

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DAVIS ADDING A NEW CHAPTER 8B, CABLE COMMUNICATIONS SYSTEMS, TO THE DAVIS MUNICIPAL CODE, TO REGULATE THE OCCUPANCY AND USE OF PUBLIC RIGHTS-OF-WAY BY CABLE SYSTEMS AND OPEN VIDEO SYSTEMS, TO PROVIDE FOR ESTABLISHMENT OF CUSTOMER SERVICE STANDARDS; TO ESTABLISH FRANCHISE AND LICENSING REQUIREMENTS FOR OPERATORS OF SUCH SYSTEMS; AND TO PRESCRIBE MINIMUM CHARGES, TERMS, AND CONDITIONS FOR AND UPON THE CONSTRUCTION, MAINTENANCE, AND REPAIR OF SUCH SYSTEMS

WHEREAS, it is anticipated that an ever-increasing number of companies will request access to and use of Public rights-of-way for provision of cable and other services to the public; and

WHEREAS, the City of Davis ("City") has the authority to regulate the use of streets, Public rights-of-way, and other City property, and to grant access thereto upon certain terms and conditions, and to regulate the placement of pedestals and other equipment in the Public rights-of-way; and

WHEREAS, the public streets, alleys, utility easements dedicated for compatible uses, and other rights-of-way within City: 1) are critical to the travel of Persons and the transport of goods and other tangibles in the business and social life of the community by all citizens; 2) are a unique and physically limited resource so that proper management by City is necessary to maximize the efficiency and to minimize the costs to the taxpayers of the foregoing uses, and to prevent harm to the community; 3) are intended for public uses and must be managed and controlled consistent with that intent; and 4) are critical for providing municipal services and ensuring public safety; and

WHEREAS, the right to occupy the Public rights-of-way cannot be granted to all Persons, and those who are granted that right obtain significant benefits; and

WHEREAS, the right to use the Public rights-of-way therefore must be exercised in a manner consistent with the public interest; and

WHEREAS, City wishes to promote the availability of high-quality and diverse services to City residents, businesses, City, and other public institutions; and to promote the availability of diverse information resources to the community, including through the development of advanced systems that can support public, educational, and governmental programming and high-speed access to the Internet, and other related services; and

WHEREAS, City wishes to provide opportunities to the public to obtain access to communications facilities for the purpose of disseminating and receiving information; to promote competitive cable rates and services; to take advantage of opportunities presented by cable and open video systems to provide for more open government, and enhanced government services; to enhance educational opportunities throughout the community and provide opportunities for building a stronger community; and to allow flexibility to respond to changes in technology, subscriber interests, and competitive factors that will affect the health, welfare, and well-being of the community; and

WHEREAS, City finds that it is in the interest of the public to franchise and to establish standards for franchising such operators in a manner that promotes these objectives and otherwise protects the public interest;

WHEREAS, this ordinance was found to be categorically exempt from environmental review, per the provisions of Section 15308 of the California Environmental Quality Act of 1970, as amended.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF DAVIS:

SECTION 1. A new Chapter 8B is hereby added to the Davis Municipal Code, to read in its entirety as follows:

CHAPTER 8B
CABLE SYSTEMS AND OPEN VIDEO SYSTEMS
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CHAPTER 8B
CABLE COMMUNICATIONS SYSTEMS

Article 8B.01. GENERAL

Section 8B.01.010. Definitions

- (a) The definitions set forth in this Part shall govern the application and interpretation of this Chapter.
- (b) When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; and words in the singular number include the plural number; and the masculine gender includes the feminine gender.
- (c) Subject to the provisions of Section 01.020 of Chapter 1 of the Municipal Code, the words “shall” and “will” are mandatory, and “may” is permissive.
- (d) Words not defined in this Chapter shall have the same meaning as in Title VI of Title 47 of the United States Code in effect on the effective date of the ordinance enacting this Chapter, and, if not defined therein, their common and ordinary meaning.
- (e) References to governmental entities (whether Persons or entities) refer to those entities or their successors in authority.
- (f) If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision.

- (g) Unless otherwise specified, references to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

Section 8B.01.020. Access, PEG access, or PEG use

“Access,” “PEG access,” or “PEG use” refers to the availability of a Cable System or OVS for public, education or government use (including Institutional Network use) by various agencies, institutions, organizations, groups, and individuals, including the City and its designated access providers, to acquire, create, and distribute programming not under a Franchisee’s editorial control, including, but not limited to the access or use described in Sections 5.20.030, 5.20.040 and 5.20.050 below.

Section 8B.01.030. Public access or Public use

“Public access” or “Public use” means access where organizations, groups, or individual members of the general public are the designated programmers or users having editorial control over their communications.

Section 8B.01.040. Education access or Education use

“Education access” or “Education use” means access where Schools are the designated programmers or users having editorial control over their communications.

Section 8B.01.050. Government access or Government use

“Government access” or “Government use” means access where government institutions or their designees are the designated programmers or users having editorial control over their communications.

Section 8B.01.060. Affiliate

“Affiliate” means a Person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another Person.

Section 8B.01.070. Basic Service

“Basic service” means any service tier regularly provided on a Cable Communications System to all Subscribers, which includes the retransmission of local television broadcast signals.

Section 8B.01.080. Cable Act

“Cable Act” means the Cable Communications Policy Act of 1984, 47 U.S.C. § 521 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996.

Section 8B.01.090. Cable Communications system

“Cable Communications System” refers to open video systems (OVS) and Cable Systems.

Section 8B.01.0100. Cable Service

“Cable Service” means:

- (a) The one-way transmission to Subscribers of (i) video programming, or (ii) other programming service; and
- (b) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

Section 8B.01.0110. Cable System

“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 a community, but such term does not include:

- (a) A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
- (b) A facility that serves Subscribers without using, or connecting to a facility that uses, any Public right-of-way within City;
- (c) A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II (Common Carriers) of the federal Communications Act of 1934, as amended, except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;
- (d) Any facilities of any electric utility used solely for operating its electric utility systems; or
- (e) An OVS that is certified by the FCC.
- (f) Any reference to a Cable System includes the Cable System as a whole, or any part thereof, including all pedestals, equipment cabinets, electronic equipment and devices appurtenant to the Cable System.

Section 8B.01.0120. Channel

“Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System or OVS and which is capable of delivering, at a minimum, a standard broadcast television service, whether in an analog or digital format. The definition does not restrict the use of any Channel to the transmission of analog television signals.

Section 8B.01.0130. City

“City” means the City of Davis and all departments, divisions, and agencies thereof; except that, when used to describe a geographic area, the term refers to the boundaries of the City of Davis, California, as they exist now or may exist in the future.

Section 8B.01.0140. City Manager

“City Manager” means the City Manager or the City Manager’s designee.

Section 8B.01.0150. Construction, operation or repair

“Construction, operation or repair” and similar formulations of that term means the named actions interpreted broadly, encompassing, among other things, installation, extension, maintenance, replacement of components, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, excavation and the management of the cable system and its operations.

Section 8B.01.0160. FCC

“FCC” means the Federal Communications Commission.

Section 8B.01.0170. Franchise

“Franchise” refers to an authorization granted by City to the Operator of a Cable Communications System giving the Operator the non-exclusive right to occupy the space, or use facilities upon, across, beneath, or over Public rights-of-way in City, to provide specified services within a Franchise area. A permit is not a Franchise.

Section 8B.01.0180. Franchise Area

“Franchise area” means the area of City that a Franchisee is authorized to serve by the terms of its Franchise ordinance or by operation of law.

Section 8B.01.0190. Franchisee

“Franchisee” refers to a Person holding a Cable Communications System franchise granted by City.

Section 8B.01.0200. Gross revenues

“Gross revenues” means any and all revenue, of any kind, nature or form derived from the operation of a Cable Communications System to provide Cable Service. Gross revenues include, by way of example and not limitation, revenues from equipment sales and rentals, services (including cable modem services), installation, late fees and other Subscriber charges, fees for carriage of programming, advertising, and shopping services; the term encompasses revenues that are received now, as well as new revenue sources that may develop in the future. “Gross revenues” shall be construed broadly to include revenues of Affiliates (other than those revenues which are already treated as the revenues of the Franchisee), to prevent avoidance of fees owed on Gross revenues.

Section 8B.01.0210. Institutional Network

“Institutional Network” or “I-Net” means a communication network financed, constructed and/or or operated by the Operator of a Cable Communications System that is available for the use of City and other local agencies.

Section 8B.01.0220. Operator

“Operator” when used with reference to a Cable Communications System, refers to a Person (a) who directly or through one (1) or more Affiliates provides Cable Service or OVS over a Cable Communications System and directly or through one (1) or more Affiliates owns a significant interest in such system; or (b) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a system.

Section 8B.01.0230. OVS

“OVS” or “open video system” means a facility consisting of a set of 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 that the FCC has certified that such system complies with 47 C.F.R. Part 76. A reference to an OVS includes pedestals, equipment enclosures (such as equipment cabinets), amplifiers, power guards, nodes, cables, fiber optics and other equipment necessary to operate the OVS, or installed in conjunction with the OVS.

Section 8B.01.0240. OVS Agreement

“OVS Agreement” means a Franchise entered into in accordance with the provisions of this Chapter between City and an OVS Franchisee setting forth the terms and conditions under which the OVS Franchise will be exercised.

Section 8B.01.0250. Person

“Person,” unless it otherwise appears from the context as used, means and includes any person, individual, firm, organization, corporation, partnership, association, limited liability company, joint stock or other company, business or other trust, public agency, school district, the State of California, its political subdivisions and/or instrumentalities, or any other legal entity, but not City.

Section 8B.01.0260. Public Property

“Public Property” means any property that is owned or under the control of City that is not a Public right-of-way, including but not limited to, buildings, parks, structures such as utility poles and light poles, or similar facilities or property located in a Public right-of-way or owned by or leased to City.

Section 8B.01.0270. Public rights-of-way

“Public rights-of-way” means the surface of and the space above and below any street, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parking strip, drive, or right-of-way or easement primarily dedicated to travel, now or hereafter existing within City which may be properly used for the purpose of installing, maintaining, and operating a Cable Communications System; and any other property that a Franchisee is entitled by state or federal law to use by virtue of the grant of a Franchise.

Section 8B.01.0280. School

“School” means any publicly funded charter school or public primary and secondary schools and colleges accredited by the State of California (which term includes all accredited post-secondary institutions, including by way of example and not limitation, community colleges, technical colleges and universities).

Section 8B.01.0290. Subscriber

“Subscriber” means City or any Person who is lawfully receiving, for any purpose or reason, any Cable Service via a Cable Communications System, whether or not a fee is paid for such service.

Section 8B.01.0300. User

“User” means a Person or City utilizing a Channel, capacity or equipment and facilities of a Cable Communications System for purposes of producing or transmitting material, as contrasted with the receipt thereof in the capacity of a Subscriber.

**Article 8B.02.
GENERAL PROVISIONS**

Section 8B.02.010. Franchise Required

No Person may construct, operate or repair a Cable Communications System in City without first obtaining a City Franchise therefor from City pursuant to the terms and provisions of this Chapter.

Section 8B.02.020. Form of Franchise

Any Franchise shall be issued in the form of an ordinance and must be accepted by the Franchisee pursuant to the terms of this Chapter and the Franchise ordinance to become effective.

Section 8B.02.030. Scope of Franchise

A Franchise granted pursuant to this Chapter shall authorize and permit a Franchisee to construct, operate and repair a Cable System or an OVS (as applicable) pursuant to the terms of its Franchise ordinance and this Chapter to provide Cable Service in City, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain facilities appurtenant to such system in, on, over, under, upon, across, and along those Public rights-of-way that City may authorize a Franchisee to use.

- (a). A Franchise shall not convey rights other than as expressly specified in this Chapter, or in a Franchise ordinance; no rights shall pass by implication.
- (b). A Franchise shall not include, or be a substitute for:
 - 1. Complying with requirements for the privilege of transacting and carrying on a business within City, including but not limited to complying with the conditions City may establish before constructing facilities for, or providing, non-Cable Services;
 - 2. Any permit, agreement or authorization required in connection with construction, operation or repair on or in Public rights-of-way or Public Property, including by way of example and not limitation, street cut permits;
 - 3. Any permits, easements or agreements for occupying any other property of City or private entities to which access is not specifically granted by the Franchise.
- (c) A Franchise does not relieve a Franchisee of its duty to comply with all City ordinances, resolutions, written policies, and regulations, and every Franchisee must comply with the same. The rights granted under a franchise ordinance are

subject to the exercise of police and other powers City now has or may later obtain, including but not limited to the power of eminent domain.

- (d). A Franchise does not convey title, equitable or legal, in the Public rights-of-way or Public Property. Nor does a Franchise grant authority to occupy any property other than the Public right-of-way. Any right granted to Franchisee by a Franchise ordinance shall not be subdivided or subleased to any other Person or Affiliate. Any attempt to subdivide or sublease any right granted by a Franchise ordinance will void the Franchise.

Section 8B.02.040. Franchise Non-Exclusive

No Franchise shall be exclusive, or prevent City from issuing other Franchises or authorizations, or prevent City from itself constructing, operating, or repairing its own Cable Communications System, with or without a Franchise.

Section 8B.02.050. Franchise Term

Every Franchise shall be for a term of years set forth in the Franchise ordinance, which term shall be a maximum of ten (10) years. The City Council may approve a longer term if necessary to provide special benefit to the community such as increased competition or improved service.

Section 8B.02.060. Costs Borne by Franchisee

Unless otherwise specifically stated in a Franchise ordinance or required by law, all acts which a Franchisee is required to perform under the Franchise ordinance or applicable law shall be performed at the Franchisee's expense.

Section 8B.02.070. Failures to Perform

If a Cable Communications System Operator fails to perform work that it is required to perform within the time provided for performance, City may perform the work or cause the work to be performed and bill the Operator therefor. The Operator shall pay the amounts billed within thirty (30) days.

Section 8B.02.080. Administration of Ordinance; Adoption of Regulations

- (a) City may from time to time adopt regulations to implement the provisions of this Chapter. This Chapter, and any regulations adopted pursuant to this Chapter, are not contracts with any Franchisee, and may be amended at any time by City.
- (b) The City Manager is hereby authorized to administer and enforce the provisions of this Chapter and any Franchise issued pursuant hereto, to provide any notices (including noncompliance notices), and to take any action on City's behalf that may be required hereunder or under applicable law.
- (c) The failure of City, upon one (1) or more occasions, to exercise a right or to require compliance or performance under a Franchise ordinance or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing.
- (d) City may designate one (1) or more Persons, including itself, to control and manage the use of Public, Educational or Government access Channels, facilities and equipment.

Section 8B.02.090. Cable Advisory Board

The City may establish a citizen's Cable Advisory Board or users' group to provide advice and assistance to the City on cable communications matters. The City may delegate to the Cable Advisory Board or users' group certain duties such as (1) hearing and resolving complaints and disagreements between grantees and subscribers or users, (2) determining the operation and use of access and leased access channels (if any), with a view to maximizing the diversity and usefulness of programs and services to subscribers, and (3) assisting the Council in its needs assessment and its consideration of applications for new, transfer, and renewal franchises. Board or group members shall be broadly representative of the City's population with diverse backgrounds and a reasonable knowledge of cable communications.

Section 8B.02.0100. Transfers

- (a) No transfer of a Franchise, Franchisee, or Cable Communications System, or of control over the same (including, but not limited to, transfer by forced or voluntary sale, merger, consolidation, receivership, or any other means) shall occur unless prior application is made by the franchisee to City; (2) the franchisee pays any applicable fee; (3) the City Council holds a public hearing; and (4) City's prior written consent is obtained, pursuant to this Chapter and the Franchise ordinance, and only then upon such terms and conditions as City deems necessary and proper to protect the public interest. Every Franchise shall be deemed to be held in trust, and to be personal to the Franchisee. Any transfer that is made without the prior approval of City shall be deemed to impair that trust. The granting of approval for a transfer in one instance shall not render unnecessary approval of any subsequent transfer.
- (b) A change of control of a Franchise, Franchisee, or Cable Communications System shall be deemed to have occurred whenever there is a change, acquisition or transfer of control of more than a ten percent (10%) ownership in the Franchisee or its direct or indirect parents by any Person, or a group of Persons acting in concert. However, a transfer also occurs whenever there is a

change in actual working control, in whatever manner exercised, over the affairs of a Franchisee or its direct or indirect parents. Without limiting the above, any change in the general partners of a Franchisee shall be presumed a change in control.

Section 8B.02.0110. Pledge of System Assets

Notwithstanding any other provision of this Chapter, pledges in trust or mortgages of the assets of a Cable Communications System to secure the Construction, operation, or repair of the system may be made without application and without City's prior consent. However, no such arrangement shall be made if it would in any respect under any condition: (1) prevent the Cable Communications System Operator or any successor from complying with, this Chapter, the Franchise ordinance or other applicable law or regulation; or (2) permit a third party to succeed to the interest of the Operator, or to own or control the system, without the prior consent of City. Any mortgage, pledge or lease shall be subject to and subordinate to the rights of City under any Franchise, this Chapter, or other applicable law.

Section 8B.02.0120. General Conditions upon Construction, Operation and Repair

- (a) The Construction, operation, and repair of Cable Communications Systems shall be performed in compliance with all laws, ordinances, resolutions, departmental rules, regulations, written policies, and practices affecting such system. By way of example, and not limitation, this includes the City of Davis Standards and Specifications (the "Specifications"); Chapter 35 of the Davis Municipal Code (i.e., regulation of streets); Chapter 40 of the Davis Municipal Code (i.e., the City's zoning ordinance); ordinances, regulations and policies to preserve or protect the public safety; construction standards; regulations for providing notice to Persons that may be affected by system construction; and directives governing the time, place and manner in which facilities may be installed in the Public rights-of-way.

Persons engaged in the Construction, operation, or repair of Cable Communications Systems shall exercise reasonable care in the performance of all their activities and shall use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property. Before beginning construction, operation or repair of a Cable Communications System, an Operator shall obtain a copy of the Specifications from the Department of Public Works.

- (b) A Franchise is required before a permit may be issued for work associated with the construction, operation or repair of a Cable Communications System. Any permit issued for such work to a Person that does not hold a Franchise shall vest no rights in the permittee; the permit may be revoked at will, and the permittee shall remove all facilities installed under the permit upon and in full compliance with City's demand.
- (c) Construction, operation, or repair of a Cable Communications System shall not commence until all required permits have been obtained from the proper City officials and all required fees have been paid. All work performed shall be performed in strict accordance with the conditions of the permit. Upon order of City, any work and/or construction undertaken that is not completed in compliance with City's requirements, or which is installed without obtaining necessary permits and approvals shall be removed in accordance with the reasonable timeline set forth by City. A Franchisee shall reimburse the City for costs incurred in inspecting construction undertaken in the course of major upgrades and/or installation of fiber optics.
- (d) Interference with the use of the Public rights-of-way by others, including others that may be installing Cable Communications Systems, must be minimized, and any interference shall only be the result of implementing permit conditions. City may require a person using the Public rights-of-way to cooperate with others through joint trenching and other arrangements to minimize adverse impacts on

the Public rights-of-way. In particular, if residents of the City wish to install facilities in the Public rights-of-way for their own use during any period in which a Franchisee has opened trenches in the Public rights-of-way, and such residents have obtained all necessary permits and other approval required under Federal, State and local law, a Franchisee shall cooperate with the efforts of such residents to install facilities.

- (e) To the extent possible, Operators of Cable Communications Systems shall use existing poles and conduit. Additional poles may not be installed in the right-of-way, nor may pole capacity be increased by vertical or horizontal extenders, without the permission of the City Engineer.

- (f) A Cable Communications System Operator shall, by a time specified by City, protect, support, temporarily disconnect, relocate, or remove any of its property when requested by City by reason of traffic conditions; public safety; Public right-of-way construction and repair (including regrading, resurfacing or widening); Public right-of-way vacation; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned system or utility, public work, public facility, or improvement; or for any other purpose where the work involved would be aided by the removal or relocation of the Cable Communications System. Collectively, such matters are referred to below as the "public work." City shall provide written notice describing where the public work is to be performed at least two (2) weeks prior to the deadline by which a Cable Communications System Operator must protect, support, temporarily disconnect, relocate or remove its facilities. Provided that, in an emergency, or where a Cable Communications System creates or is contributing to an imminent danger to health, safety, or property, City may protect, support, temporarily disconnect, remove, or relocate any or all parts of the Cable Communications System without prior notice, and charge the Cable Communications System Operator for costs incurred. The City shall not be liable

for any resulting damage to the Cable Communications System, or for any damage caused by the Cable Communications System.

- (g) To accommodate the Construction, operation, or repair of the facilities of another Person authorized to use the Public rights-of-way or Public Property, a Franchisee shall, by a time specified by such Person, protect, support, temporarily disconnect, relocate or remove its facilities. The Franchisee shall be given written notice describing where the Construction, operation or repair is to be performed at least fifteen (15) days prior to the time by which its work must be completed. City may, by order, resolve disputes as to responsibility for costs associated with removal, relaying, or relocation of facilities among Persons authorized to install facilities in the Public rights-of-way or on Public Property if such Persons are unable to do so themselves.
- (h) A Cable Communications System Operator shall, on the request of any Person holding a valid permit issued by a governmental authority, temporarily raise or lower its wires by a time specified to permit the moving of buildings or other objects. A Cable Communications System Operator shall be given not less than seven (7) days advance notice to arrange for such temporary wire changes. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same.
- (i) Cable Communications System Operator may abandon any property in place in the Public rights-of-way or upon Public Property only with the written consent of City. An Operator may request permission to leave facilities in the Public right-of-way or on Public Property. If the City fails to consent, however, within ninety (90) days of the receipt of a written request for consent, the City shall be deemed to have determined that the safety, appearance, functioning or use of the Public right-of-way or Public Property and facilities in the Public right-of-way or on Public Property will be adversely affected. In that case, the Operator shall remove the property within 180 days of its abandonment. If City consents to the

abandonment, City may request that the Cable Communications System Operator transfer ownership of the property to City at no cost, and execute necessary quitclaim deeds. Whether or not ownership is transferred, the Operator must indemnify City against future costs associated with mitigating or eliminating any hazard associated with the abandoned property.

- (j) Every Cable Communications System shall be subject to inspection and testing by City. Each Operator shall respond fully and in a timely manner to requests for information regarding its system and plans for the system as City may from time to time issue, including requests for information regarding its plans for Construction, operation and repair and the purposes for which the plant is being constructed, operated, or repaired.
- (k) Each Operator of a Cable Communications System that places facilities underground shall be a member of the regional notification center for subsurface installations (Underground Services Alert) and shall field mark the locations of its underground communications facilities upon request. The Operator shall locate its facilities for City at no charge.
- (l) At least ninety (90) days prior to commencing construction, each Cable Communications System Operator shall provide City a plan for any initial Cable Communications System construction, operation or repair or for any substantial rebuild, upgrade or extension of its Cable Communications System, which shall show its timetable for construction of each phase of the project, and the areas of City that will be affected. This plan shall not take the place of any permits, zoning approval or other requirements of this Chapter, the Specifications, or the Davis Municipal Code.
- (m) Within one hundred eighty (180) days from and after the effective date of any ordinance awarding a Franchise or Franchise renewal, or within such extended period of time as the City Council in its discretion may authorize, the Franchisee

shall file with the City Clerk copies of all contracts which it may have with all public utility companies, whereby Franchisee is granted any right to use any of the property, equipment or facilities of such utility or utilities in the conduct of any operations pursuant to the Franchise or Franchise renewal awarded to said Franchisee.

- (n) City shall have the right to install and maintain, free of charge upon any poles or in any conduit owned by a Franchisee any wire and pole fixtures that do not unreasonably interfere with the Cable Service operations of the Franchisee.

Section 8B.02.0130. Undergrounding Aerial Facilities

Whenever all existing utilities are located underground in an area in City, every Cable Communications System Operator installing its system in the same area must locate its Cable Communications System underground. Whenever the owner of a pole locates or relocates underground within an area of City, every Cable Communications System Operator in the same area shall concurrently relocate its facilities underground. Nothing in this Section prevents City from ordering Cable Communications System facilities to be located or relocated underground under other provisions of the Municipal Code.

Section 8B.02.0140. Consequences of Public Works Projects

Any and all Public rights-of-way, other Public Property, or Private property that is disturbed or damaged during the Construction, operation or repair of a Cable Communications System shall be promptly repaired by the Operator. Public Property and Public rights-of-way must be restored to the satisfaction of City to a condition as good or better than before the disturbance or damage occurred.

Section 8B.02.0150. Interconnection

- (a) An Operator's system shall be designed and constructed, insofar as technically and economically feasible, so as to be capable of interconnection with any systems existing in areas contiguous to the City and with any such systems anticipated for future construction.
- (b) Upon request of City, every Cable Communications System shall be required to interconnect with every other Cable Communications System within City, or adjacent to City, on fair and reasonable terms for purposes of providing public, educational, and governmental and institutional network services. In the event of a dispute, the City Manager may issue an order establishing the terms and conditions under which interconnection shall occur, and any franchisee shall comply with the order.
- (c) An Operator shall cooperate with any interconnection corporation, regional interconnection authority, or county or state regulatory agency which may be hereafter established for the purpose of regulating, facilitating, financing, or otherwise providing for interconnection of Cable Communications Systems beyond the boundaries of individual political jurisdictions.

Section 8B.02.0160. Indemnification

No Franchise shall be valid or effective until and unless City obtains an adequate indemnity from the Franchisee. The indemnity shall, to the extent permitted by law:

- (a) a Release City from and against any and all liability and responsibility in or arising out of the Construction, operation, repair or maintenance of the Cable Communications System. Each Cable Communications System Operator shall further agree not to sue or seek any money or damages from City in connection with the above mentioned matters; and

- (b) Indemnify and hold harmless City, its trustees, elected and appointed officers, agents, and employees, from and against any and all claims, demands, or causes of action of any kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees sustained by City or any third party arising out of, or by reason of, or resulting from or of the acts, errors, or omissions of the Cable Communications System Operator, or its agents, independent contractors or employees related to or in any way arising out of the Construction, operation or repair of the system.

Section 8B.02.0170. Insurance

- (a) A Franchisee (or those acting on its behalf) shall not commence construction or operation of the Cable Communications System without first obtaining insurance in amounts and of a type satisfactory to City, from an insurer acceptable to the City. The required insurance shall be obtained and maintained for the entire period the Franchisee has facilities in the Public rights-of-way or on Public Property. If the Franchisee, its contractors, or subcontractors do not have the required insurance, City may order such Persons to stop operations until the insurance is obtained and approved.
- (b) Certificates of insurance, reflecting evidence of the required insurance and naming City as an additional insured, waiver of subrogation, and other proofs as City may find necessary, shall be filed with City. For Persons issued Franchises after the effective date of this Chapter, certificates and other required proofs shall be filed within thirty (30) days of the issuance of a Franchise, once a year thereafter, and whenever there is any change in coverage. For Persons that have facilities in the Public rights-of-way as of the effective date of this Chapter, the certificate shall be filed within sixty (60) days of the effective date of this Chapter, annually thereafter, and whenever there is any change in coverage, unless a pre-existing Franchise ordinance expressly provides for filing of

certificates in a different manner. Each Franchisee's insurance coverage shall be primary insurance as respects the City. Any insurance or self-insurance maintained by the City shall be excess of the Franchisee's insurance and shall not contribute with it.

(c) Certificates shall contain a provision that coverage afforded under these policies will not be canceled until at least thirty (30) days' prior written notice has been given to City. Policies shall be issued by companies authorized to do business under the laws of the State of California. Financial Ratings must be no less than "A.VII" in the latest edition of "Bests Key Rating Guide", published by A.M. Best Guide.

(d) A Cable Communications System Operator (and those acting on its behalf to construct, operate or repair the system) shall maintain the following minimum insurance. City shall be named as an additional insured on the general liability and automotive policies; those insurance policies shall be primary and contain a cross-liability clause.

1. COMMERCIAL GENERAL LIABILITY insurance to cover liability from bodily injury and property damage. Exposures to be covered shall include: premises, operations, products/completed operations, and certain contracts. Coverage must be written on an occurrence basis, with the following limits of liability:

2. BODILY INJURY

a. Each Occurrence \$1,000,000

b. Annual Aggregate \$5,000,000

Property Damage

a. Each Occurrence \$1,000,000

b. Annual Aggregate \$5,000,000

Personal Injury
Annual Aggregate \$5,000,000

Completed Operations and Products Liability shall be maintained for two (2) years after the termination of the Franchise or License (in the case of the Cable Communications System owner or Operator) or completion of the work for the Cable Communications System owner or Operator (in the case of a contractor or subcontractor).

Property Damage Liability Insurance shall include Coverage for the following hazards: X - explosion, C - Collapse, U - underground.

Prior to approval by City, all insurance and indemnification shall be received and approved by the Yolo County Public Agency Risk Management and Insurance Agency.

- 3. WORKERS' COMPENSATION insurance shall be maintained during the life of the Franchise to comply with statutory limits for all employees, and in the case any work is sublet, each Cable Communications System Operator shall require the subcontractors similarly to provide workers' compensation insurance for all the latter's employees unless such employees are covered by the protection afforded by each Cable Communications System operator. Each Cable Communications System Operator and its contractors and subcontractors shall maintain during the life of this policy employers liability insurance. The following minimum limits must be maintained:

Workers' Compensation Statutory
Employer's Liability \$ 1,000,000 per Occurrence

4. COMPREHENSIVE AUTO LIABILITY

Bodily Injury

- a. Each Occurrence \$ 1,000,000
- b. Annual Aggregate \$ 3,000,000

Property Damage

- a. Each Occurrence \$ 1,000,000
- b. Annual Aggregate \$ 3,000,000

Coverage shall include owned, hired, and non-owned vehicles.

Section 8B.02.0180. Performance Bond

Every Operator of a Cable Communications System shall obtain and maintain a performance bond to ensure the faithful performance of its responsibilities under this Chapter and any Franchise ordinance. In the case of any Franchise ordinance that requires the Cable Communications System Operator to initially build, or to upgrade a system, the amount of the bond shall be in an amount sufficient to ensure that the required construction is satisfactorily completed. The amount of the bond may be reduced upon successful completion of the required construction. The amount of the performance bonds shall be set by the City Manager or may be set in a Franchise ordinance in light of the nature of the work to be performed pursuant to or under the Franchise, but initially shall not be less than ten percent (10%) of the estimated cost of constructing or (in the case of existing systems) upgrading the Cable Communications System. The bond is not in lieu of any additional bonds that may be required through any permitting process. The bond shall be in a form acceptable to the City Attorney. Bonds must be obtained prior to the effective date of any Franchise, transfer or Franchise renewal, unless a Franchise ordinance specifically provides otherwise.

Section 8B.02.0190. Security Fund.

Every Cable Communications System Operator shall establish and maintain a cash security fund or provide City an irrevocable letter of credit or a cash deposit in an amount specified in the Franchise ordinance but no less than fifty thousand dollars (\$50,000) to secure the payment of fees owed, to secure any other performance promised in a Franchise ordinance, including but not limited to compliance with this Chapter and applicable customer service standards, and to pay any taxes, fees or liens owed to City. The letter of credit shall be in a form and with an institution acceptable to the City Manager and in a form acceptable to the City Attorney. Drawing on the cash security fund or letter of credit shall not be City's exclusive remedy. Should City draw upon the cash security fund or letter of credit, the Cable Communications System Operator shall, within fourteen (14) days, restore the fund or the letter of credit to the full required amount. This security fund/letter of credit may be waived or reduced by City for a Franchisee where City determines in its discretion that a particular Franchisee's operations are sufficiently limited that a security fund/letter of credit is not necessary to secure the required performance. City may from time to time require a Franchisee to change the amount of the required security fund/letter of credit to reflect changed risks to City and to the public, including delinquencies in taxes or other payments to City. The cash security fund or letter of credit must be obtained prior to the effective date of any Franchise, transfer or Franchise renewal, unless a Franchise ordinance specifically provides otherwise.

Section 8B.02.0200. Revocation

- (a) The City Council may revoke a Franchise or reduce the term of a Franchise if it finds, after a publicly-noticed hearing, that a Cable Communications System Operator has violated any provision of this Chapter or its Franchise ordinance, committed a material breach of its Franchise ordinance or repeatedly failed to comply with its Franchise ordinance; has defrauded or attempted to defraud City or Subscribers; or has attempted to evade the requirements of this Chapter or its

Franchise ordinance. Before conducting a hearing to revoke the Franchise: (1) the City Manager must have given notice of a claimed violation, breach, default or failure; and (2) the Franchisee must have been given thirty (30) days to cure the claimed default, except as provided herein. An opportunity to cure is not required where the City finds that the defect in performance is due to willful misconduct, is an adjudicated violation of criminal law, or is part of a pattern of violations where the franchisee has already had notice and opportunity to cure. The Franchisee will be given at least twenty (20) days notice of the hearing date, and will be provided an opportunity to be heard at the hearing.

Section 8B.02.0210. Forfeiture

City may declare a Franchise forfeited without opportunity to cure where (1) a Franchisee voluntarily stops providing cable service it is required to provide; or (2) a transfer described under Section 8B.02.0100 occurs without the prior consent of City.

Section 8B.02.0220. Bankruptcy

A Franchise will terminate automatically by force of law one hundred twenty (120) calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the Franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding. However, the Franchise may be reinstated within that one hundred twenty (120) day period, if: (1) such assignment, receivership or trusteeship has been vacated; or (2) such assignee, receiver or trustee has fully complied with the terms and conditions of this Chapter and the Franchise ordinance, and has executed an agreement, approved by any court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of this Chapter and the Franchise ordinance. In the event of foreclosure or other judicial sale of any of the facilities, equipment or property of a Franchisee, City may revoke the Franchise following a public hearing before the City Council, by serving notice upon the Franchisee and the successful bidder at the

sale, in which event the Franchise and all rights and privileges thereunder will be revoked and will terminate thirty (30) calendar days after serving such notice, unless: (1) City has approved the transfer of the Franchise to the successful bidder; and (2) the successful bidder has covenanted and agreed with City to assume and be bound by the terms and conditions of the Franchise ordinance and this Chapter.

Section 8B.02.0230. City's Rights Upon Termination or Forfeiture.

- (a) Upon termination or forfeiture of a Franchise, whether by action of the City as provided above, or by passage of time, City may do one or a combination of the following.
1. Direct the Franchisee to stop using the Cable Communications System for the purposes authorized by the Franchise.
 2. Require the former Franchisee to remove all or a portion of its facilities and equipment at the former Franchisee's expense. If the former Franchisee fails to do so within a reasonable period of time, City may have the removal done at the former Franchisee's and/or surety's expense.
 3. By resolution of the City Council, acquire ownership or effect a transfer of all or a portion of the Cable Communications System at an equitable price if termination or forfeiture is for cause, or if termination or forfeiture is not for cause, at fair market value, not including the value of the franchise.
- (b) Subsection (a)(3) of this section does not apply to an abandonment. If a Cable Communications System or any part thereof is abandoned by Franchisee, City may require the Franchisee to transfer title to or some of the abandoned portions to it at no charge, free and clear of encumbrances, and the same will become City's property and City may keep, sell, assign, or transfer all or part of the assets

of the cable communications system, or otherwise dispose of those assets as it sees fit.

- (c) Notwithstanding the foregoing, City may not, pursuant to this section, issue an order that violates 47 U.S.C. § 541(b)(3)(c).

Section 8B.02.0240. Remedies Cumulative.

Remedies provided for under this Chapter, or under a Franchise ordinance, shall be cumulative and are in addition to all other remedies which may be available at law or equity. Recovery by City of any amounts under insurance, the performance bond, the security fund or letter of credit, does not limit a Franchisee's duty to indemnify City; or relieve a Franchisee of its Franchise obligations or limit the amounts owed to City.

Section 8B.02.0250. Liquidated Damages

Each Franchise may contain a provision specifying liquidated damages payable to City in the event of a breach of a Franchise obligation where damages would otherwise be difficult to ascertain.

Section 8B.02.0260. Books and Records

- (a) City shall have the right to inspect and copy books and records: related in whole or in part to the construction, operation or repair of the Cable Communications System; that City deems relevant to monitoring compliance with the terms of this ordinance, a franchise or applicable law; or that City deems relevant to the exercise of any right or duty of City under the same. Each Cable Communications System operator is responsible for maintaining control over such books and records whether created by grantee, or by those acting on its behalf. It is responsible for producing these records upon City's request, for City's inspection and copying. The records that Franchisee must produce shall

include, but are not limited to revenue records, and other records related to compliance with any provision of this Chapter or a Franchise ordinance. Books and records must be maintained for a period of five (5) years, except that a Franchise ordinance may specify a shorter period for certain categories of voluminous books and records where the information contained therein can be derived simply from other materials. The phrase “books and records” shall be read expansively to include information in whatever format stored.

- (b) Books and records requested shall be produced to City by a time and at a location in City designated by the City Manager. However, if the requested books and records are too voluminous, or for security reasons cannot be copied and moved, then the Franchisee may request that the inspection take place at some other location mutually agreed to by City and the Franchisee, provided that (1) the Franchisee must make necessary arrangements for copying documents selected by City after its review; and (2) the Franchisee must pay all travel and additional copying expenses incurred by City (above those that would have been incurred had the documents been produced in City) in inspecting those documents or having those documents inspected by its designee.

Section 8B.02.0270. Reports

- (a) The City Manager may from time to time direct a Franchisee to prepare reports and to submit those reports by a date certain, in a format prescribed by the Manager, in addition to those required by this Chapter.
- (b) Unless an exemption is granted by the City Manager, within forty-five (45) days of the end of each calendar quarter, a Franchisee shall submit a report to City containing the following information:

1. the number of service calls (calls requiring a truck roll) received during the prior quarter and the percentage of service calls compared to the Subscriber base; and
 2. the total estimated hours of known outages as a percentage of total hours of operation. An outage is a loss of sound or video on any signal, or a significant deterioration of any signal, affecting two (2) or more Subscribers.
- (c) Unless an exemption is granted by the City Manager, no later than ninety (90) days after the end of its fiscal year, a Franchisee shall submit the following information, except that the information required by Section 8B.02.0260(c)(3) need only be provided where there has been a change from the preceding year:
1. A fully audited or certified revenue report from the previous calendar year for the Cable Communications System, and a certified statement setting forth the computation of Gross revenues used to calculate the Franchise fee for the preceding year and a detailed explanation of the method of computation showing (i) Gross revenues by category (e.g., basic, pay, pay-per-view, advertising, installation, equipment, late charges, miscellaneous, other); and (ii) what, if any, deductions were made from Gross revenues in calculating the Franchise fee (e.g., bad debt, credits and refunds), and the amount of each deduction.
 2. A report showing, for each applicable customer service standard, the Franchisee's performance with respect to that standard for each quarter of the preceding year. In each case where Franchisee concludes it did not comply fully, the Franchisee will describe the corrective actions it is taking to assure future compliance. In addition, the report should identify the number and nature of the customer service complaints received and an explanation of their dispositions.

3. An ownership report, indicating all Persons who at the time of filing control or own an interest in the Franchisee of ten percent (10%) or more.
- (d) Within ten (10) days of their receipt or (in the case of documents created by the Cable Communications System Operator or a Person acting on its behalf) filing, a Franchisee shall provide City:
1. notices of deficiency or forfeiture related to the operation of the Cable Communications System; and
 2. any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the Franchisee or by any partnership or corporation that owns or controls the Franchisee directly or indirectly.

Section 8B.02.0280. Maps Required

Each Franchisee shall maintain accurate maps and improvement plans that show the location, size, and a general description of all facilities installed in the Public rights-of-way or on Public Property and any power supply sources (including voltages and connections). Each Franchisee shall provide a map to City showing the location of its facilities, in such detail, format and scale as may be directed by the City Manager and update the map at least annually, and whenever the facility expands or is relocated. Copies of maps shall be provided on disk, in a commercially available electronic format specified by the City Manager.

Section 8B.02.0290. Other Records Required

Unless the City Manager specifically waives the requirement in writing, a Franchisee shall at all times maintain:

- (a) Records of all complaints received, their nature and resolution. The term “complaints” refers to complaints about any aspect of the Franchisee’s services, construction, operations or repairs activities;
- (b) Records of outages known to the Franchisee, their cause and duration;
- (c) Records of service calls for repair and maintenance indicating the nature of the call for service, the date and time service was requested, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was solved;
- (d) Records of installation/reconnection and requests for service extension, indicating date of request, date of acknowledgment, and the date and time service was extended;
- (e) Records sufficient to show whether the Franchisee has complied with each customer service standard that applies to it.

Section 8B.02.0300. Exemptions

The City Manager may temporarily exempt any Franchisee from its obligations under Sections 8B.02.0260 -8B.02.0280 if the City Manager determines that the requirement would be unduly burdensome or unnecessary, and that City and Subscriber interests may be adequately protected in some other manner.

Section 8B.02.0310. Privacy

A Franchisee and its officers, agents, employees, contractors and subcontractors, shall respect, refrain from invading, and take affirmative action to prevent violation of the privacy of Subscribers served by its Cable Communications System. A Franchisee

shall comply with all of the requirements of 27 U.S.C. § 551, as amended, in addition to the following:

- (a) Neither a Franchisee nor any other person, agency, or entity shall tap, or arrange for the tapping or monitoring of any cable, line, signal, input device, or Subscriber outlet or receiver for any purpose whatsoever, except that the Franchisee may conduct tests for the functioning of the Cable Communications System where necessary in order to ensure proper maintenance of the System and to collect performance data for agencies regulating the quality of signals, and the Franchisee may conduct Cable Communications System-wide or individually addressed “sweeps” for the sole purpose of verifying Cable Communications System integrity (including individual security system integrity), controlling return path transmissions, billing for pay services, or collecting aggregate data on viewing patterns by channel. “Tapping” shall mean observing or attempting to intercept a communications signal exchange where at least one of the communicating parties is unaware of the observation or interception, whether the exchange is observed by visual, aural or electronic means, for any purpose whatsoever. The mere provision of Cable modem services by a Franchisee shall not be construed to be “tapping” or “monitoring” under this Subparagraph.

- (b) The Franchisee shall not place in any private residence or in any institution any equipment capable of two-way communications without the written consent of the Subscriber, and shall not utilize the two-way communications capability of the System for Subscriber surveillance of any kind without the written consent of the Subscriber specifying the data to be collected, with definitions in lay persons' terms, and how the data collected will be used and by whom, except as permitted by 47 U.S.C. § 551(b)(2), or other applicable federal law. The written consents shall be, and shall show on their face that they are, revocable by the Subscriber at any time by written communication mailed by the Subscriber to the Franchisee. No penalty shall be invoked for a Subscriber's failure to provide a written consent or for his or her revocation thereof, and all written consents shall

so state on their face. The Franchisee shall not make such written consent a condition precedent to receipt by a Subscriber of any service. The provisions of this subparagraph shall not be deemed to require consent as a condition precedent to System-wide or individually addressed “sweeps” for the sole purpose of verifying System integrity, controlling return-path transmissions, billing for pay services, or collecting aggregate data on viewing patterns by channel.

- (c) No cable, line, wire, amplifier, converter, or other piece of equipment associated with Cable Communications System services shall be attached to any residence or other property of a citizen (except within Public rights-of-way) without first securing the written permission of the owner or tenant of the property. If such permission is later lawfully revoked, whether by the original or subsequent owner or tenant, the Franchisee shall remove forthwith all of the equipment and promptly restore the property to its original condition. The Franchisee shall perform all installations in a workmanlike manner and shall be responsible for any damage to residences or other property caused by the installation.
- (d) Except as permitted by 47 U.S.C. § 551(c), or other applicable federal law, no Franchisee or officer, agent or employee thereof shall sell, or otherwise make available, lists of the names and addresses of its Subscribers, or any list which identifies, by name or otherwise individual subscriber viewing habits, to any person, agency, or entity for any purpose whatsoever except that the Franchisee shall, upon request, provide lists of names and addresses of its Subscribers to authorized representatives of the City when the City Council deems such information necessary for performance of the regulatory functions of the City. Names and addresses of Subscribers within the possession of the City shall not be subject to public inspection or review, except as required by the California Public Records Act.
- (e) A Franchisee may release the number of Subscribers but only as a total number and as a percentage of the potential Subscribers within the License Area. When

indicating the number of Subscribers viewing a particular channel, a Franchisee shall indicate only the total number of Subscribers viewing during the relevant time and the percentage of all Subscribers which they represent, but not the identity of any Subscriber.

- (f) No polls or other two-way responses of Subscribers shall be conducted by a Franchisee whether for commercial purposes or otherwise unless the program of which the poll is a part contains an explicit disclosure of the nature, purpose, and prospective use of the results of the poll. A Franchisee shall adopt and enforce measures which ensure that personally identifiable information concerning a Subscriber, including his or her viewing habits and response or responses to the inquiry of inquiries, is not received by any third party, including the party sponsoring the poll, except as permitted by 47 U.S.C. § 551(c), or other applicable federal law.
- (g) A Franchisee shall not tabulate any test results that would reveal the commercial product preferences or opinions of individual Subscribers, members of their families or their invitees, licenses or employees, without advance written authorization by the Subscriber, except as may be permitted by 47 U.S.C. § 551(b)(2), or other applicable law. Tenants who occupy premises connected by the System shall be deemed to be Subscribers within the meaning of this section regardless of who actually pays for the service.
- (h) A Franchisee shall provide to a governmental entity personally identifiable information concerning a cable subscriber only pursuant to a court order and only if, in the court proceeding relevant to such court order:
 - 1. such entity offers clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the case; and

2. the subject of the information is afforded the opportunity to appear and contest such entity's claim;

If a court enters an order requiring the disclosure of any information, the Franchisee shall notify the subscriber immediately.

- (i) A Franchisee shall take all reasonable steps required so that it is able to provide reports, books and records to City, including by providing appropriate Subscriber privacy notices. Each Franchisee shall be responsible for redacting data that applicable law prevents it from providing to City. Nothing in this Section shall be read to require a Franchisee to violate city, state or federal Subscriber privacy laws, or any provision of this Chapter or a franchise ordinance related to privacy.

Section 8B.02.0320. Procedures for Paying Franchise Fees and Fees in Lieu of Franchise Fees

- (a) The Franchise fee paid pursuant to Article 8B.03, and the fee in lieu of Franchise fee paid pursuant to Article 8B.04, shall be paid monthly unless otherwise specified in a Franchise. Payment for each month shall be made to City by electronic transfer not later than forty-five (45) days after the end of each calendar month.
- (b) Unless a Franchise ordinance expressly provides otherwise, a Franchisee or other Person subject to a fee under Article 8B.03 or 8B.04 shall file with City within thirty (30) days of the end of each calendar month a statement showing Gross revenues during the preceding month and the number of Subscribers served.

Section 8B.02.0330. No Accord or Satisfaction

No acceptance by City of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such payment be construed as a release of any claim City may have for additional sums payable or otherwise related to that payment.

Section 8B.02.0340. Franchise Fee not in Lieu of Any Tax

Neither the Franchise fee under Article 8B.03, nor the fee paid in lieu of the Franchise fee under Article 8B.04, is a payment in lieu of any tax, fee or other assessment. Every Franchise ordinance shall state that such fees constitute rent, as compensation for the use of Public rights-of-way by a Franchisee, and shall provide that the Franchisee shall not denominate any such fees in any bills or other communications with Subscribers in any manner that misstates the amount, notice, basis, incidence, or method of calculation of such fees, or that might mislead a Subscriber regarding such matters.

Section 8B.02.0350. Interest or Late Payments

In the event that a fee payment is not received by City on or before the due date set forth in this Section or in a Franchise ordinance, or the fee owed is not fully paid, the Person subject to the fee will be charged interest on the outstanding amount owed from the due date at an interest rate equal to three percent (3%) above the rate for three-month Federal Treasury Bills at the most recent United States Treasury Department sale of such Treasury Bills occurring prior to the due date of the Franchise fee payment.

Section 8B.02.0360. Final Franchise Fee Statement

Within ninety (90) days of the date a Franchisee ceases operations under a Franchise (whether because of Franchise termination, transfer, bankruptcy or for any other reason), the Franchisee (or its successor in interest) shall: (A) make a final franchise fee

payment, covering the period from the end of the prior calendar month to the date the Franchisee ceased operations; and (B) file a final statement of Gross revenues covering the period from the beginning of the calendar year in which the operations ceased to the date operations ceased. The statement shall contain the information and be certified as required by Section 8B.02.0260(C)(1).

Section 8B.02.0370. Exclusive Contracts

Beginning on the effective date of this ordinance, neither a Franchisee nor the owner of any apartment building in the City shall enter into any agreement granting a Franchisee the exclusive right to provide Cable Service to residents of such a building. Franchisees and owners of apartment buildings shall comply with all requirements of state and federal law regarding access to such buildings by Operators of Cable Communications Systems.

Article 8B.03. SPECIAL RULES APPLICABLE TO CABLE SYSTEMS

Section 8B.03.010. Applications - Generally

- (a) An application must be filed for an initial and renewal Cable System Franchise, or for approval of a transfer. All applications under this provisions of this Chapter shall be in writing and shall be filed in the Office of the City Manager. These requirements do not apply to a renewal proposal submitted pursuant to 47 U.S.C. Section 546(h) as may be amended.
- (b) An application may be rejected if it is incomplete, or if the response to requests for information is not timely and complete.

- (c) Before taking final action on any such application, the City Council shall conduct a public hearing. No initial grant, renewal or transfer of a Franchise shall be effective without the approval of the City Council.

Section 8B.03.020. Content of Applications

- (a) The City Manager may specify the information that must be provided in connection with an application, and the form in which the information is to be provided.
- (b) At a minimum, each application must identify the applicant, show that the applicant is financially, technically and legally qualified to construct, maintain and operate the Cable System, contain a pro forma showing capital expenditures and expected income and expenses for the first five (5) years the applicant is to hold the Franchise, and show that the applicant is willing to comply unconditionally with this Chapter and its Franchise obligations. In addition, any application for an initial or renewal Franchise must describe in detail the Cable System that the applicant proposes to build or maintain, show where it is or will be located, set out the system construction or rebuild schedule, and show that the applicant will provide adequate Channels, facilities and other support for Public, Educational and Government use (including institutional network use) of the Cable System. To be accepted for filing, an original and six (6) copies of a complete application, including any required application fee must be submitted. All applications shall include the names and addresses of Persons authorized to act on behalf of the applicant with respect to the application.
- (c) City may at any time require, and applicant shall provide, such supplementary, additional or other information as the City may deem reasonably necessary to determine whether the requested Franchise should be granted. An applicant (and the transferor and transferee, in the case of a transfer) shall respond to any request for information from City, by the time specified by City.

- (d) The City Council, by resolution, may establish application fees in amounts sufficient to recover the City's costs of reviewing and processing applications.

Section 8B.03.030. Application for an Initial Franchise or Renewal Franchise

- (a) This Section establishes additional provisions that apply to an application for an initial Franchise, or a renewal Franchise application that is not governed by 47 U.S.C. Section 546(a)-(h) as may be amended.
- (b) Any Person may apply for an initial or renewal Franchise by submitting an application therefor on that Person's own initiative, or in response to a request for proposals issued by City. If City receives an unsolicited application, it may choose to issue a request for additional proposals, and require the applicant to amend its proposal to respond thereto. City may conduct such investigations as are necessary to act on an application.
- (c) Before taking final action on an application, the City shall conduct a public hearing in accordance with applicable state and federal law.
- (d) In determining whether to grant an initial Franchise or renew a Franchise, City may consider:
 - 1. in the case of an applicant for renewal, whether the applicant has substantially complied with the applicable law and the material terms of any existing cable Franchise ordinance, and whether the applicant's' quality of service under its existing Franchise ordinance, including signal quality, response to customer complaints, billing practices, and the like has been reasonable in light of the needs of the community;

2. in the case of an applicant that has not previously held a Cable System Franchise in City, whether the applicant's record in other communities indicates that it can be relied upon to provide high-quality service throughout any Franchise term;
 3. whether the applicant has the financial, legal, and technical ability to provide the services, facilities, and equipment set forth in an application, and to satisfy any minimum requirements established by City;
 4. whether the applicant's application is reasonable to meet the future cable-related needs and interests of City, taking into account the cost of meeting such needs and interests;
 5. whether issuance of a Franchise is warranted in the public interest considering the immediate and future effect on streets, Public Property, and Private property that will be used by the applicant's Cable System;
 6. whether issuance of the Franchise would improve competition in the provision of Cable Service in City;
 7. whether the applicant has proposed to provide adequate facilities, equipment, Channels and other support for PEG use (which includes Institutional Network use, pursuant to Section 8B.01.020) of the Cable System; and
 8. such other matters as City is authorized or required to consider.
- (e) If City determines that issuance of a Franchise would be in the public interest considering the factors described in this Section, it may proffer a Franchise ordinance to the applicant.

- (f) Within thirty-one (31) days after the effective date of the ordinance awarding a Franchise or Franchise renewal, or within such extended period of time as the City Council in its discretion may authorize, the successful applicant or Franchisee shall file with the City Manager an unconditional written acceptance, in form satisfactory to the City Attorney, of the Franchise or Franchise renewal, together with an agreement to be bound by and to comply with all applicable provisions of City's ordinance, this Chapter, and the Franchise ordinance. Such acceptance and agreement shall be acknowledged before a notary public and shall in form and content be satisfactory to and approved by the City Attorney.

Section 8B.03.040. Application for Renewal Franchise Filed Pursuant to 47 U.S.C. Section 546

- (a) This Section establishes provisions that apply to applications for renewal governed by 47 U.S.C. 546(a)-(g) as may be amended.
- (b) A Franchisee that intends to exercise rights under 47 U.S.C. 546(a)-(g) as may be amended shall submit a notice in writing to City in a timely manner clearly stating that it is activating the procedures set forth in those sections. City shall thereafter commence any proceedings that may be required under federal law, and upon completion of those proceedings, City may issue a request for proposals and an application may be submitted for renewal. City may preliminarily deny the application by resolution, and if the application is preliminarily denied, City may conduct such proceedings and by resolution establish such procedures and appoint such individuals as may be necessary to conduct any proceedings to review the application.

Section 8B.03.050. Application for Transfer

An application for transfer must contain all the information required by City Manager, by Section 8B.03.020(B), all information required by the FCC Form 394 as it existed on

January 1, 2001, or as it may be amended in the future, and all information that it is required to file under applicable federal or state law.

Section 8B.03.060. Review of Transfer Application

In determining whether a transfer application should be granted, denied, or granted subject to conditions, City may consider the legal, financial, and technical qualifications of the transferee to operate the Cable System; any potential impact of the transfer on Subscriber rates or services; whether the incumbent cable Operator is in compliance with its Franchise; whether the transferee owns or controls any other Cable System in City; whether the transfer may eliminate or reduce competition in the delivery of Cable Service in City; and whether operation by the transferee or approval of the transfer would otherwise adversely affect Subscribers, the public, or City's interest under this Chapter, the Franchise ordinance, or other applicable law. The proposed transferee shall pay all reasonable costs incurred by City in reviewing and evaluating the applications. Before taking final action on a transfer application, the City shall conduct a public hearing.

Section 8B.03.070. Acceptance of Franchise by Transferee

No application shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of this Chapter and the Franchise ordinance, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous Franchisee for all purposes.

Section 8B.03.080. Legal Qualifications of Proposed Transferee

(a) In order to be legally qualified:

1. The applicant must be willing to comply with the provisions of this Chapter and applicable laws; and to comply with such requirements of a Franchise ordinance as City may lawfully require.
2. The applicant must not have had any Cable System or OVS Franchise revoked by City within three (3) years preceding the submission of the application. If Franchisee challenges a revocation, it may not apply while the appeal is pending, or for three years after the final resolution of the appeal if the revocation is valid.
3. The applicant may not have had an application to City for an initial or renewal Cable System Franchise denied on the ground that the applicant failed to propose a Cable System meeting the cable-related needs and interests of the community, or as to which any challenges to such franchising decision were finally resolved (including any appeals) adversely to the applicant, within three (3) years preceding the submission of the application; and may not have had an application for an initial or renewal OVS Franchise denied on any ground within three (3) years of the application.
4. The applicant shall not be issued a Franchise if, at any time during the ten (10) years preceding the submission of the application, applicant was convicted of fraud, racketeering, anti-competitive actions, unfair trade practices or other conduct of such character that the applicant cannot be relied upon to deal truthfully with City and the Subscribers, or to substantially comply with its obligations.
5. Applicant must have the necessary authority under California and federal law to operate a Cable System, or show that it is in a position to obtain that authority.

6. The Applicant shall not be issued a Franchise if it files materially misleading information in its application or intentionally withholds information that the applicant lawfully is required to provide.
 7. For purposes of Section 8B.03.080(A)(1)-(4), the term applicant includes any Affiliate of applicant.
- (b) Notwithstanding Section 8B.03.080(A), an applicant shall be provided a reasonable opportunity to show that a Franchise should issue even if the requirements of Section 8B.03.080(A)(2)-(4) are not satisfied, by virtue of the circumstances surrounding the matter and the steps taken by the applicant to cure all harms flowing therefrom and prevent their recurrence, the lack of involvement of the applicant's principals, or the remoteness of the matter from the operation of a Cable System.

Section 8B.03.090. Franchise Fee

A Cable System Operator shall pay to City a Franchise fee in an amount equal to five (5) percent of Gross revenues, or such other amount as may be specified in the Franchise ordinance; *provided, however,* that if the Franchise ordinance specifies an amount, that amount shall be subject to increase should federal limits on fee payments be eliminated or changed.

Section 8B.03.0100. Right to Service

It is the policy of City to ensure that every Cable System provide service in its Franchise area upon request to any Person or any government building. Each Franchisee shall extend service upon request within its Franchise area, provided that, a Franchise ordinance may permit a Franchisee to require a potential Subscriber to contribute a fair share of the capital costs of installation or extension as a condition of extension or installation in cases where such extension or installation may be unduly expensive.

Cable Service must be provided within time limits specified in Section 8B.05.050(g).. If ownership or control of a system is to be transferred, the transferor shall notify Subscribers at least 30 days in advance. In addition, no later than 60 days after a transfer has occurred, the transferor shall so notify all Subscribers to provide them with the opportunity to terminate their subscriptions.

Section 8B.03.0110. Technical Standards

- (a) A Cable System within City shall meet or exceed the technical standards set forth in 47 C.F.R. § 76.601 and any other applicable technical standards as may be amended.
- (b) Each cable Operator shall perform at its expense such tests as may be necessary to show whether or not the Franchisee is in compliance with its obligations under applicable FCC standards, this Chapter or a Franchise ordinance.
- (c) Each Cable Operator shall participate in the City's Emergency Alert System, in accordance with FCC rules and the terms of the Operator's Franchise ordinance.

Section 8B.03.0120. Continuity of Service

Each Franchisee shall, during the term of its Franchise, ensure that Subscribers are able to receive continuous service. In the event the Franchise is revoked or terminated, the Franchisee may be required to continue to provide service for a reasonable period to assure an orderly transition of service from the Franchisee to another Person. A Franchise ordinance may establish more particular requirements under which these obligations will be satisfied.

Section 8B.03.0130. Rate Regulation

City may regulate any of an Operator's rates and charges, except to the extent it is prohibited from doing so by law. City will regulate rates in accordance with FCC rules and regulations, where applicable. Except to the extent FCC rules provide otherwise, all rates and charges that are subject to regulation, and changes in those rates or charges must be approved in advance. The City Manager may take any required steps to file complaints, toll rates, issue accounting orders or take any other steps required to comply with FCC regulations. The City Council shall be responsible for issuing rate orders that establish rates or order refunds. A Franchisee shall comply with all rate orders issued by the City Council pending appeals by the Franchisee, unless a stay order has been issued by the FCC.

Section 8B.03.0140. No Discrimination in Rates

- (a) A cable Operator shall not discriminate in its rates or charges or by granting undue preferences to any Subscriber, potential Subscriber, or group of Subscribers or potential Subscribers; *provided, however*, that a Franchisee may offer temporary, bona fide promotional discounts in order to attract or maintain Subscribers, so long as such discounts are offered on a non-discriminatory basis to similar classes of Subscribers throughout the Franchise area; and a Franchisee may offer discounts for the elderly, the disabled, or the economically disadvantaged; and such other discounts as it is expressly entitled to provide under federal law, if such discounts are applied in a uniform and consistent manner.
- (b) A cable Operator shall not deny access or charge different rates to any group of Subscribers or potential Subscribers because of the income of the residents of the local area in which such group resides.

Section 8B.03.0150. Public Benefits

A Franchise may include provisions under which a Franchisee will construct an Institutional Network, which may be owned in whole or in part by the City or the Franchisee. The City may acquire any portions of an I-Net owned by a Franchisee pursuant to Section 8B.02.0230. A Franchisee may also include provisions for support of PEG access. Such public benefits constitute part of the rent or compensation paid by a Franchisee to the City in return for the right to occupy the Public rights-of-way. A Franchisee shall not identify the amount, cost, or value of such benefits in any communications with Subscribers in any fashion that would mischaracterize the nature or purpose of such benefits. A Franchise ordinance may contain specific provisions regarding the valuation, computation or itemization of such benefits.

Article 8B.04. OPEN VIDEO SYSTEMS.

Section 8B.04.010. Applications for Grant or Renewal of Franchises

- (a) A written application shall be filed with the City Manager for grant of an initial or renewal OVS Franchise. To be acceptable for filing, a signed original of the application shall be submitted together with six (6) copies, and any required application fee. The application must conform to any applicable request for proposals, and contain all information required under Section 8B.03.020(B). All applications shall include the names and addresses of Persons authorized to act on behalf of the applicant with respect to the application.

- (b) The City Manager may specify the information that must be provided in connection with a request for proposals or an application for an initial or renewal OVS Franchise. At a minimum, each application must: identify the applicant, where it plans to construct its OVS, and the OVS construction schedule; show that the Applicant will provide adequate Channels, facilities and other support for

Public, Educational and Government use (including institutional network use) of the OVS; and show that the applicant is financially, technically and legally qualified to construct and operate the OVS.

- (c) A Person may apply for an initial or renewal OVS Franchise on its own initiative or in response to a request for proposals. Upon receipt of an application, City may conduct such investigations as are necessary to consider the application. City may request such additional information as it deems appropriate. An applicant shall respond to requests for information completely, and within the time directed by City, and must strictly comply with procedures, instructions, and requirements City may establish. An application may be rejected if it is incomplete or the applicant fails to follow procedures or respond fully to information requests.
- (d) Before taking final action on an application, the City shall conduct a public hearing.

Section 8B.04.020. Evaluation of Application

In evaluating an OVS Franchise application, City may consider the following:

- (a) The extent to which the applicant has substantially complied with the applicable law and the material terms of any existing City OVS Franchise;
- (b) Whether the applicant has the financial, technical, and legal qualifications to hold an OVS Franchise;
- (c) Whether the application satisfies any minimum requirements established by City for, or will otherwise provide adequate Public, Educational, and Governmental use capacity, facilities, or financial support (including with respect to institutional networks);

- (d) Whether issuance of an OVS Franchise would require replacement of property or involve disruption of property, public services, or use of the Public rights-of-way;
- (e) Whether the approval of the application may eliminate or reduce competition in the delivery of Cable Service in City; and
- (f) Such other matters as it is required or entitled to consider.

Section 8B.04.030. Grant of OVS Franchise

If City finds that it is in the public interest to issue an OVS Franchise considering the factors above, shall proffer an OVS Agreement to applicant, and if applicant is willing to unconditionally accept the terms thereof, and to comply with the requirements of applicable law, including this Chapter, it shall issue an OVS Franchise.

Section 8B.04.040. OVS Transfers - Consent Required

No transfer of an OVS Franchise shall occur without prior written notice to the City Council, followed by a public hearing and the approval of the City Council.

Section 8B.04.050. OVS Transfer Applications

- (a) An OVS Franchisee shall promptly notify City of any proposed transfer, and submit an application for its approval at least 120 days in advance of the proposed and anticipated transfer date.
- (b) The City Manager may specify information that must be provided in connection with a transfer application. At a minimum, an application must: describe the Persons involved in the transaction and the Person that will hold the OVS Franchise; describe the chain of ownership before and after the proposed

transaction; show that the Person that will hold the OVS Franchise will be legally, financially, and technically qualified to do so; attach complete information on the proposed transaction, including the contracts or other documents that relate to the proposed transaction, and all documents, schedules, exhibits, or the like referred to therein; and attach any shareholder reports or filings with the Securities and Exchange Commission (“SEC”) that discuss the transaction.

Section 8B.04.060. Review of Transfer Applications

- (a) For the purposes of determining whether it shall consent to a transfer, City or its agents may inquire into all qualifications of the prospective transferee and such other matters as City may deem necessary to determine whether the transfer is in the public interest and should be approved, denied, or conditioned. If the transferee or OVS Franchisee refuse to provide information, or provide incomplete information, the request for transfer may be denied.
- (b) In deciding whether a transfer application should be granted, denied or granted subject to conditions, City may consider the legal, financial, and technical qualifications of the transferee to operate the OVS; whether the incumbent OVS Operator is in compliance with its OVS Agreement and this Chapter and, if not, the proposed transferee’s commitment to cure such noncompliance; whether the transferee owns or controls any other OVS or Cable System in City, and whether operation by the transferee may eliminate or reduce competition in the delivery of Cable Service in City; and whether operation by the transferee or approval of the transfer would adversely affect Subscribers, the public, or City’s interest under this Chapter, the OVS Agreement, or other applicable law.
- (c) No application shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of this Chapter and the OVS Agreement , and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous Franchisee for all purposes.

The proposed transferee shall pay all reasonable costs incurred by City in reviewing and evaluating the applications.

Section 8B.04.070. OVS Legal Qualifications.

(a) In order to be legally qualified:

1. The applicant must be willing to comply with the provisions of this Chapter and applicable laws, and to comply with such requirements of an OVS Agreement as City may lawfully require.
2. The applicant must not hold a Cable System Franchise, or have pending an application for a Cable System Franchise.
3. The applicant must not have had any Cable System or OVS Franchise revoked by City within three (3) years preceding the submission of the application. If Franchisee challenges a revocation, it may not apply while the appeal is pending, or for three years after the final resolution of the appeal if the revocation is valid.
4. The applicant may not have had an application for an initial or renewal Cable System Franchise to City denied on the ground that the applicant failed to propose a Cable System meeting the cable-related needs and interests of the community, or as to which any challenges to such franchising decision were finally resolved (including any appeals) adversely to the applicant, within three (3) years preceding the submission of the application.
5. The applicant may not have had an application for an initial or renewal OVS Franchise denied on any grounds within three (3) years of the applications.

6. The applicant shall not be issued an OVS Franchise if, at any time during the ten (10) years preceding the submission of the application, applicant was convicted of fraud, racketeering, anti-competitive actions, unfair trade practices or other conduct of such character that the applicant cannot be relied upon to deal truthfully with City and the Subscribers, or to substantially comply with its obligations.
 7. Applicant must have the necessary authority under California and federal law to operate an OVS, and must be certified by the FCC under Section 653 of the Cable Act as may be amended.
 8. The Applicant shall not be issued an OVS Franchise if it files materially misleading information in its application or intentionally withholds information that the applicant lawfully is required to provide.
 9. For purposes of Section 8B.04.070(a)(2)-(6), the term applicant includes any Affiliate of applicant.
- (b) Notwithstanding Section 8B.04.080(a) , an applicant shall be provided a reasonable opportunity to show that an OVS Franchise should issue even if the requirements of Section 8B.04.080(a)(3)-(6) are not satisfied, by virtue of the circumstances surrounding the matter and the steps taken by the applicant to cure all harms flowing therefrom and prevent their recurrence, the lack of involvement of the applicant's principals, or the remoteness of the matter from the operation of an OVS.

Section 8B.04.080. Minimum Requirements for OVS Operators

- (a) No OVS Operator shall be issued a Franchise, or may commence construction of an OVS, until (A) it agrees to match in all respects the highest PEG obligations

borne by any Cable System Operator in City; or (B) it agrees to PEG obligations acceptable to City.

- (b) Any OVS Operator that constructs an I-Net must match in all respects the highest I-Net obligations borne by any Cable System Operator in City, unless it agrees to alternative I-Net obligations acceptable to City.
- (c) Every OVS Agreement shall specify the construction schedule that will apply to any required construction, upgrade, or rebuild of the OVS. The schedule shall provide for prompt completion of the project, considering the amount and type of construction required.
- (d) Each OVS Operator shall perform at its expense such tests as may be necessary to show whether or not the OVS Franchisee is in compliance with its obligations under this Chapter or a Franchise or an OVS Agreement.
- (e) Every OVS Franchisee must satisfy customer service consumer protection requirements established from time to time under state or local law and applicable to OVS.
- (f) If an OVS Franchisee's FCC certification is revoked or otherwise terminates as a result of the passage of time or as a matter of law, City may revoke the OVS Franchise after a hearing. The OVS franchise may also be revoked if federal regulations or statutory provisions governing OVS are declared invalid or unenforceable, or are repealed.
- (g) City may regulate an OVS Franchisee's rates and charges except as prohibited by law, and may do so by amendment to this Chapter, separate ordinance, by amendment to an OVS Agreement, or in any other lawful manner.

Section 8B.04.090. Fee in Lieu of Franchise Fee Paid by OVS Franchisee

In lieu of the Franchise fee required by Article 8B.03, an OVS Franchisee shall pay to City a fee of five percent (5%) of Gross Revenues.

Section 8B.04.0100. Fee in Lieu of Franchise Fee Paid by Person Leasing Capacity

A Person leasing capacity from an OVS Operator, other than a Person whose revenues are included in the payment made under Section 8B.04.090 shall pay City a fee in lieu of the Franchise fee required by Article 8B.03 of five percent (5%) of the gross revenues of such Person. For purposes of this section, the term gross revenues means all revenues, whether cash, in-kind or in any other form, of the Person leasing capacity, or its affiliates, derived from use of the OVS to provide cable service in the City.

Notwithstanding the foregoing, where a Person, other than an Affiliate, pays an OVS Franchisee to use its Franchisee's OVS (the "use payments"); and that Person recovers those use payments through charges to its Subscribers that are included in that Person's Gross revenues; and the OVS Franchisee pays a Franchise fee on those use charges; then that Person may deduct from its Gross revenues the use payments it makes.

Article 8B.05. CUSTOMER SERVICE STANDARDS

Section 8B.05.010. Consumer Protection Standards in General

Each Cable System Operator must satisfy all FCC and state customer service standards or consumer protection standards, as well as the provisions of this Article. In the case of a conflict among standards, the stricter standard shall apply.

Section 8B.05.020. Office Availability.

(a) Walk-in Hours

Each Operator shall maintain at least one office at a convenient location in City that shall be open for walk-in traffic at least ten (10) hours per day (except legal holidays) Monday through Friday, with some evening hours, and at least five (5) hours on Saturday to allow Subscribers to pay bills, drop off equipment and to pick up equipment.

(b) Service Call Hours

Each Operator shall perform service calls, installations, and disconnects at least ten (10) hours per day Monday through Saturday, except legal holidays, provided that an Operator shall respond to outages twenty-four (24) hours a day, seven (7) days a week.

Section 8B.05.030. Telephones.

(a) Telephone Hours

Each Operator shall establish a publicly listed local toll-free telephone number. Customer service representatives must answer the phone at least ten (10) hours per day, Monday through Saturday, except legal holidays, for the purpose of receiving requests for service, inquiries, and complaints from Subscribers. After such business hours the phone shall be answered so that customers can register complaints and report service problems on a twenty-four (24) hour per day, seven (7) day per week basis, and so that the Operator can respond to service outages as required herein.

(b) Telephone Answering Time

Telephone answering time shall not exceed thirty (30) seconds or four (4) rings, and the time to transfer the call to a customer service representative (including hold time) shall not exceed an additional thirty (30) seconds.

(c) Busy Signal

Under normal operating conditions customers shall receive a busy signal less than three percent (3%) of the time.

(d) Meeting Standards

Under normal operating conditions, the standards set out in Section 8B.05.030(b) and 8B.05.030(c) shall be met ninety (90) percent of the time, measured quarterly. The phrase “of the time” refers to the percentage of calls to the Operator during normal operating conditions, so that if 1000 calls are received by the Operator, 900 of those calls must be answered within the time limits specified in 8B.05.030(b); and fewer than 30 should receive a busy signal as specified in Section 8B.05.030(c).

Section 8B.05.040. Scheduling Work.

(a) Appointments

All appointments for service, installation, or disconnection shall be specified by date. Each Operator shall specify a specific time at which the work will be done, and service personnel shall arrive within thirty (30) minutes of the scheduled time. An Operator may also, upon request, schedule service installation calls outside normal business hours, for the express convenience of the customer.

(b) Rescheduling Appointments

If at any time an installer or technician anticipates that he or she will be late for an appointment and believes a scheduled appointment time will be missed, an attempt to contact the customer shall be made and the appointment rescheduled at a time convenient to the customer, if rescheduling is necessary. It is the Operator's burden to prove it met the appointment.

(c) Missed Appointments

The Operator shall offer and fully describe to Subscribers who have experienced a missed appointment (where the missed appointment was not the Subscriber's fault) that the Subscriber may choose between the following options:

1. Installation or service call free of charge, if the appointment was for an installation or service call for which a fee was to be charged;
2. One (1) month or a credit equal to one (1) month of the most widely subscribed to service tier free of charge for other appointments; and
3. An opportunity to elect remedies under California Civil Code 1722 as may be amended, if applicable.

Section 8B.05.050. Service Standards.

(a) Acknowledging Service Request

Under normal operating conditions, requests for service, repair, and maintenance shall be acknowledged by a trained customer service representative within twenty-four (24) hours, or before the end of the next business day, whichever is earlier.

(b) Acknowledging Other Inquiries

An Operator shall respond to all other inquiries (including billing inquiries) within five (5) business days of the inquiry or complaint.

(c) Repairing Outages

Under normal operating conditions, repairs and maintenance for outages or service interruptions shall be completed within twenty-four (24) hours after the outage or service interruption becomes known to Operator where the Operator has adequate access to facilities to which it must have access in order to remedy the problem. Each Operator shall obtain an Emergency Repair Permit annually from the Department of Public Works.

(d) Service Problem Repairs

Under normal operating conditions, work to correct all other service problems must be begun by the next business day after notification of the service problem, and must be completed within five (5) business days from the date of the initial request.

(e) Abnormal Operating Conditions

When normal operating conditions do not exist, an Operator shall complete the work in the shortest time possible.

(f) Cancellation of Appointments

An Operator shall not cancel a service or installation appointment with a customer after the close of business on the business day preceding the scheduled appointment.

(g) Time for Extension.

Except as a Franchise otherwise provides, service shall be extended upon request to any Person or to any government building in an Operator's Franchise area (i) within seven (7) days of the request, where service can be provided by activating or installing a drop; (ii) within ninety (90) days of the request where an extension of one-half mile or less is required; or (iii) within six (6) months where an extension of one-half mile or more is required.

(h) Service Upgrades

Requests for additional outlets, service upgrades or other connections (e.g., DMX, VCR, A/B switch) separate from the initial installation shall be performed within seven (7) business days after an order has been placed.

(i) Service Standards To Be Met

Under normal operating conditions, the service standards set out in Sections 8B.05.050(a) - 8B.05.050(h) shall be met at least ninety-five percent (95%) of the time, measured on a quarterly basis. The phrase "of the time" refers to the number of service requests received by the Operator, so that if Operator receives 100 service requests, at least 95 of those requests shall be scheduled and/or completed within the time limits specified in Sections 8B.05.050(a)- 8B.05.050(h).

(j) Sufficient Service Staff Required

The failure of the Operator to hire sufficient staff or to properly train its staff shall not justify an Operator's failure to comply with this provision.

Section 8B.01.010. Penalties

For each violation of a Cable System customer service standard, penalties will be imposed as follows and shall not be charged or passed-through to Subscribers:

1. Two hundred dollars (\$200) for each day of each material breach, not to exceed six hundred dollars (\$600) for each occurrence of material breach.
2. If there is a subsequent material breach of the same provision within twelve (12) months, four hundred dollars (\$400) for each day of each material breach, not to exceed twelve hundred dollars (\$1200) for each occurrence of the material breach.
3. If there is a third or additional material breach of the same provision within twelve (12) months of the first, one thousand dollars (\$1000) for each day of each material breach, not to exceed three thousand dollars (\$3000) for each occurrence of the material breach.

Any penalty assessed under this Section will be reduced dollar for dollar to the extent any liquidated damage provision of a Franchise imposes a monetary obligation on a Franchisee for the same customer service failures, and no other monetary damages may be assessed. A citation may be served on the Franchisee by providing a copy to the person to whom notices are to be sent under the Franchise. Penalties will be imposed pursuant to procedures set forth in the Municipal Code, applied in a manner consistent with Cal. Govt. Code Sec. 53088(2)(r).

Section 8B.05.060. Disabled Services.

With regard to Subscribers with disabilities, upon Subscriber request, each Operator shall arrange for pickup and/or replacement of converters or other Operator equipment at the Subscriber's address or by a satisfactory equivalent (such as the provision of a postage-prepaid mailer).

Section 8B.05.070. Notice to Subscribers regarding Service.

An Operator shall provide each Subscriber at the time service is installed, and annually thereafter, clear and accurate written information:

- (a) On placing a service call, filing a complaint, or requesting an adjustment (including when a Subscriber is entitled to refunds for outages and how to obtain them);
- (b) Showing the telephone number of City office responsible for administering the Cable Television Franchise;
- (c) Providing a schedule of rates and charges (which listing must identify any discounts offered), including but not limited to disconnect fees and service downgrade fees, if any; Channel positions; services provided; a copy of the service contract, delinquent Subscriber disconnect and reconnect procedures; notifying Subscribers of the availability of parental control devices, and the conditions under which they will be provided and the cost (if any) charged; and notifying Subscribers of the Franchisee's privacy policy;
- (d) Describing conditions that must be met to qualify for discounts;
- (e) Describing policies related to privacy and confidentiality;
- (f) Describing any other of the Operator's policies in connection with its Subscribers; and
- (g) Describing any discounts, services, or specialized equipment available to Subscribers with disabilities; explaining how to obtain them; and explaining how to use any accessibility features.

Subscribers shall also be given notice of any material changes in the foregoing at least 30 days before such changes take effect.

Section 8B.05.080. City Approval of Notices and Bills

The form of all general communications with subscribers, including without limitation, billing statements and notices of customer service policies and procedures shall be subject to City approval. The Franchisee shall submit for City approval a copy of all such documents at least thirty (30) days prior to the date of intended distribution to customers. City response to Franchisee's requests for review shall be made within five (5) working days of Franchisee's submission, and approval shall not be unreasonably withheld.

Section 8B.05.090. Changes in Noticed Information.

Operator shall provide City Manager at least sixty (60) days, and all Subscribers at least thirty (30) days, written notice of any material changes in the information required to be provided under this article, except that, if federal law establishes a shorter notice period and preempts this requirement, the federal requirement will apply.

Section 8B.05.0100. Truth in Advertising; Usability Standards.

Each Operator shall take appropriate steps to ensure that all written Operator promotional materials, announcements, and advertising of residential Cable Service to Subscribers and the general public, where price information is listed in any manner, clearly and accurately discloses price terms. In the case of telephone orders, an Operator shall take appropriate steps to ensure that price terms are clearly and accurately disclosed to potential customers in advance of taking the order. In addition, 100% of all written materials distributed to subscribers shall be appropriate for reading at the 8th grade level.

Section 8B.05.0110. Public Inspection of File

Each Operator shall maintain a file open for public inspection containing all notices provided to Subscribers under these customer service standards, as well as all promotional offers made to Subscribers. The notices and offers shall be kept in the file for at least one (1) year from the date of such notice or promotional offer.

Section 8B.05.0120. Interruptions of Service.

An Operator will provide forty-eight (48) hours prior notice to Subscribers and City before interrupting service for planned maintenance or construction; provided, however, that planned maintenance that does not require more than two (2) hours interruption of service and that occurs between the hours of 1:00 a.m. and 5:00 a.m. will not require such notice to Subscribers, and notice to City must be given no less than twenty-four (24) hours before the anticipated service interruption.

Section 8B.05.0130. Prorated Billing.

An Operator's first billing statement after a new installation or service change will be prorated as appropriate and will reflect any security deposit.

Section 8B.05.0140. Billing Statement

(a) Clear Billing Statement

An Operator's billing statement must be clear, concise, and understandable; must itemize each category of service and equipment provided to the Subscriber; and must state clearly the charges therefor.

(b) Payment Due Date Specified

An Operator's billing statement must show a specific payment due date not earlier than the later of:

- (A) Fifteen (15) days after the date the statement is mailed; or
- (B) The tenth (10th) day of the service period for which the bill is rendered.

(c) Late Fee

A late fee or administrative fee (collectively referred to below as a “late fee”) shall not be imposed for payments earlier than twenty-seven (27) days after the due date specified in the bill. In addition, an Operator shall not report any delinquency or the imposition of any late fee to any credit agency earlier than twenty-seven (27) days after the due date.

(d) Notice of Late Fee

A late fee shall not be imposed unless the Subscriber is provided written notice at least ten (10) days prior to the date the fee is imposed that a fee will be imposed, the date the fee will be imposed and the amount of the fee that will be imposed if the delinquency is not paid. A late fee shall not be imposed unless the outstanding balance exceeds ten dollars (\$10.00). Once a Subscriber’s account is up to date and any late fee paid, an Operator shall immediately notify all credit agencies or other third parties to whom the Operator may have provided information regarding the Subscriber’s past delinquency, and shall take no further action that might penalize or harm the Subscriber.

(e) Operator’s Billing Errors

Subscribers shall not be charged a late fee or otherwise penalized for any failure by an Operator, including failure to timely or correctly bill the Subscriber, or failure to properly credit the Subscriber for a payment timely made. Payments shall be considered timely if postmarked on the due date.

(f) Payment by Mail or in Person

An Operator's bill must permit a Subscriber to remit payment by mail or in person at the Operator's local office.

Section 8B.05.0150. Credit for Service Impairment.

(a) Prorated Credit

A Subscriber's account shall be credited a prorated share of the monthly charge for the service upon Subscriber request if a Subscriber is without service or if service is substantially impaired for any reason for a period exceeding one (1) hour during any twenty-four (24) hour period; or automatically if the loss of service or impairment is for twelve (12) hours or longer.

(b) Impairment Caused by Subscriber

An Operator need not credit Subscriber where it establishes that a Subscriber will obtain a refund for a loss of service or impairment caused by the Subscriber or by Subscriber-owned equipment (not including, for purposes of this Section, in-home wiring installed by the Operator).

Section 8B.05.0160. Billing Complaints.

Operator shall provide an appropriately detailed response to all written billing complaints from Subscribers within thirty (30) days of receipt.

Section 8B.05.0170. Billing Refunds.

Refunds to Subscribers shall be issued no later than:

- (a) The earlier of the Subscribers next billing cycle following resolution of the refund request, or thirty (30) days; or

- (b) The date of return of all equipment to Operator, if Cable Service has been terminated.

Section 8B.05.0180. Credits for Cable Service.

Credits for Cable Service shall be issued no later than the Subscriber's next billing cycle after the determination that the credit is warranted.

Section 8B.05.0190. Disconnection and Downgrades.

(a) Subscriber Termination

A Subscriber may terminate service at any time without penalty.

(b) Disconnection Upon Subscriber Termination

An Operator shall promptly disconnect from the Operator's Cable System or downgrade any Subscriber who so requests. No charges for service may be made after the Subscriber requests disconnection. No period of notice before voluntary termination or downgrade of Cable Service may be required of Subscribers by any Operator. There shall be no charge for disconnection, except for the collection fee authorized by state law, and any downgrade charges shall conform to Applicable Law. The notice required by Section 6 shall describe the collection fee authorized by state law and the circumstances in which it may apply.

Section 8B.05.0200. Security Deposit.

Any security deposit and/or other funds, including interest, due a Subscriber that disconnects or downgrades service shall be returned to the Subscriber within thirty (30) days or in the next billing cycle, whichever is later, from the date disconnection or downgrade was requested except in cases where the Subscriber does not permit the Operator to recover its equipment, in which case the amounts owed shall be paid to

subscribers within thirty (30) days of the date the equipment was recovered, or in the next billing cycle, whichever is later.

Section 8B.05.0210. Disconnection due to Nonpayment.

(a) Disconnection for Nonpayment

An Operator shall not disconnect a Subscriber's Cable Service for non-payment unless:

1. The Subscriber is delinquent in payment for Cable Service;
2. A separate, written notice of impending disconnection, postage prepaid, has been sent to the Subscriber at least twenty (20) days before the date on which service may be disconnected, at the premises where the Subscriber requests billing, which notice shall identify the names and address of the Subscriber whose account is delinquent, state the date by which disconnection may occur if payment is not made, and the amount the Subscriber must pay to avoid disconnection, and a telephone number of a representative of the Operator who can provide additional information concerning and handle complaints or initiate an investigation concerning the services and charges in question;
3. The Subscriber fails to pay the amounts owed to avoid disconnection by the date of disconnection; and
4. No pending inquiry exists regarding the bill to which Operator has not responded in writing.

(b) No Disconnection if Payment Made

If the Subscriber pays all amounts due, including late charges, before the date scheduled for disconnection, the Operator shall not disconnect service. Service may only be terminated on days in which the customer can reach a representative of the Operator either in person or by telephone.

(c) Reinstating Service

After disconnection (except as noted below), upon payment by the Subscriber in full of all proper fees or charges, including the payment of the reconnection charge, if any, the Operator shall promptly reinstate service.

Section 8B.05.0220. Disconnection and Restoration.

(a) Disconnection.

An Operator may immediately disconnect a Subscriber if:

1. The Subscriber is damaging, destroying, or unlawfully tampering with or has damaged or destroyed or unlawfully tampered with the Operator's Cable System;
2. The Subscriber is not authorized to receive a service and is receiving it and/or is facilitating, aiding or abetting the unauthorized receipt of service by others; or
3. Subscriber-installed or attached equipment is resulting in signal leakage that is in violation of FCC rules.

(b) Lawful Use of Equipment

A Subscriber may use or install any equipment on the Subscriber's premises, and connect it to the Cable System, unless expressly prohibited by law. Installation or use of any such equipment by a Subscriber is permitted and an Operator shall not

disconnect such a Subscriber unless the use or installation of the equipment creates grounds for disconnection pursuant to Section 8B.05.0220(a).

(c) Restoration of Service

After disconnection, the Operator shall restore service after the Subscriber provides adequate assurance that it has ceased the practices that led to disconnection, and paid all proper fees and charges, including any reconnect fees and all amounts owed the Operator for damage to its Cable System or equipment. Provided that, no reconnection fee may be imposed on a Subscriber disconnected pursuant to this article if the leakage was the result of the Operator's acts or omissions; or in any case unless the Operator notifies the Subscriber of the leakage at least three (3) business days in advance of disconnection, and the Subscriber has failed to correct the leakage within that time.

Section 8B.05.0230. Operator's Property.

Except as Applicable Law may otherwise provide, an Operator may remove its property from a Subscriber's premises within thirty (30) days of the termination of service. If an Operator fails to remove its property in that period, the property shall be deemed abandoned unless the Operator has been denied access to the Subscriber's premises, or the Operator has a continuing right to occupy the premises under Applicable Law.

Section 8B.05.0240. Deposits.

An Operator may require a reasonable, non-discriminatory deposit on equipment provided to Subscribers. Deposits will be placed in an interest-bearing account, and the Operator shall return the deposit, plus interest earned to the date the deposit is returned to the Subscriber, less any amount the Operator can demonstrate should be deducted for damage to such equipment.

Section 8B.05.0250. Parental Control Option.

- (a) Without limiting an Operator's obligations under Federal law, an Operator shall provide parental control devices at no charge to all Subscribers who request them that enable the Subscriber to block the video and audio portion of any Channel or Channels of programming. An Operator shall notify all Subscribers in writing of the availability of these devices at the time of initial connection, and at least annually thereafter.

- (b) To the extent required by federal law, if a grantee plans to provide a premium channel without charge to a Subscriber who does not subscribe to such premium channel, the Operator shall provide at least 30 days' prior written notice thereof to said Subscriber, and upon the Subscriber's request, shall block entirely the Subscriber's reception of said channel. For purposes of this section, a "premium channel" shall mean any pay service offered on a per channel or per program basis, which offers movies rated by the Motion Picture Association as X, NC-17, or R.

Section 8B.05.0260. Bundled Services.

A Franchisee shall offer Subscribers the opportunity to subscribe to each service offered by the Franchisee on an unbundled basis.

Section 8B.05.0270. Relief from Obligations.

Notwithstanding the requirements of this article, the City Manager is authorized to relieve an Operator of its obligations under this article if:

- (a) Operator shows that there is an alternative standard that is substantially similar to that established by this article;

- (b) The City Manager determines that there is sufficient competition among cable operators that renders application of these standards unnecessary; or
- (c) In light of the number of customers served by a cable Operator, the requirements of this article are, in the City Manager's sole discretion, unduly burdensome and there is an alternative way to serve the same interest.

The City Manager shall inform the City Council of any decision to relieve an Operator of any obligations.

**Article 8B.06.
MISCELLANEOUS**

Section 8B.06.010. Severability

If any term, condition, or provision of this Chapter shall, to any extent, be held to be invalid or unenforceable by a valid order of any court or regulatory agency, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by City and shall thereafter be binding on the Franchisee and City.

Section 8B.06.020. Connections to Cable System; Use of Antennae.

- (a) To the extent consistent with federal law, Subscribers shall have the right to attach VCR's, receivers, and other terminal equipment to a Franchisee's Cable Communications System. Subscribers also shall have the right to use their own remote control devices and converters, and other similar equipment.

- (b) A Franchisee shall not, as a condition of providing service, require a Subscriber or potential Subscriber to remove any existing antenna or satellite dish, or disconnect an antenna or satellite dish except at the express direction of the subscriber or potential Subscriber, or prohibit installation of a new antenna or connection to any other multi-channel video provider's system.

Section 8B.06.030. Discrimination Prohibited

- (a) A Cable Communications System Operator shall not discriminate among Persons or City or take any retaliatory action against a Person or City because of

that Person's exercise of any right it may have under federal, state, or local law, nor may the Operator require a Person or City to waive such rights as a condition of taking service.

- (b) A Cable Communications System Operator shall not refuse to employ, discharge from employment, or discriminate against any Person in compensation or in terms, conditions, or privileges of employment because of race, color, creed, national origin, sex, age, disability, religion, ethnic background, marital status or sexual orientation. A Cable Communications System Operator shall comply with all federal, state, and local laws and regulations governing equal employment opportunities, and hiring practices, as the same may be amended from time to time.

Section 8B.06.040. Transitional Provisions

Any Person holding an existing Franchise for a Cable Communications System may continue to operate under the existing Franchise to the conclusion of its present term (but not any renewal or extension thereof) with respect to those activities expressly authorized by the Franchise; and provided further that, such Person shall be subject to the other provisions of this Chapter to the extent permitted by law.

PASSED FOR PUBLICATION OF TITLE this _____ day of _____,
20__ by the following vote:

AYES:

NOES:

ABSENT:

Mayor

ATTEST:

City Clerk

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