unnecessarily interfere with usual and customary use, traffic and travel upon Public Ways and Easements, and according to any Public Way or Easement use standards established by the City. In addition:

(a) A Cable Operator shall construct, operate, maintain and repair its Cable System in compliance with all current technical codes adopted by the City, the State and the FCC, as are customary to the cable television industry. To the extent that these are inconsistent with other provisions of a Franchise, or State or local law, then the more stringent shall govern in order to protect the public health, safety and welfare.

(b) A Cable Operator shall obtain all required Permits from the City before commencing any work requiring a Permit, including the opening or disturbance of any Public Way.

(c) All facilities of a Cable Operator shall be installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The Cable Operator shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public, to include barricades, flags, lights or other devices as are reasonably required for public safety.

(d) A Cable Operator shall use existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on Public Ways without obtaining all Permits required by the City. Any poles or other fixtures placed in any public way by the Cable Operator shall be placed in such a manner as not to interfere with the usual travel on such public way.

(e) The Cable Operator shall, at its own expense, restore any damage or disturbance caused to the Public Way as a result of its operation, construction, or maintenance of the Cable System to a condition reasonably comparable to the condition of the Public Way immediately prior to such damage or disturbance.

(f) If a Cable Operator's system creates a hazardous or unsafe condition or an unreasonable interference with property, then the Cable Operator shall at its own expense voluntarily, or upon request of the City, remove or move, as appropriate, that part of the system that creates the hazardous condition.

(g) A Cable Operator shall not place equipment where it will interfere with the rights of property owners or with other public utility services or any other service facility that benefits the City or its residents' health, safety or welfare.

(h) A Cable Operator shall, at its expense, protect Public Ways and Easements, and support or temporarily disconnect or relocate in the same Public Way, any property of the Cable Operator when necessitated by reason of: traffic conditions, public safety, a street closing, street construction or resurfacing, change or establishment of a street grade, installations of other City utility services, or any improvement, construction or repair related to health, safety or welfare. Except in case of Emergency, the City shall provide at least 10 days written notice to the Cable Operator of the need for a relocation or temporary disconnection. In addition, the City shall have the right to remove any of the Cable Operator's facilities in the

event of Emergency, and no charge shall be made by the Cable Operator to the City for restoration and repair, unless such acts amount to gross negligence by the City.

(i) If the City elects to alter or change the grade of any Public Ways, the Cable Operator upon reasonable notice from the City, shall relocate any portions of its Cable System impacted by the City's Public Way alterations, at the Cable Operator's expense.

(j) A Cable Operator shall, at the request of any person holding a lawful permit issued by the City, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Street as necessary any property of the Cable Operator, provided that the expense of doing so is paid by the person making the request and the Cable Operator is given reasonable advance written notice to prepare for such changes. The Cable Operator may require such payment in advance. For purposes of this subsection, "reasonable advance written notice" shall be no less than 10 business days in the event of a temporary relocation and no less than 120 days for a permanent relocation.

(k) A Cable Operator shall have the authority to trim trees in the Public Way at its own expense as may be necessary to protect its wires and facilities.

(l) In those areas of the City where transmission or distribution of both telephone and power companies are underground or are later placed underground, a Cable Operator's feeder and Subscriber drops shall also be placed underground. To the extent reasonably possible, a Cable Operator shall coordinate the joint use of facilities with the telephone and power companies. Subscriber drops shall be buried within a reasonable time period, subject to weather conditions.

11-5-17 Technical Standards.

A Cable Operator shall comply with any rules and regulations of the FCC concerning technical operation, signal quality, consumer electronics equipment compatibility and performance monitoring.

11-5-18 Emergency Alert System.

A Cable Operator shall comply with all applicable federal statutes, rules and regulations with respect to Emergency Alert Systems.

11-5-19 Service Area and Expansion.

Cable Service shall be provided as follows:

(a) A Cable Operator shall make Cable Service distributed over its Cable System available, at a charge which does not exceed the Cable Operator's normal rate for standard installations, to every residence within any area within the City where there is a minimum density of at least 30 residences per lineal strand mile of cable as measured from the Cable Operator's closest trunk line or distribution cable that is actively delivering Cable Service as of the date of such

request for service; provided, however, (i) such installation shall be financially and technically feasible, (ii) the Cable Operator shall have legal access to the Subscriber's location, and (iii) the Subscriber shall be within 125' of the Cable Operator's existing distribution system.

(b) Notwithstanding the above, a Cable Operator shall have the right, but not the obligation, to extend the Cable System into any other area of the City and to make Cable Service available to residential subscribers or to businesses, upon such terms and conditions as determined by the Cable Operator.

11-5-20 Franchise.

No person or Entity, other than the City, shall be permitted to construct, operate or maintain a Cable System where any part of the Cable System's facilities to occupy or cross Public Ways without first having entered into a Franchise. With respect to all Franchises:

(a) The City may award one or more non-exclusive Franchises; provided, however, anytime (i) a Franchise is issued, (ii) the City otherwise grants a permit to a Video Programming Provider, which contains terms that are more favorable to a particular Cable Operator or Video Programming Provider, or (iii) the City constructs, operates, or maintains its own Cable System within the City limits, then the City shall, within 30 days of a written request from another Cable Operator or Video Programming Provider, modify that Cable Operator's Franchise or Video Programming Provider authorization to insure that the obligations applicable to any one Cable Operator or Video Programming Provider are no more burdensome than those imposed on one or more competing Cable Operators or Video Programming Providers or the City's own Cable System. If the City fails to make modifications consistent with this requirement, the requesting Cable Operator's Franchise or Video Programming Provider's authorization shall be deemed so modified 30 days after the initial written request.

(b) An Applicant shall be selected as part of a public proceeding and hearing which affords due process to both the City and the Cable Operator. If the Applicant is selected as a Cable Operator, then the Applicant will enter into a Franchise agreement with the City.

(c) Unless prohibited by law, the City reserves the right to construct, operate or maintain its own Cable System within the City limits, provided the city shall regulate all Cable Operators, Video Programming Providers, and its own Cable System in a competitively neutral and nondiscriminatory manner.

(d) If the Council awards a Franchise to an Applicant, or approves a proposal for renewal of a Franchise, then a Franchise agreement shall be signed. A newly franchised Cable Operator may not lay any cable until the Franchise agreement is executed by the Cable Operator and the City. At a minimum, a Franchise agreement shall contain provisions for the following:

- (1) the term or duration of the Franchise;
- (2) an agreement to comply with this Article;

- (3) any applicable construction, upgrade or rebuild schedule; and
 - (4) any applicable build-out and density standard.
- (e) Upon entering into a Franchise, a Cable Operator may construct, install, maintain, operate, repair, replace, remove, or restore a Cable System within the City. In so doing:
- (1) The Cable Operator may utilize the Public Ways and those Easements dedicated to the public use.
 - (2) The Cable Operator shall be responsible for obtaining its own Easements for private property and pole attachment agreements with other utilities.
- (f) The term of a Franchise may be for a period not to exceed 10 years from the date that a Franchise, or a Franchise renewal, is approved by the Council. Proceedings for the renewal of a Franchise shall be governed by the applicable provisions of the Cable Act.

11-5-21 Franchise Fees.

Each Cable Operator shall pay to the City a Franchise Fee equal to 5% of the Gross Revenues of the Cable Operator. The City reserves the right at any time, upon 90 days' notice to all Cable Operators, to amend this section so as to increase the Franchise Fee to the maximum rate allowable under Federal law, in the event that the maximum rate is increased. It is intended that the Franchise Fees will promote the health, safety and welfare of the citizens of the City. Accordingly, the Franchise Fee shall be deposited into the general revenues of the City, unless otherwise specified.

- (a) The Franchise Fees may be passed through to Subscribers as a line item on Subscriber bills or otherwise, consistent with Federal law.
- (b) Within 45 days after the end of each Reporting Quarter, a Cable Operator shall file with the City a detailed financial and revenue report showing the Gross Revenues received by the Cable Operator for operations within the City during the proceeding Reporting Quarter. The report shall include Gross Revenue from all sources upon which a Franchise Fee is payable. Gross Revenue may be reported in the aggregate by general service type or source.
- (c) In the event that payment is not made within 60 days after the end of a Reporting Quarter, then the Cable Operator may be declared in default of the Franchise, and the City may take action against the Cable Operator as authorized in this Article.
- (d) The acceptance of any payment shall not be construed as a release of, or an accord or satisfaction of, any claim that the City might have for further or additional sums payable under the terms of this Article, or for any other performance or obligation of a Cable Operator.

(e) Payments of compensation made by a Cable Operator to the City pursuant to this Article shall be considered in addition to any and all taxes of general applicability owed to the City by the Cable Operator that are not included as Franchise Fee under Federal law.

(f) A Franchise Fee shall not be payable on any Gross Revenue source(s) which are excluded by Federal law.

11-5-22 Assignment of Franchise.

A Cable Operator's Franchise may not be assigned in whole or in part without the City's prior written approval. For purposes of this paragraph, "Assigned" or "Assignment" shall mean the transfer, sale, or any other form of assignment of a Cable System, to include any transaction or action which effectively or actually changes ownership from one person or Entity to another to include the transfer of 50% or more of the ownership interest of an Entity or the parent of an Entity. Any attempted Assignment without prior written approval shall constitute a default in the Franchise. A proposed Assignment shall be subject to the following:

(a) At least 120 days before a proposed Assignment is scheduled to become effective, the Cable Operator shall make a written request to the Council for the City's approval of the proposed Assignment.

(b) The City will not unreasonably withhold its consent to an Assignment. However, in making its determination, the Council shall consider the legal, financial and technical qualifications of the proposed assignee.

(c) Nothing in this section shall restrict the City from considering criteria established under State or Federal law, rule or regulation.

(d) Before an Assignment is approved by the City, the proposed assignee shall sign a statement indicating that it has read, understands, and intends to abide by any existing Franchise agreement.

(e) The City may include certain amendment(s) to the Franchise or this Article as a condition to the Assignment; provided, however, any such amendment(s) shall either (i) be by mutual agreement between the City and the proposed assignee, or (ii) shall not have a material adverse effect on the rights and obligations of the Cable Operator under the Franchise.

(f) In the event of any approved Assignment, the assignee shall assume all obligations and liabilities of the former Cable Operator.

(g) The City's consent to an Assignment shall not relieve the former Cable Operator of its liability under the Franchise agreement until the Assignment actually takes place unless specifically relieved by Federal or State law or by the Council at the time an Assignment is approved. In the event of an Assignment, the former Cable Operator shall remain liable for any Franchise Fees incurred as of the time that the Assignment is effective for the period governed by the applicable statute of limitations.

(h) If the Cable Operator has provided the City with all information as required by this section or the FCC in a timely manner, and the City has not taken action on the Cable Operator's request for transfer within 120 days after receiving such request, consent by the City shall be deemed given.

Consent shall not be required for an Assignment to a wholly-owned subsidiary Entity of a Cable Operator or the current parent Entity of a Cable Operator, whether the ownership is direct or indirect, such as through other wholly-owned intermediate subsidiaries. In addition, consent shall not be required for the granting of a security interest in the Cable Operator's system including its Franchise. However, if the holder of the security interest repossesses, forecloses or takes other action concerning its collateral, it shall dispose of the Cable System within a reasonable period of time and the disposition by the holder of the security interest shall be considered an Assignment subject to the provisions of this section.

11-5-23 Educational and Governmental Access.

To the extent permitted by law, and in order to fulfill a public, educational and governmental access policy that will facilitate the long range needs of the City, each Cable Operator shall provide at its own expense one PEG Channel under the control of the City. The following shall apply to the PEG Channel:

(a) The City is solely responsible for the content it provides over the PEG Channel. The Cable Operator shall not exercise any editorial control over any programming of the PEG Channel and shall also not be subject to any civil or criminal liability for any programs carried on the PEG Channel.

(b) The PEG Channel may be placed on any tier of service available to all Subscribers, including the digital tier. The City shall provide programming on the PEG Channel to occupy 70% of the hours between 11 a.m. and 11 p.m. for any twelve consecutive week period. In the event that the above the programming levels are not maintained or if the City does not adequately use the channel, the Cable Operator reserves the right to have the channel returned to the Cable Operator for the Cable Operator's use. If at any later time, which must be at least one year from the return of the PEG Channel to the Cable Operator, the City desires to utilize the PEG Channel, it may notify the Cable Operator of its desire to do so, and the PEG Channel shall be made available to the City within 30 days of the request. The above programming requirements shall apply with respect to continuance of the PEG Channel by the City.

(c) If the City is utilizing the PEG Channel and is also using any of the following locations for signal input, signal input locations shall be provided at City Hall. Only those signal input locations actually being used shall be required.

(d) Cable Operators may interconnect their cable systems for the purpose of sharing PEG access programming, provided that the Cable Operators are able to reach agreement for the

interconnection. Nothing in this paragraph should be construed as requiring a Cable Operator to add additional PEG Channels.

11-5-24 Public Service.

A Cable Operator shall furnish, upon request, and subject to applicable law, one outlet for public buildings as identified in a Cable Operator's Franchise. With respect to this service:

(a) The Cable Service provided pursuant to this section shall not be used for commercial purposes and shall not generally be available for public viewing. The City shall take reasonable precautions to prevent any use of the Cable System that results in the inappropriate use or any loss or damage to the Cable System.

(b) The City shall hold the Cable Operator harmless from any and all liability or claims arising out of the provision and use of Cable Service to City buildings.

11-5-25 Default.

When a Cable Operator violates a provision of this Article, or acts so as to compromise the legal, financial or technical integrity and/or stability of the Cable System or the Cable Operator itself, in either case, to a degree that the interests of the Subscribers are negatively affected, then a Cable Operator shall be considered in default of this Article.

(a) Examples of a default shall include, but are not limited to: bankruptcy (except for a reorganization as long as the Cable Operator is in compliance with an approved plan or other court order), insolvency, failure to pay taxes or Franchise Fees, failure to receive written City approval for an Assignment, or failure to substantially abide by the terms and conditions of the Franchise agreement or this Article, to include the failure to operate its Cable System. Provided:

(1) It is not the City's intention to subject a Cable Operator to penalties, fines, forfeitures or revocation of a Franchise for violations where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the City, or where strict performance would result in practical difficulties and hardship to a Cable Operator which outweighs the benefit to be derived by the City and/or Subscribers.

(2) Events in the nature of force majeure or conditions which cannot be corrected because they are matters reasonably beyond the ability of the affected Cable Operator to anticipate and control shall not be considered a default. This provision includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, work delays caused by failure of utility providers to service, maintain or monitor their utility poles to which a Cable Operator's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary; provided, however, such noncompliance shall only be excused for as long as the Cable Operator is reasonably pursuing compliance.

(b) In the event that a default occurs, the City shall provide written notice of the default to the affected Cable Operator. The notice of default shall specify the violation(s).

(c) The Cable Operator shall have 30 days from the receipt of the written notice to bring itself into compliance so that it is no longer in default of its Franchise or this Article, as the case may be; provided, however, if by the nature of default, the default cannot be cured within this 30 day period, the Cable Operator shall initiate reasonable steps to remedy the default and notify the City of the steps being taken and the projected date that they will be completed.

(d) If the Cable Operator fails to cure its default within the time period provided for above, the matter shall be set for public hearing before the Council to be held within 75 days after the notice of default was mailed to the Cable Operator. Written notice of the time and place of the public hearing shall be sent to the Cable Operator at least 20 days prior to the date of the hearing.

(e) At the hearing, the Cable Operator shall have an opportunity to state its position on the matter, present evidence and question witnesses. If the Cable Operator fails to attend the hearing where a continuance of the hearing has not been granted by the Council, then the Cable Operator may be declared in default of the Franchise agreement.

(f) If the default has not been resolved by the time of or as a result of the hearing, the Council may, after the public hearing, direct the Cable Operator to take corrective action within a specified period of time, or may declare the Cable Operator in default of the Franchise agreement, and revoke or terminate the Franchise. The Council's action shall be delivered to the Cable Operator in writing within 15 days of the Council's action.

(g) If the Council directs corrective action to be taken and the Cable Operator does not rectify the default within the time specified, then the Council may without further notice declare the Cable Operator to be in default and revoke or terminate the Franchise.

(h) If the Cable Operator fails to comply with any determination by the Council, which determination is not stayed or overturned by order of an appropriate court, then the City shall have any and all remedies available to it by law, provided the Cable Operator may continue to operate the Cable System until all legal appeals procedures have been exhausted.

11-5-26 Removal of Cable System.

(a) In the event of termination or forfeiture of the a Franchise Agreement or abandonment of a Cable Operator's Cable System, the City may require the Cable Operator to remove all or any portion of its Cable System from all Public Ways; provided, however, that the Cable Operator will not be required to remove those portions of its Cable System required to provide telecommunications services or other non-cable service to the extent that the Cable Operator lawfully provides telecommunications services or other non-cable service over the Cable System.

(b) If a Cable Operator has failed to commence removal of its Cable System, or such part as designated by the City, within 120 days after written demand for removal is given, or if the Cable Operator has failed to complete such removal within twelve months after written demand for removal is given, the City may apply funds secured by the Franchise agreement toward removal.

11-5-27 Federal Legislation, Rules and Regulations; Franchise Subject to Amendment.

In addition to any requirements contained within this Article, all Cable Operators shall be expected to comply with all applicable provisions of the Cable Act and all other federal laws directed at controlling or regulating Cable Operators, and any rules and regulations issued pursuant to those laws. In addition, any Franchise issued pursuant to this Article shall be subject to amendment by mutual agreement of the parties to incorporate any applicable Federal legislation, rules or regulations which become effective after the date of the Franchise.

11-5-28 Inter-Governmental Cooperation.

In the event that a Cable System serves areas outside the jurisdiction of the City (to include the Community), then the various jurisdictions or governmental subdivisions shall have the right to enter into one or more agreements concerning the matters covered by this Article. By way of example, it is contemplated that the members of the Community may enter into one or more agreements to assist them in regulating administering Franchises. These agreements may include, but shall not be limited to, the following general areas:

1. Allocation of the total Franchise Fee collected from the Cable System between the various governmental subdivisions.
2. The Review and evaluation of (i) proposals to provide Cable Television Service, or (ii) requests for renewal of existing Franchises.
3. Evaluations of a Cable Operator's performance.
4. PEG Channel use.

11-5-29 Tampering and unauthorized reception of certain signals.

No person shall intercept or receive, or assist in intercepting or receiving, any communications service offered over a Cable System, unless specifically authorized to do so by a Cable Operator, or as may otherwise be specifically authorized by law.

(a) For purposes of this section, the term "assist in intercepting or receiving" shall include the manufacture or distribution of equipment intended by the manufacturer or distributor for the unauthorized reception of Cable Service.

(b) Without securing permission from a Cable Operator, or making payment to a Cable Operator, then no person shall be authorized to make any connection with any part of a Cable System for the purpose of receiving or intercepting or assisting others to receive or intercept any Cable Service provided lawfully by a Cable Operator.

(c) No person shall be authorized to willfully tamper with, remove or damage any facilities used for the distribution of Cable Service.

(d) Any violation of this section shall constitute a misdemeanor and upon conviction shall be subject to a fine of up to \$100. Each day that the violation continues shall be considered a separate offense.

11-5-30 Severability.

The provisions of this Article will be deemed severable, and if any provision of this Article is held illegal, void, or invalid under applicable law, that provision may be changed to the extent reasonably necessary to make the provision legal, valid and binding. If any provision of this Article is held illegal, void or invalid in its entirety, the remaining provisions of this Article will not be affected.”

Section 2. All ordinances or parts of ordinances passed and approved prior to passage, approval and publication of this ordinance in conflict herewith are now repealed.

Section 3. This Ordinance shall be published in pamphlet form and shall be effective upon its passage and approval.

PASSED AND APPROVED on _____.

Mayor

ATTEST:

City Clerk (Seal)

Approved by:

City Attorney