

Chapter 5.70

CABLE TELEVISION SYSTEMS

Sections:

5.70.010	Intent.
5.70.020	Short Title.
5.70.030	Definitions.
5.70.040	Grant of franchise.
5.70.050	Franchise required.
5.70.060	Establishment of franchise requirements.
5.70.070	Authority to grant franchise.
5.70.080	Use of public streets and ways.
5.70.090	Term.
5.70.100	Franchise nonexclusive.
5.70.110	New franchise applications.
5.70.120	Grant procedure.
5.70.130	Transfer of ownership or control.
5.70.140	Franchise renewal.
5.70.150	Police powers.
5.70.160	Franchise fee.
5.70.170	Forfeiture or revocation.
5.70.180	Procedures in the event of termination or expiration.
5.70.190	Receivership and foreclosure.
5.70.200	Franchise processing costs.
5.70.210	Regulatory authority.
5.70.220	Regulatory responsibility.
5.70.230	PEG access.
5.70.240	Public access management.
5.70.250	Reservation by grantor.
5.70.260	Rates.
5.70.270	Rate change procedure.
5.70.280	Annual review of performance and quality of service.
5.70.290	System and services review.
5.70.300	Construction bond.
5.70.310	Performance bond.
5.70.320	Security fund.
5.70.330	Indemnification.
5.70.340	Insurance.
5.70.350	System design.
5.70.360	Geographical coverage.
5.70.370	Cablecasting facilities.
5.70.380	System construction schedule.
5.70.390	Remedies for delay in construction.
5.70.400	Provision of service.
5.70.410	Undergrounding of cable.
5.70.420	New development undergrounding.
5.70.430	Underground at multiple dwelling units.
5.70.440	Street occupancy.
5.70.450	Construction and technical standards.
5.70.460	Areawide interconnection.
5.70.470	Reduction in services.
5.70.480	Public, educational and government (PEG) access facilities.
5.70.490	Cable channels for commercial use.
5.70.500	Consumer service standards.

- 5.70.510** **Requests for cable service and repairs.**
- 5.70.520** **Verification of compliance.**
- 5.70.530** **Non-compliance with standards.**
- 5.70.540** **Complaint procedure.**
- 5.70.550** **Review by the grantor.**
- 5.70.560** **Escrow account.**
- 5.70.570** **Remedies for violations.**
- 5.70.580** **Notices.**
- 5.70.590** **Quality of service.**
- 5.70.600** **Tenant rights.**
- 5.70.610** **Grantee rules and regulations.**
- 5.70.620** **Rights of individuals.**
- 5.70.630** **Continuity of service mandatory.**
- 5.70.640** **Identification of employees.**
- 5.70.650** **Books and records.**
- 5.70.660** **Records required.**
- 5.70.670** **Right of inspection of construction.**
- 5.70.680** **Right of intervention.**
- 5.70.690** **Right of grantee and grantor.**
- 5.70.700** **Remedies for franchise violations.**
- 5.70.710** **Procedure for remedying franchise violations.**
- 5.70.720** **Force majeure-Grantee's inability to perform.**
- 5.70.730** **Annual reports.**
- 5.70.740** **Plant survey report.**
- 5.70.750** **Copies of federal and state reports.**
- 5.70.760** **Public reports.**
- 5.70.770** **Complaint file and reports.**
- 5.70.780** **Miscellaneous reports.**
- 5.70.790** **Inspection of facilities.**
- 5.70.800** **Public inspection.**
- 5.70.810** **Failure to report.**
- 5.70.820** **False statements.**
- 5.70.830** **Cost of reports.**
- 5.70.840** **Compliance with state and federal laws.**
- 5.70.850** **Separability non-material provisions.**
- 5.70.860** **Separability material provisions.**
- 5.70.870** **Notices.**
- 5.70.880** **Captions.**
- 5.70.890** **No recourse against the Grantor.**
- 5.70.900** **Nonenforcement by the Grantor.**

5.70.010 Intent.

The City of Napa finds that the development of cable television and communications systems has the potential of having great benefit and impact upon the residents of Napa. Because of the complex and rapidly changing technology associated with cable television, the City further finds that the public convenience, safety and general welfare can best be served by establishing, in accordance with applicable laws, regulatory powers which should be vested in the City or such persons as the City shall designate. It is the intent of this chapter and subsequent amendments to provide for and specify the means to attain the best possible public interest and public purpose in these matters, and any franchise issues pursuant to this chapter shall be deemed to include this finding as an integral part thereof. (Prior code § 26-100, Ord. No. 094-026, Enacted, 08/02/1994)

5.70.020 Short Title.

This chapter shall be known and may be cited as the "City of Napa Cable Television Franchise Ordinance". (Prior code § 26-101, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.030 Definitions.

For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. Words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. Words not defined shall be given their common and ordinary meaning.

"Basic cable service" means any service tier which includes the retransmission of local television broadcast signals.

"Broadcast signal" means a television or radio signal that is transmitted over the air to a wide geographic audience and is received by a Cable Television System off-the-air or by microwave.

"Cable Television System", also referred to as "Cable System" or "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 terms does not include:

1. A facility that serves only to retransmit the television signals of one or more television broadcast stations, unless such facility uses any public right-of-way;
2. A facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility uses any public right-of-way;
3. A facility of a common carrier, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or
4. Any facilities of any electric utility used solely for operating its electric utility system.

"Cablecasting" means distributing programming that originates within the facilities of the Cable Television System.

"Cable service" means the total of the following:

1. The one-way transmission to subscribers of video programming or other programming service; and
2. Subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

"Channel" or "cable channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television signal as defined by the Federal Communications Commission.

"Commence construction" means that time and date when construction of the Cable Television System is considered to have commenced, which shall be when the first connection is physically made to a utility pole, or undergrounding of cables is initiated, after preliminary engineering (strand mapping) and after all necessary permits and authorizations have been obtained.

"Commence operation" means that time and date when operation of the Cable Television System is considered to have commenced which shall be when sufficient distribution facilities have been installed so as to permit the offering of full services to a dwelling unit located within the franchise area and such services are actually subscribed to by a resident of the franchise area.

"Commercial use channel(s)" means the channel capacity designated for commercial use as defined and required by Federal law.

"Completion of construction" means that point in time when all cable system equipment specified in the Franchise Agreement has been installed by the Grantee so as to permit the offering of cable service to all of the potential subscribers in the franchise area, as well as the provision, in an operational state, of any cable-related facilities required by the Franchise Agreement.

"Council" means the City Council, the governing body of the City of Napa.

"FCC" means the Federal Communications Commission and any legally appointed or elected successor.

"Franchise" means an initial authorization or renewal thereof, issued by the City, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system.

"Franchise Agreement" means a franchise award ordinance and/or a contractual agreement, containing the specific provisions of the franchise granted, including referenced specifications, franchise applications, franchise regulatory ordinances and other related materials.

"Franchise fee" means any tax, fee or assessment of any kind imposed by the City on a Grantee for Grantee's use of the public rights-of-way. The term "franchise fee" does not include:

1. Any tax, fee or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against Grantee or cable subscribers);

2. Capital costs which are required by the franchise to be incurred by Grantee for public, educational, or governmental access facilities;

3. Requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance indemnification, penalties, or liquidated damages; or

4. Any fee imposed under Title 17, United States Code.

"Grantee" means any "person" receiving a franchise pursuant to this ordinance and under the granting franchise ordinance or agreement, and its lawful successor, transferee or assignee.

"Grantor" or "City" means the City of Napa as represented by the City Council or any delegate acting within the scope of its jurisdiction.

"Gross annual receipts" means the annual gross receipts received by the Grantee from all sources of operations of the franchised Cable Television System excluding refundable deposits, except that any sales, excise or other taxes collected for direct pass-through to local, State or Federal government shall not be included.

"Initial service area" means the portion of the franchise area which will receive service initially, as set forth in the Franchise Agreement.

"Installation" means the connection of the system from feeder cable to subscribers' terminals, and the provision of service.

"Pay-Cable", "Pay-Television", or "Pay-per-View" means the delivery to subscribers, over the Cable Television System, of television signals for a fee or charge to subscribers over and above the charge for Basic Cable Service, on a per program, per channel, or other subscription basis.

"Person" means an individual, partnership, association, joint stock company, trust, corporation, or organizational entity.

"Programmer" means a person or entity who or which produces or otherwise provides program material or information for transmission by video, audio, digital, or other signals, either live or from recorded tapes or other storage media, to subscribers, by means of the Cable Television System.

"Public, Educational or Government Access Facilities", or "PEG Access Facilities" means the total of the following:

- A. Channel capacity designated for public, educational, or governmental use; and

- B. Facilities and equipment for the use of such channel capacity.

"Resident" means any person residing in the City as otherwise defined by applicable law.

"School" means any accredited nonprofit educational institution including primary and secondary schools, colleges and universities.

"Section" means any section, subsection, or provision of this franchise ordinance.

"Service area" or "franchise area" means the entire geographic area within the City designated in a Franchise Agreement to receive cable service.

"State" means the State of California.

"Street" or "public right-of-way" means each of the following which have been dedicated to the public or hereafter may be dedicated to the public and maintained under public authority or by others and located within the City limits: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public property and areas that the Grantor shall permit to be included within the definition of street from time to time.

"Subscriber" means any person, firm, corporation, or other entity who or which elects to subscribe to, for any purpose, a service provided by the Grantee by means of or in connection

with the Cable Television System. (Prior code §§ 26-102 through 26-133, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.040 Grant of franchise.

In the event that Grantor shall grant to a Grantee a nonexclusive, revocable franchise to construct, operate, maintain, and reconstruct, a Cable Television System within the franchise area, or a renewal of an existing franchise, said franchise shall constitute both a right and an obligation to provide the services of a Cable Television System as required by the provisions of this chapter and the Franchise Agreement or franchise grant ordinance.

Any franchise granted under the terms and conditions contained herein shall be consistent with Federal laws and regulations and State general laws and regulations. In the event of any conflict between applicable laws and the terms and conditions of the franchise and/or the terms and conditions on which the Grantor can grant a franchise, the general law and/or statutory requirements shall, without exception, control.

Any franchise granted is hereby made subject to the general ordinance provisions now in effect or hereafter made effective pursuant to Section 5.70.150. Nothing in the franchise shall be deemed to waive the requirements of any other codes and ordinances of the Grantor regarding permits, fees to be paid or manner of construction. (Prior code § 26-141, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.050 Franchise required.

No Cable Television System shall be allowed to occupy or use the streets in the franchise area or be allowed to operate without a franchise in accordance with the provisions of this chapter. (Prior code § 26-142, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.060 Establishment of franchise requirements.

This chapter shall apply to all franchises granted or renewed after the effective date of this chapter. It shall also apply to any expansions of an existing Grantee's service area occurring after the effective date of this chapter. It shall further apply to the extent permitted by applicable Federal or State law to all existing franchises granted prior to the effective date of this chapter. (Prior code § 26-143, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.070 Authority to grant franchise.

The Grantor may grant a franchise for all or any defined portion of the City. The service area shall be the entire area defined in the Franchise Agreement. The initial service area shall be that portion of the franchise area scheduled to receive initial service, as stated in the Franchise Agreement. (Prior code § 26-144, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.080 Use of public streets and ways.

For the purpose of operating and maintaining a Cable Television System in the franchise area, and subject to the provisions of Section 5.70.440 herein, the Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the public streets and ways within the franchise area such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of the Cable Television System. Prior to construction or alteration, however, the Grantee shall in each case file plans with the appropriate Grantor agencies and local utility companies, and receive approval before proceeding. Grantee shall in any event comply with all applicable Grantor Construction codes and procedures. (Prior code § 26-145. (Ord. No. O94-026, Enacted, 08/02/1994)

5.70.090 Term.

The term of any new franchise or renewal and all rights privileges, obligations and restrictions pertaining thereto shall be as established in the Franchise Agreement, unless terminated sooner as hereinafter provided. (Prior code §26-146. Ord. No. O94-026, Enacted, 08/02/1994)

5.70.100 Franchise nonexclusive.

Any franchise granted shall be nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional franchises for a Cable Television System as it deems appropriate, and in accordance with applicable law provided, however, that such additional grants shall not operate to materially modify, revoke, reduce or terminate any rights previously granted to any Grantee. (Prior code § 26-147, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.110 New franchise applications.

Applicants for a franchise shall submit to the Grantor written applications providing all information reasonably requested by the Grantor and including any application fees designated by Grantor. (Prior code §26-148, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.120 Grant procedure.

A. Upon receipt of an application for a new franchise, the city manager or his designee shall expeditiously prepare a report (hereafter "Report"), including recommendations respecting such application, which shall be filed with the council and each applicant.

B. Upon receipt of said Report and recommendations of the city manager, the council shall adopt a resolution of intention which shall:

1. Set a time and place for a public hearing to consider the granting of a franchise; and
2. Give notice of receipt of the applications, and describe the character of the franchise desired; and
3. Establish the terms and conditions upon which such franchise is proposed to be granted.

C. Copies of the application and the Report shall be available for public inspection at the office of the city clerk. The city clerk shall publish the resolution of intention at least once in a newspaper of general circulation within the city at least ten (10) days prior to said hearing.

D. At the time set for the hearing, or at any adjournment thereof, the council shall proceed to hear all interested persons, including any objections or protests to the granting of the franchise.

E. In making any determination hereunder as to any application, the council shall give due consideration to the quality of the service proposed, rates to subscribers, income to the city, experience, character, technical and financial responsibility of the applicant, and any other considerations deemed pertinent by the council for safeguarding the interests of the city and public. The council, at its discretion, shall determine whether to award a franchise on the basis of such considerations.

F. The Council may, at any time prior to the close of the hearing, demand and the applicant shall provide, such supplementary, additional or other information as the Council may deem reasonably necessary to determine whether the requested franchise should be granted.

G. After the public hearing the Council shall make one (1) of the following determinations:

1. That one (1) or more of said applications for a franchise be denied; or
2. That one (1) or more of said applications for a franchise be granted upon appropriate terms and conditions.

H. If the Council denies an application for a franchise, such determination shall be final and conclusive.

If the Council determined that an application for a franchise shall be granted, such franchise shall be granted by ordinance, subject to negotiations, naming the Grantee, and setting forth the terms and conditions of the franchise.

I. Any Grantee, prior to the effective date of its franchise, shall reimburse Grantor for its actual expenses including, but not limited to, engineering, administration, consultant, publication and legal expenses, incurred in connection with the processing, evaluation, and preparation of documents relating to such franchise, in excess of the prepaid non-refundable applications fee(s).

J. No provision of this chapter shall be deemed or construed to require the granting of a franchise when in the opinion of the Grantor it is in the public interest not to grant such a franchise. (Prior code § 26-149, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.130 Transfer of ownership or control.

A. Transfer of Franchise. Any franchise granted hereunder shall be a privilege to be held for the benefit of the public. Said franchise cannot in any event be sold, transferred, leased, assigned or disposed of, including but not limited to, by forced or voluntary sale, merger, consolidation, receivership, or other means without the prior written consent of the Grantor, and then only under such reasonable conditions as the Grantor may establish. Such consent as required by the Grantor shall be given or denied no later than ninety (90) days following Grantor's receipt of all reasonably relevant information as provided in "B" below, and shall not be unreasonably withheld. If Grantor does not act within the said ninety (90) day period, the request shall be deemed to be approved. Notwithstanding the foregoing, Grantee may assign or otherwise transfer the franchise in connection with any internal reorganizing action to any direct or indirect parent, subsidiary or affiliated entity having the identical ownership as Grantee without prior consent.

B. Ownership or Control. The Grantee shall promptly notify, in writing, the Grantor of any proposed change in, or transfer of, or acquisition by any other party of, control of the Grantee. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or transfer by any person or group of persons of ten percent (10%) or more of the beneficial ownership interest of the Grantee. Every change, transfer, or acquisition of control of the Grantee shall make the franchise subject to cancellation unless and until the Grantor shall have consented in writing thereto, which consent shall be given or denied no later than ninety (90) days following Grantor's receipt of all relevant information pertaining to any request, and shall not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the Grantor may inquire into the qualifications of the prospective controlling party, and the Grantee shall assist the Grantor in any such inquiry.

In seeking the Grantor's consent to any change in ownership or control, the Grantee shall have the responsibility:

1. To show to the satisfaction of the Grantor whether the proposed purchaser, transferee, or assignee (the "proposed transferee"), which in the case of a corporation, shall include all directors and all persons having a legal or equitable interest in five percent (5%) or more of its voting stock:

a. Has ever been convicted or held liable for felonious acts including, but not limited to, any violation of Federal, State or local law or regulations, or is presently under an indictment, investigation or complaint charging such acts;

b. Has ever had a judgment in an action for fraud, deceit or misrepresentation entered against it, her, him, or them by any court of competent jurisdiction; or

c. Has pending any legal claim, lawsuit or administrative proceeding arising out of or involving a cable system.

2. To establish to the satisfaction of the Grantor the financial solvency of the proposed transferee by submitting relevant current financial data for the proposed transferee. Financial statements shall be audited, certified and qualified by a Certified Public Accountant.

3. To establish to the satisfaction of the Grantor that the financial and technical capability of the proposed transferee is such as shall enable it to maintain and operate the cable system for the remaining term of the franchise under the existing franchise terms.

C. The Grantor agrees that any financial institution having a pledge of the franchise or its assets for the advancement of money for the construction and/or operation of the franchise shall have the right to notify the Grantor that it or its designee satisfactory to the Grantor shall take control and operate the Cable Television System, in the event of a Grantee default in its financial obligations. Further, said financial institution shall also submit a plan for such operation that will insure continued service and compliance with all franchise requirements during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the system for a period exceeding one (1) year unless extended by the Grantor in its

discretion and during said period of time it shall have the right to petition the Grantor to transfer the franchise to another Grantee. If the Grantor finds that such transfer after considering the legal, financial, character, technical and other public interest qualities of the applicant are satisfactory, the Grantor shall transfer and assign the rights and obligations of such franchise as in the public interest. The consent of the Grantor to such transfer shall be given or denied no less than ninety (90) days after any request, and shall not be unreasonably withheld.

D. The consent or approval of the Grantor to any transfer by the Grantee shall not constitute a waiver or release of the rights of the Grantor in and to the streets, and any transfer shall by its terms, be expressly subject to the terms and conditions of any franchise.

E. In the absence of extraordinary circumstances, the Grantor shall not approve any transfer or assignment of the franchise prior to completion of initial construction of the cable system.

F. In no event shall a transfer of ownership or control be approved without the successor in interest becoming a signatory to the Franchise Agreement. (Prior code § 26-150, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.140 Franchise renewal.

Franchise renewal shall be as prescribed by applicable law. (Prior code §26-151, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.150 Police powers.

In accepting a franchise, the Grantee acknowledges that its rights hereunder are subject to the police powers of the Grantor to adopt and enforce general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and ordinances enacted by the Grantor pursuant to such power.

Any conflict between the provisions of this chapter and any other present or future lawful exercise of the Grantor's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the jurisdiction or applies exclusively to any Cable Television System franchise which contains provisions inconsistent with this chapter shall prevail only if upon such exercise the Grantor finds an emergency exists constituting a danger to health, safety, property or general welfare or such exercise is mandated by law. (Prior code § 26-152, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.160 Franchise fee.

A. Annual Franchise Payment. A Grantee of a franchise hereunder shall pay to the Grantor an annual fee in an amount as designated in the Franchise Agreement. Such payment shall commence as of the effective date of the franchise or any renewal date. The Grantor, on an annual basis, shall be furnished a statement within sixty (60) days of the close of the calendar year, either audited and certified by an independent Certified Public Accountant or certified by a financial officer of the Grantee, reflecting the total amounts of gross receipts and all payments, deductions and computations for the period covered by the payment. Upon ten (10) days prior written notice, Grantor shall have the right to conduct an independent audit of Grantee's records, in accordance with Generally Accepted Accounting Procedures, and if such audit indicates a franchise fee underpayment of two percent (2%) or more, the Grantee shall assume all reasonable costs of such an audit. Any such audit shall be completed within six (6) months after commencement.

B. Acceptance by Grantor. No acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for further or additional sums payable as a franchise fee under this ordinance or for the performance of any other obligation of the Grantee.

C. Failure to Make Required Payment. In the event that any franchise payment or recomputed amount is not made on or before the dates specified herein, Grantee shall pay as additional compensation:

1. An interest charge, computed from such due date, at an annual rate equal to the average rate of return on invested funds of the City during the period for which payment was due.

2. If the payment is late by forty-five (45) days or more, a sum of money equal to five percent (5%) of the amount due in order to defray those additional expenses and costs incurred by the Grantor by reason of delinquent payment.

D. Franchise fee payments shall be made in accordance with the schedule indicated in the Franchise Agreement.

E. Any Grantee "pass through" of itemization of franchise fee costs on subscribers' bills shall be in accordance with Federal law. (Prior code § 26-153, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.170 Forfeiture or revocation.

A. Grounds for Revocation. The Grantor reserves the right to revoke any franchise granted hereunder and rescind all rights and privileges associated with the franchise in the event of a breach of any material requirement or limitation of this ordinance, the Franchise Agreement, any rule or regulation adopted by the Grantor, any lawful order issued for or on behalf of the City, and any applicable Federal, State or local statute or regulation (hereinafter collectively "Requirement"). A material breach of a Requirement shall include, but not be limited to:

1. If the Grantee should default in the performance of any material Requirement, subject to the provisions of Sections 5.70.710 and 5.70.720.

2. If the Grantee shall fail to provide or maintain in full force and effect, the liability and indemnification coverages or the security fund or bonds as required herein.

3. If any court of competent jurisdiction, or any Federal or State regulatory body by rules, decisions or other action determines that any material provision of the franchise, including this ordinance and the Franchise Agreement is invalid or unenforceable prior to the commencement of initial system construction.

4. If the Grantee ceases to provide all services for any reason within the control of the Grantee over the Cable System.

5. If the Grantee willfully violates any of the material provisions of this ordinance or the Franchise Agreement or attempts to practice any fraud upon the Grantor.

6. If the Grantee becomes insolvent, or upon listing of an order for relief in favor of Grantee in a bankruptcy proceeding.

B. Procedure Prior to Revocation.

1. The Grantor may make written demand that the Grantee comply with any such Requirement deemed cause for revocation. In the event the stated breach is not reasonably curable within ninety (90) days, the franchise shall not be terminated or revoked, or damages assessed, if the Grantee provides within the said ninety (90) days a plan, satisfactory to the Grantor, to remedy the violation. If the breach of said Requirement continues for a period exceeding ninety (90) days following receipt of such written demand by the Grantor, and the Grantee has not provided a plan, the Grantor may place its request for termination of the franchise upon a regular Council meeting agenda. The Grantor shall cause notice to be served upon such Grantee, at least twenty (20) days prior to the date of such meeting, a written notice of this intent to request such termination, and the time and place of the meeting, notice of which shall be published at least once, ten (10) days before such meeting in a newspaper of general circulation within the franchise area.

2. The Grantor shall hear any persons interested therein, and shall determine, within ninety (90) days, based upon the preponderance of the evidence, whether the Grantee has committed a material breach of this chapter or the Franchise Agreement, and, if so, whether such breach was willful.

3. If the Grantor determines that the Grantee has willfully committed a material breach, then the Grantor may, by resolution, declare that the franchise of such Grantee shall be terminated and security fund and bonds forfeited, or the Grantor may, at its option and if the material breach is capable of being cured by the Grantee, direct the Grantee to take appropriate remedial action within such time and manner and upon such terms and conditions as the Grantor shall determine are reasonable under the circumstances. (Prior code § 26-154, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.180 Procedures in the event of termination or expiration.

A. Disposition of Facilities. In the event a franchise expires, is revoked, or otherwise terminated, the Grantor may order the removal of the above-ground system facilities from the franchise area within a reasonable period of time as determined by the Grantor or require the original Grantee to maintain and operate its cable system for a period not to exceed twenty-four (24) months as indicated in "D" below.

B. Restoration of Property. In removing its plant, structures, and equipment, the Grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to the Grantee's removal of its equipment without affecting the electrical or telephone cable wires, or attachments. The liability, indemnity and insurance, and the security fund and bonds provided shall continue in full force and effect during the period of removal and until full compliance by the Grantee with the terms and conditions of this section.

C. Restoration by Grantor, Reimbursement of Costs. In the event of a failure by the Grantee to complete any work required by Subsection "A" above and/or Subsection "B" above, or any other work required by Grantor by law or ordinance, within ninety (90) days after receipt of written notice, and to the satisfaction of the Grantor, the Grantor may cause such work to be done and the Grantee shall reimburse the Grantor the reasonable cost thereof within thirty (30) days after receipt of an itemized list of such costs or the Grantor may recover such reasonable costs through the security fund or bonds provided by Grantee. The Grantor shall be permitted to seek legal and equitable relief to enforce the provisions of this section.

D. Extended Operation. Upon either the expiration or revocation of a franchise, the Grantor may require the Grantee to continue to operate the Cable System for a defined period of time not to exceed twenty-four (24) months from the date of such expiration or revocation. The Grantee shall, as trustee for its successor in interest, continue to operate the Cable System under the terms and conditions of this chapter and the Franchise Agreement and to provide the regular cable service and any of the other services that may be provided at that time. The Grantor shall be permitted to seek legal and equitable relief to enforce the provisions of this section.

E. Rights Not Affected. The termination and forfeiture of any franchise shall in no way affect any of the rights of the Grantor or the Grantee under any provision of law. (Prior code § 26-155, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.190 Receivership and foreclosure.

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

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

2. Such receivers or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction on the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the Franchise Agreement.

B. Upon the foreclosure or other judicial sale of all or a substantial part of a system, or upon the termination of any lease covering all or a substantial part of the system, the Grantee shall notify the city clerk of such fact, and such notification shall be treated as a notification that a change in ownership of the Grantee has taken place and the provisions of this chapter governing such changes shall apply. (Prior code §26-156, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.200 Franchise processing costs.

For either a new franchise grant, a franchise renewal, or a transfer, the Grantee shall reimburse the Grantor for all out-of-pocket processing costs, which shall include, but shall not be limited to, costs of publications of notices, development and publication of relevant franchise

ordinances and agreements, and any cost not covered by the application fees, incurred by the Grantor in its study and evaluation of applications including, but not limited to, consultant and attorney fees.

These franchise processing costs are over and above the construction inspection and permit fees specified in Section 5.70.450 and the franchise fee specified in Section 5.70.160. (Prior code § 26-157, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.210 Regulatory authority.

The Grantor shall exercise regulatory authority under the provisions of this chapter and applicable law. If the Cable Television System operated by Grantee also serves other contiguous or neighboring communities, Grantor may, at its sole option, participate in a joint regulatory agency, with delegated responsibility in the area of cable and related communications. (Prior code § 26-161, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.220 Regulatory responsibility.

The Grantor, acting alone or acting jointly with other Grantors, may exercise or delegate the following regulatory responsibility:

- A. Administering and enforcing the provisions of the Cable Television System franchise(s).
- B. Coordination of the operation of Public, Educational and Government (PEG) Access channel and facilities.
- C. Providing technical, programming and operational support to public agency users, such as government departments, schools and health care institutions.
- D. Establishing jointly with the Grantee, or as otherwise specified in the Franchise Agreement, procedures and standards for use of channels dedicated to public use and sharing of public facilities, if provided for in any Franchise Agreement.
- E. Planning expansion and growth of public benefit cable services.
- F. Analyzing the possibility of integrating cable communications with other local, state or national telecommunications networks.
- G. Formulating and recommending long-range public telecommunications policy. (Prior code § 26-162, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.230 PEG access.

If so specified in the Franchise Agreement, and consistent with applicable law, the Grantor may utilize a portion of the Cable Television System capacity, and associated facilities and resources, to develop and provide non-commercial public, educational and government (PEG) cable services that will be in the public interest. In furtherance of this purpose, the Grantor may establish a commission, public corporation, or other entity to receive and allocate facilities, support funds and other considerations provided by the Grantor, the Grantee, and/or others. Such an entity, if established, may be delegated the following responsibilities:

- A. Receive and utilize or reallocate for utilization, channel capacity, facilities, funding and other support provided specifically for public usage of the Cable Television System.
- B. Review the status and progress of each service developed for public benefit.
- C. Reallocate resources jointly with the Grantee on a periodic basis to conform with changing priorities and public needs.
- D. Report to the Grantor and the Grantee annually on the utilization of resources, the new public services developed and the benefits achieved for the Grantor and its residents. (Prior code § 26-153, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.240 Public access management.

- A. The Grantor may delegate the responsibility for public access management to a nonprofit entity which may include, but not be limited to, any of the following:
 - 1. A nonprofit public corporation.

2. A commission or committee, appointed by Grantor, and representing a broad spectrum of the community.

3. An established nonprofit entity with special cablecasting capability, such as a local or regional community college.

B. Functions. The entity designated to manage public access may be delegated the following functions:

1. Responsibility for program production for and management of any public access facilities designated in the Franchise Agreement for community-based programming.

2. To assure that the public access facilities are made available to all residents of the franchise area on a nondiscriminatory, first-come, first-served basis.

3. To assure that no censorship or control over program content of the public access exists except as necessary to comply with federal prohibition of material that is illegal.

4. To devise, establish, and administer all rules, regulation, and procedures pertaining to the use and scheduling of the public access facilities.

5. To prepare, in conjunction with the Grantee, such regular or special reports as may be required or desirable.

6. To hire and supervise staff.

7. To make all purchases of materials and equipment that may be required.

8. To develop sources of funding, such as foundation or federal or state grants, to further community programming.

9. To establish budgets, on an annual basis, and utilize funds and resources received for the purpose of public access programming and cablecasting.

C. Reports to Grantor. The public access management entity shall provide a report to the Grantor and the Grantee, at least annually, indicating achievements in community-based programming and services. (Prior code § 26-164, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.250 Reservation by grantor.

The Grantor reserves the right, at its discretion, from time to time, to determine if the entity described in Section 5.70.240 above is performing its purposes in a manner satisfactory to the Grantor, and consistent with applicable law, and if it is not, the Grantor may receive and reallocate all or a portion of the channel capacity, operations appropriation, and capital appropriation, including any facilities and equipment purchased previously with such appropriation, to another entity. A new entity shall be required to comply in all respects with the legal responsibilities described in Section 5.70.240. (Prior code § 26-165, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.260 Rates.

The Grantee shall establish rates for its services that must be applied fairly and uniformly to all subscribers in the franchise area. The Grantor retains the right to institute rate regulation to the extent permitted by applicable law, and to reinstitute such regulation in the event that currently preemptive deregulation ceases to exist. (Prior code § 26-166, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.270 Rate change procedure.

A. To the extent local regulation of rates is permitted under federal and state law, existing rates may be changed from time to time pursuant to this section. Failure to enforce this section by the Grantor shall not amount to a waiver of its provisions.

B. If rate regulation by Grantor is permitted in the future, and Grantor exercises such authority, Grantor may establish additional requirements for information to be provided as part of any rate change request. Grantor may require any information to be submitted as part of the request so long as the information requested is reasonably necessary to permit Grantor to make its decision as to whether to approve the rate change in whole or in part. Grantor shall arrive at its decision within ninety (90) days after all such requested information has been received, or the request shall be deemed to be approved. (Prior code § 26-167, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.280 Annual review of performance and quality of service.

At Grantor's sole option, within ninety (90) days of the first anniversary of the effective date of each franchise, and each year thereafter throughout the term of the franchise, the Grantor may hold a public hearing at which the Grantee shall be present and shall participate, to review the performance and quality of customer service of the Cable Television System. The reports required within this section, commencing with Section 5.70.730, regarding subscriber complaints, the records of performance tests and the opinion survey report shall be utilized as the basis for review. In addition, any subscriber may submit comments or complaints during the review meetings, either orally or in writing, and these shall be considered.

A. Within thirty (30) days after the conclusion of the public hearing, Grantor shall issue a report with respect to Grantee's compliance with all applicable consumer service and protection requirements. If franchise violations are found, Grantor may direct Grantee to correct the violations within a reasonable period of time.

B. Failure of Grantee, after due notice, to correct the violations shall be considered a breach of the franchise, and Grantor may, at its sole discretion, exercise any remedy within the scope of this chapter considered appropriate. (Prior code § 26-168, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.290 System and services review.

To provide for technological, economic, and regulatory changes in the state of the art of cable communications, to facilitate renewal procedures, to promote the maximum degree of flexibility in the cable system, and to achieve a continuing, advanced modern system, the following system and services review procedures are hereby established:

A. At Grantor's sole option, the Grantor may hold a public hearing on or about the third (3rd) anniversary date of the Franchise Agreement at which the Grantee shall be present and shall participate, to review the Cable Television System and services. Subsequent system and services review hearings may be scheduled by the Grantor no more often than each three (3) years thereafter. If an annual quality of service review, as provided for in Section 5.70.280 above has also been scheduled, the two (2) reviews shall be combined.

B. Sixty (60) days prior to the scheduled system and services review hearing, Grantee shall submit a report to Grantor indicating the following:

1. All cable system services reported in cable industry trade journals that are being commonly provided on an operational basis, excluding tests and demonstrations, to communities in the State of California with comparable populations, that are not provided to the Grantor.

2. Any specific plans for provision of such new services by the Grantee, or a justification indicating why Grantee believes that such services are not feasible for the franchise area.

C. Topics for discussion and review at the system and services review hearing shall include, but not be limited to, services provided, feasibility of providing new services, application of new technologies, system performance, programming, subscriber complaints, user complaints, rights of privacy, amendments to the franchise, undergrounding processes, developments in the law, and regulatory constraints.

D. Either the Grantor or the Grantee may select additional topics for discussion at any review hearing.

E. Not later than sixty (60) days after the conclusion of each system and service review hearing, Grantor shall issue a report, including specifically a listing of any cable services not then being provided to the Grantor that are considered technically and economically feasible. Grantor may request Grantee to provide such services within a reasonable time, under reasonable rates and conditions. (Prior code § 26-169, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.300 Construction bond.

A. Within thirty (30) days after the effective date of a new franchise, or a renewal which requires significant system construction, and prior to the commencement of any construction work by the Grantee, the Grantor may require the Grantee to file a construction bond in the amount specified in the Franchise Agreement in favor of the Grantor and any other person who may claim damages as a result of the breach of any duty by the Grantee assured by such bond.

B. Such bond as contemplated herein shall be in the form approved by the Grantor and shall, among other matters, cover the cost of removal of any properties installed by the Grantee in the event said Grantee shall default in the performance of its franchise obligation.

C. In no event shall the amount of said bond be construed to limit the liability of the Grantee for damages.

D. Grantor, at its sole option, may waive this requirement, or permit consolidation of the construction bond with the performance bond and/or the security fund specified, respectively in Sections 5.70.310 and 5.70.320.

E. Upon completion of construction, any construction bonds then in force shall be released. (Prior code § 26-171, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.310 Performance bond.

A. In addition to the construction bond set forth above, the Grantee may be required, at least thirty (30) days prior to the commencement of operation, to file with the Grantor a performance bond in the amount specified in the Franchise Agreement in favor of the Grantor and any other person who may be entitled to damages as a result of any occurrence in the operation or termination of the Cable Television System operated under the Franchise Agreement and including the payments required to be made to the Grantor hereunder.

B. Such bond as contemplated herein shall be in the form approved by the Grantor and shall among other matters cover the cost of removal of any properties installed by the Grantee in the event said Grantee shall default in the performance of its franchise obligation.

C. In no event shall the amount of said bond be construed to limit the liability of the Grantee for damages. (Prior code § 26-172, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.320 Security fund.

A. Within thirty (30) days after the effective date of the franchise, the Grantee shall deposit into a bank account, established by the Grantor and maintain on deposit through the term of this franchise, the sum specified in the Franchise Agreement, as security for the faithful performance by it of all the provisions of the franchise, and compliance with all orders, permits and directions of any agency of the Grantor having jurisdiction over its acts or defaults under this chapter, and the payment by the Grantee of any claims, liens and taxes due the Grantor which arise by reason of the construction, operation or maintenance of the system.

Subject to the provisions of "D" below, the security fund may be assessed by the Grantor for purposes including, but not limited to, the following:

1. Failure of Grantee to pay Grantor sums due under the terms of the franchise.
2. Reimbursement of costs borne by the Grantor to correct franchise violations not corrected by Grantee, after due notice.
3. Monetary remedies or damages assessed against Grantee due to default or violation of franchise requirements.

B. At Grantor's sole option, some portion or all of the security fund may be provided in the acceptable form of an irrevocable letter of credit, in lieu of a cash deposit.

C. Within thirty (30) days after notice to it that any amount has been withdrawn by the Grantor from the security fund pursuant to Subsection "A" of this Section, the Grantee shall deposit a sum of money sufficient to restore such security fund to the amount required by the Franchise Agreement.

D. If the Grantee fails, after thirty (30) days written notice, to pay to the Grantor any franchise fee or taxes due and unpaid; or, fails to pay to the Grantor, within such thirty (30) days, any damages, costs or expenses which the Grantor shall be compelled to pay by reason of any act or default of the Grantee in connection with the franchise; or fails, after thirty (30) days notice of such failure by the Grantor, to comply with any material provision of the franchise which the Grantor reasonably determines can be remedied by an expenditure of the security fund, the Grantor may thereafter withdraw the amount thereof, with interest and any penalties, from the security fund. Upon such withdrawal, the Grantor shall notify the Grantee of the amount and date thereof. In the event the security fund is insufficient to pay and/or repay the Grantor for its lawful

costs, damages, or obligations incurred, any other funds, bonds, or assets of the Grantee may be drawn upon by the Grantor for any such amounts due the Grantor.

E. The security fund deposited pursuant to this section shall become the property of the Grantor in the event that the franchise is revoked for cause by reason of the default of the Grantee in accordance with the procedures of Section 5.70.170 above. The Grantee, however, shall be entitled to the return of such security fund, or portion thereof, as remains on deposit no later than ninety (90) days after the expiration of the term of the franchise, provided that there is then no outstanding default on the part of the Grantee. The Grantee shall be entitled to any interest accrued on the cash portion of the security fund.

F. The rights reserved to the Grantor with respect to the security fund are in addition to all other rights of the Grantor whether reserved by this chapter or authorized by law, and no action, proceeding or exercise of a right with respect to such security fund shall constitute an election of remedies or a waiver of any other right the Grantor may have. (Prior code § 26-173, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.330 Indemnification.

A. The Grantee shall, by acceptance of any franchise granted, indemnify, defend and hold harmless the grantor, its officers, boards, commissions, agents, and employees from any and all claims, suits, judgments for damages or other relief, costs, attorneys' fees, consultant fees and accountant fees in any way arising out of or through or alleged to arise out of or through:

1. The act of the grantor in granting the franchise; and

2. The acts or omissions of Grantee, its servants, employees, or agents in the exercise of the franchise including, but not limited to, any failure or refusal by Grantee, its servants, employees or agents to comply with any obligation or duty imposed on Grantee by this chapter or the Franchise Agreement.

3. The exercise of any right or privilege granted or permitted by this chapter or the Franchise Agreement.

Such indemnification shall include, but not be limited to, all claims arising in tort, contracts, infringements of copyright, violations of statutes, ordinances or regulations or otherwise.

B. In the event any such claims shall arise, the Grantor or any other indemnified party shall tender the defense thereof to the Grantee. Provided, however, that the Grantor, in its sole discretion, may participate in the defense of such claims at its expense, and in such event, Grantee shall not agree to any settlement of claims without consulting Grantor.

C. The Grantee shall not be required to indemnify the Grantor for negligence or willful misconduct on the part of Grantor's officials, boards, commissions, agents or employees. (Prior code § 26-174, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.340 Insurance.

A. The Grantee shall maintain throughout the term of the franchise insurance in amounts at least as follows:

1. Workers' Compensation Insurance. In such coverage as may be required by the workers' compensation insurance and safety laws of the State of California and amendments therefor.

2. Comprehensive General Liability. Comprehensive general liability insurance including, but not limited to, coverage for bodily injury and property damage shall be maintained at the sum(s) specified in the Franchise Agreement.

3. Comprehensive Automobile Liability. Comprehensive automobile liability including, but not limited to, non-ownership and hired car coverage, as well as owned vehicles with coverage for bodily injury and property damage shall be maintained at the sum(s) specified in the Franchise Agreement.

B. The Grantee shall furnish the Grantor with copies of such insurance policies or certificates of insurance.

C. Such insurance policies provided for herein shall name the Grantor, its officers, boards, commissions, agents, and employees as additional insured, and shall be primary to any insurance carried by Grantor, and shall contain the following endorsements:

1. "It is hereby understood and agreed that this insurance policy may not be canceled by the surety or the intention not to renew be stated by the surety until thirty (30) days after receipt by the city by registered mail or written notice of such intention to cancel or not renew.

2. The naming of an additional insured as herein provided shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured.

3. The additional insured named herein shall not be held liable for any premium or expense of any nature on this policy or any extension thereof.

4. The additional insured named herein shall not by reason of being so named be considered a member of any mutual insurance company for any purpose whatsoever.

5. Any other insurance held by the additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance which is referred to by this certificate."

D. The minimum amounts set forth in the Franchise Agreement for such insurance shall not be construed to limit the liability of the Grantee to the Grantor under the franchise issued hereunder to the amounts of such insurance.

E. All insurance carriers providing coverage under "A" above shall be duly licensed to operate in the State of California.

F. Each Grantee shall, concurrently, with the filing of its acceptance of its Franchise Agreement, and thereafter periodically during the term of its Franchise Agreement, furnish to the City Clerk, certificates of insurance evidencing the existence of insurance coverage required hereunder. Such certificates shall provide that coverage may not be canceled, substantially altered or terminated, except upon thirty (30) days written notice to Grantor.

G. If a Grantee fails to maintain any of the insurance coverage required hereunder, Grantor may forthwith terminate its franchise and/or obtain, at Grantee's expense, such insurance coverage. (Prior code § 26-175, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.350 System design.

A system permitted to be installed and operated pursuant to a franchise shall be designed and installed to meet all of the standards and shall offer all of the facilities, equipment and services as required by this chapter and the Franchise Agreement. Said facilities, equipment and services shall be offered to all subscribers in accordance with this chapter and the Franchise Agreement. The Grantee shall not reduce the level of required facilities, equipment and customer services without prior Grantor notice. (Prior code § 26-181, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.360 Geographical coverage.

The Grantee shall design and construct the Cable System in such a manner as to have the capability to pass by every single-family dwelling unit, multiple-family dwelling unit, school and public agency within the franchise area. Service shall be provided to subscribers in accordance with the schedules and line extension policies specified in the Franchise Agreement. Cable System construction and provision of service shall be non-discriminatory, and Grantee shall not delay or defer service to any section of the franchise area on the grounds of economic preference. (Prior code § 26-182, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.370 Cablecasting facilities.

The Grantee shall provide cablecasting facilities in accordance with the requirements of the Franchise Agreement. (Prior code § 26-183, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.380 System construction schedule.

A. The Grantee shall comply with the requirements of the system construction schedule contained in the Franchise Agreement.

B. The Grantee shall provide a detailed construction plan indicating progress schedule, area construction maps, test plan, and projected dates for offering service. In addition, the Grantee shall update this information on a monthly basis, by submitting a copy of its normal internal

progress reports, showing specifically whether schedules are being met and the reasons for any delay. (Prior code § 26-184, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.390 Remedies for delay in construction.

The Grantor may, at its sole option, apply any or all of the remedies in connection with unjustified delays in system construction as specified within this section, commencing with Section 5.70.700, herein. (Prior code § 26-185, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.400 Provision of service.

After service has been established by activating trunk and distribution cables for any area, the Grantee shall provide service to any requesting subscriber within that area within thirty (30) days from the date of request in accordance with any line extension policy specified in the Franchise Agreement. (Prior code § 26-186, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.410 Undergrounding of cable.

The undergrounding of cable is encouraged. In any event, cables shall be installed underground at Grantee's cost where utilities are already underground, or where required by law. Previously installed aerial cable shall be undergrounded and relocated in concert with other utilities, when such other utilities convert from aerial to underground construction. (Prior code § 26-187, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.420 New development undergrounding.

In cases of new construction or property development where utilities are to be placed underground, upon request by the Grantee, the developer or property owner shall give Grantee at least ten (10) days notice of the particular date on which open trenching will be available for Grantee's installation of conduit, pedestals and/or vaults to be provided at Grantee's expense. Grantee shall also provide specifications as needed for trenching.

Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if Grantee fails to install its conduit, pedestals and/or vaults within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five (5) day period, the cost of new trenching is to be borne by Grantee. (Prior code § 26-188, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.430 Underground at multiple dwelling units.

In cases of multiple dwelling units services by aerial utilities, Grantee shall make every effort to minimize the number of individual aerial drop cables giving preference to undergrounding of multiple drop cables between the pole and the dwelling unit. (Prior code § 26-189, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.440 Street occupancy.

A. Grantee shall utilize existing poles, conduits and other facilities whenever possible and economically feasible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property until the written approval of the Grantor is obtained.

B. Except in situations requiring emergency repairs, Grantee shall notify the Grantor at least ten (10) days prior to the intention of the Grantee to commence any construction in any streets. The Grantor shall cooperate with the Grantee in granting any permits required, providing such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such streets and that proposed construction shall be done in accordance with the pertinent provisions of the ordinances of the Grantor.

C. All transmission lines, equipment and structure shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times, shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The Grantee shall, at all times, employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by the Grantee shall be placed in such a manner as not to interfere with the usual travel on such public way.

D. Grantee shall, at its own expense, and in a manner approved by the Grantor, restore to Grantor standards and specifications, any damage or disturbance caused to the public way as a result of its operations or construction on its behalf.

E. Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the Grantor to remove any of the Grantee's facilities, no charge shall be made by the Grantee against the Grantor for restoration and repair. Whenever possible, Grantee shall be contacted to perform such restoration and repair.

F. Grantee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities, subject to the supervision and direction of the Grantor.

G. Upon receipt of thirty (30) days written notice, the Grantee at its expense, shall protect, support, temporarily disconnect, relocate, or remove any property of Grantee when, in the opinion of the Grantor the same is required by reason of traffic conditions, public safety, street vacation, freeway or street grade, separation or realignment, installation of sewers, drains, water pipes, power line, signal line, transportation facilities, tracks, or any other types of structure or improvements by governmental agencies whether acting in a governmental or a proprietary

capacity, or any other structure or public improvement, including but not limited to, movement of public buildings, redevelopment, or any general program under which the Grantor shall undertake to cause any such properties to be located beneath the surface of the ground. Nothing hereunder shall be deemed a taking of the property of Grantee and Grantee shall be entitled to no surcharge by reason of anything hereunder unless any such action is provided solely for the benefit of a private party.

H. After receipt of thirty (30) days written notice, upon failure of Grantee to commence, pursue or complete any work required by law or by the provisions of this chapter to be done in any street, within the time prescribed and to the satisfaction of the Grantor, the Grantor may, at its option, cause such work to be done and the Grantee shall pay to the Grantor the reasonable cost thereof in the itemized amounts reported by the Grantor to Grantee within thirty (30) days after receipt of such itemized report.

I. The Grantee shall make no paving cuts or curb cuts unless absolutely necessary, and only after written permission has been given by the Grantor.

J. Grantor reserves the right to require conduit for underground cabling in special areas. In the event conduit is required, Grantor shall make the requirement known in a timely manner during the construction process. (Prior code § 26-190, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.450 Construction and technical standards.

A. Construction Standards:

1. Grantor Codes and Permits. Grantee shall comply with all applicable Grantor construction codes and permits procedures. Grantor shall be entitled to charge reasonable permit and inspection fees to recover the special nonrecurring inspection costs imposed by the construction of the cable system.

2. Compliance with Safety Codes. All construction practices shall be in accordance with all applicable sections of federal and state occupational safety and health acts and any amendments thereto, as well as all state and local codes where applicable.

3. Compliance with Electrical Codes. All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the provisions of the National Electrical Code as amended, and all applicable state and local codes.

4. Antennas and Towers. Antenna supporting structures (towers) shall be designed for the proper loading as specified in Electronics Industry Association's R.S. 222-A specifications, and provisions of the Uniform Building Code, as modified.

5. Compliance with Aviation Requirements. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable state or local codes and regulations.

6. Construction Standards and Requirements. All of the Grantee's plant and equipment including, but not limited to, the antenna site, headend and distribution system towers, house connections, structures, poles, wire, cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not to endanger or interfere in any manner with the rights of any property owner, or to hinder or obstruct pedestrian or vehicular traffic.

7. Safety, Nuisance Requirements. The Grantee shall, at all times, employ professional care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

B. Technical Standards. The Cable Television System shall meet all technical and performance standards contained in the Franchise Agreement, subject to applicable law.

C. Test and Compliance Procedure. The Grantee shall submit, within sixty (60) days after the effective date of the Franchise Agreement, a detailed test plan describing the methods and schedules for testing the Cable Communications System on an ongoing basis to determine compliance with the provisions of the Franchise Agreement. The tests shall be performed at intervals no greater than twelve (12) months. The tests may be witnessed by representatives of the Grantor, and written test reports shall be submitted to the Grantor. If more than ten percent (10%) of the locations tested fail to meet the performance standards, the Grantee shall be required to indicate what corrective measures have been taken, and the entire test shall be

repeated. A second failure of more than ten percent (10%) may result, at the Grantor's option, in appropriate remedies.

D. Special Tests. At any time after commencement of service to subscribers the Grantor may require Grantee to perform additional tests, full or partial repeat test, different test procedures, or tests involving a specific subscriber's terminal. Requests for such additional tests will be made on the basis of complaints received or other evidence indicating an unresolved controversy or significant noncompliance, and such tests shall be limited to the particular matter in controversy. The Grantor shall endeavor to so arrange its requests for such special tests so as to minimize hardship or inconvenience to Grantee or to the subscriber.

E. Cost of Tests. The reasonable cost of all tests required by "C" and "D" above, and retesting as necessary, shall be borne by the Grantee. (Prior code § 26-191, Ord. No. 094-026, Enacted, 08/02/1994)

Section 5.70.460 Areawide interconnection.

A. Interconnection. The Grantor may request Grantee to interconnect public usage channels of the Cable Television System with any or all other cable systems in adjacent areas. Interconnection of systems shall permit interactive transmission and reception of program material, and may be done by direct cable connection, microwave link, satellite, or other appropriate method.

B. Interconnection Procedure. Upon receiving the request of the Grantor to interconnect, the Grantee shall initiate negotiations with the other affected system or systems, and shall report to the Grantor the results of such negotiation no later than sixty (60) days after initiation.

C. Relief. The Grantee may be granted reasonable extensions of time to interconnect. The Grantor shall rescind its request to interconnect upon petition by the Grantee to the Grantor, if the Grantor finds that the Grantee has negotiated in good faith and has failed to obtain an equitable cost-sharing agreement with the system or systems involved in the proposed interconnection, or that the cost of the interconnection would cause an unreasonable financial burden upon the Grantee and/or its subscribers.

D. Cooperation Required. The Grantee shall cooperate with any interconnection corporation, regional interconnection authority or city, county, state or federal regulatory agency which may be hereafter established for the purpose of regulating, financing, or otherwise providing for the interconnection of cable systems beyond the boundaries of the franchise area. (Prior code § 26-192, Ord. No. 094-026, Enacted, 08/02/1994)

5.70.470 Reduction in services.

Services provided by Grantee shall not be reduced without at least thirty (30) days prior notification to Grantor and subscribers. (Prior code § 26-201, Ord. No. 094-026, Enacted, 08/02/1994)

5.70.480 Public, educational and government (PEG) access facilities.

The Grantee shall provide the PEG access facilities, including channel capacity, necessary interface equipment and cabling, to permit operation as specified in the Franchise Agreement. (Prior code § 26-202, Ord. No. 094-026, Enacted, 08/02/1994)

5.70.490 Cable channels for commercial use.

The Grantee shall designate channel capacity for commercial use as required by applicable law. (Prior code § 26-203, Ord. No. 094-026, Enacted, 08/02/1994)

5.70.500 Consumer service standards.

The Grantee shall maintain a local office to provide the necessary facilities, equipment and personnel to comply with the following consumer standards under normal conditions of operation, excluding billing cycles, equipment change-outs, etc:

A. Sufficient toll-free telephone line capacity during normal business hours to assure that an average of ninety percent (90%) of all calls will be answered before the fourth (4th) ring, and that,

on the average, ninety percent (90%) of the callers will not be required to wait more than thirty (30) seconds before being connected to a service representative or an automatic response unit.

B. Emergency toll-free telephone line capacity on a twenty-four (24) hour basis, including weekends and holidays.

C. A business and service office, within the city, open during normal business hours and at least four (4) additional hours per week during evening and/or weekends, and adequately staffed to accept subscriber payments and respond to service requests and complaints.

D. An emergency system maintenance and repair staff, capable of responding to and repairing major system malfunction on a twenty-four (24) hour basis.

E. An installation staff, capable of installing service to any subscriber within an average of seven (7) days after receipt of a request, in all areas where trunk and feeder cable have been activated.

F. Grantee shall schedule, within a specified four (4) hour time period, all appointments with subscribers for installation or service. This shall permit "morning" or "afternoon" scheduling or, with the subscriber's concurrence, "all day" appointments. (Prior code § 26-211, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.510 Requests for cable service and repairs.

A. The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions, insofar as possible, shall be preceded by notice and shall occur during period of minimum use of the system, preferably between midnight and six a.m. (6:00 a.m.). A written log or an equivalent stored in computer memory and capable of access and reproduction, shall be maintained for all service interruptions and requests for cable service resulting in a service call as required by Section 5.70.770.

B. The Grantee shall maintain a repair force of technicians normally capable of responding to subscriber requests for service within the following time frames:

1. System outage: Within two (2) hours, including weekends, of receiving subscriber calls which by number identify a system outage of sound or picture of one (1) or more channels, affecting at least ten percent (10%) of the system subscribers.

2. Isolated outage: Within twenty-four (24) hours, including weekends, of receiving requests for service identifying an isolated outage of sound or picture for one (1) or more channels, for an individual subscriber.

3. Inferior reception quality: Within forty-eight (48) hours, including weekends, of receiving a request for service identifying a problem concerning picture or sound quality, for an individual subscriber.

Grantee shall be deemed to have responded to a request for service under the provisions of this section when a technician arrives at the service location or begins work on the problem. In the case of a subscriber not being home when the technician arrives, response shall be deemed to have taken place if the technician leaves written notification of arrival.

No charge shall be made to the subscriber for any service call unless the service request can be demonstrated to be both repeated and non-cable system in origin, or to involve subscriber negligence.

C. In the event that the service to any subscriber is interrupted, without fault of the subscriber, for twenty-four (24) or more consecutive hours, except for acts of God, or where prior approval of the interruption is obtained from the Grantor, the Grantee shall provide a pro rata rebate of the monthly fees for the time of the interruption that occurs to each affected subscriber. (Prior code § 26-212, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.520 Verification of compliance.

Upon reasonable notice, the Grantee shall demonstrate compliance with any or all of the standards required in Sections 5.70.500 and 5.70.510 above. The Grantee shall provide sufficient detail to permit the Grantor to verify the extent of compliance. (Prior code § 26-213, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.530 Non-compliance with standards.

A repeated and verifiable pattern of non-compliance with the consumer protection standards of Sections 5.70.500 and 5.70.510, after Grantee receipt of due notice and an opportunity to cure, may be termed a breach of the franchise, subject to any and all remedies as prescribed within this section, commencing with Section 5.70.700 herein and applicable law. (Prior code § 26-214, Ord. No. 094-026, Enacted, 08/02/1994)

5.70.540 Complaint procedure.

A. Complaints to Grantee. Grantee shall establish written procedure for receiving, acting upon and resolving subscriber complaints without intervention by the Grantor. The written procedures shall prescribe the manner in which a subscriber may submit a complaint either orally or in writing that Grantee has violated any provision of this chapter, or the terms and conditions of the subscriber's contract with Grantee.

B. Complaints to Grantor. A subscriber who is dissatisfied with Grantee's proposed decision or who was not sent a written decision within a ten (10) day period shall be entitled to have the complaint reviewed by the Grantor. The subscriber shall initiate the review by filing a written complaint together with the Grantee's written decision, if any, with the Grantor and by the Grantor notifying the Grantee of the filing. The subscriber shall make such filing and notification within twenty (20) days of receipt of Grantee's decision or, if no Grantee decision has been provided, within thirty (30) days after filing the original complaint with Grantee. The Grantor may extend these time limits for reasonable cause. (Prior code § 26-215, Ord. No. 094-026, Enacted, 08/02/1994)

5.70.550 Review by the grantor.

The Grantor shall determine, solely upon a review of a subscriber complaint and the Grantee's decision, if any, whether further action is warranted. In the event the Grantor does not initiate further proceedings within fifteen (15) days of the filing of the complaint, the Grantee's proposed action or resolution shall be final. If the Grantor decides to initiate further investigation, the Grantor shall require the Grantee and the subscriber to submit, within ten (10) days of notice thereof, a written statement of the facts and arguments in support of their respective positions. The Grantee or the subscriber may request in such statement that a hearing be conducted by the Grantor. A hearing, if requested, shall be conducted by the Grantor following notice in writing specifying the time and place for such hearing. The hearing shall be conducted informally, and the parties may offer any evidence pertinent to the dispute. The parties shall produce any additional evidence, including testing reports from the Grantee, which the Grantor may deem necessary to an understanding and determination of the dispute. The Grantor shall issue a written decision within fifteen (15) days of receipt of the written statements or, if a hearing is requested, within fifteen (15) days of the conclusion of the hearing setting forth the basis of the decision. The decision may be appealed to the Council. (Prior code § 26-216, Ord. No. 094-026, Enacted, 08/02/1994)

5.70.560 Escrow account.

The Grantor may establish an escrow account wherein a subscriber may deposit a disputed portion of the subscriber's monthly service charge. If a subscriber either continues to make full and timely payment of all monthly service charges to Grantee, or deposits any disputed portion of such monthly service charges to said escrow account, Grantee shall not discontinue service during the pendency of a complaint submitted under the provisions of this chapter. Any amounts deposited in the escrow account shall be paid to the Grantee or subscriber in accordance with a final determination of a complaint. (Prior code § 26-217, Ord. No. 094-026, Enacted, 08/02/1994)

5.70.570 Remedies for violations.

The Grantor may, as a part of a subscriber complaint decision issued under the provisions of this chapter, impose damages on the Grantee as specified in the Franchise Agreement. Damages may be imposed only if the Grantor finds that the Grantee has arbitrarily refused or failed without justification to comply with the provisions of this section. (Prior code § 26-218, Ord. No. 094-026, Enacted, 08/02/1994)

5.70.580 Notices.

A. Operating Policies. As subscribers are connected or reconnected to the cable system, and at least once annually thereafter, the Grantee shall provide each subscriber with written information concerning the procedures for making inquiries or complaints, including the name, address and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed, and also furnish information concerning the Grantor office responsible for administration of the franchise with the name and telephone number of the office. The notice shall also indicate Grantee's business hours and procedures for responding to inquiries after normal business hours.

The Grantee shall provide all subscribers and the Grantor written notice no less than thirty (30) days prior to any proposed change in these policies.

B. Rates and Services. Under normal circumstances, the Grantee shall provide all subscribers and the grantor with at least thirty (30) days written notice prior to the implementation of any change in rates or programming services.

C. Copies to Grantor. Copies of all notices provided to subscriber shall be filed concurrently with the Grantor. (Prior code § 26-219, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.590 Quality of service.

In addition to the annual review provided in Section 5.70.280, Grantor may evaluate the quality of service at any time, based upon the number of subscriber complaints received by the Grantee and the Grantor, and Grantee's response to those complaints. A Grantor determination that Grantee has not complied with consumer service and protection requirements may lead to direction to Grantee to cure the non-compliance. Grantee shall commence corrective action within thirty (30) days after receipt of written notice. Failure to do so may be deemed to be a breach of the franchise and subject to the remedies prescribed within this section, commencing with Section 5.70.700. Grantor, after due process and in accordance with the Franchise Agreement, may utilize the performance bond and/or security fund of Sections 5.70.310 and 5.70.320, respectively, to remedy any such franchise breach. (Prior code § 26-220, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.600 Tenant rights.

It is Grantor's intent that tenants not be discriminated against in the ability to subscribe to cable services. Grantee shall be required to provide service to tenants in individual units of a multiple housing facility with all services offered to other dwelling units within the franchise area, so long as the owner of the facility consents in writing, if requested by Grantee, to the following:

A. To Grantee's providing the service to units of the facility;

B. To reasonable conditions and time for installation, maintenance, and inspection of the system on the facility premises;

C. To reasonable conditions promulgated by Grantee to protect Grantee's equipment and to encourage widespread use of the system; and

D. To not discriminate in rental charges, or otherwise, between tenants who receive cable service and those who do not. (Prior code § 26-221, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.610 Grantee rules and regulations.

The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under the franchise, and to assure an uninterrupted service to each and all of its customers, provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations. (Prior code § 26-222, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.620 Rights of individuals.

A. Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, PEG access channel users, or general citizens on the basis of income, race, color, religion, national origin, age or sex. Grantee shall comply at all times with all other applicable federal, state and local laws and regulations, and all executive and administrative orders relating to non-discrimination which are hereby incorporated and made part of this chapter by reference.

B. Grantee shall strictly adhere to the equal employment opportunity requirements of federal, state and local law and regulations in effect on the date of the franchise grant, and as amended from time to time.

C. The Grantee's policy with regard to personally identifiable information shall be consistent with federal law.

D. Fairness of Accessibility. The entire system of the Grantee shall be operated in a manner consistent with the principle of fairness and equal accessibility of its facilities, equipment, channels, studios and other services to all citizens, businesses, public agencies and other entities having a legitimate use for the system, and no one shall be arbitrarily excluded from its use. (Prior code § 26-223, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.630 Continuity of service mandatory.

A. It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to rebuild, modify, or sell the system, or the Grantor give notice of intent to terminate or fails to renew this franchise, the Grantee shall act so as to ensure that all subscribers receive continuous, uninterrupted service.

In the event of a change of Grantee, or in the event a new operator acquires the system, the original Grantee shall cooperate with the Grantor, new Grantee or operator in maintaining continuity of service to all subscribers. During such period, Grantee shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs for its services when it no longer operates the system.

B. In the event Grantee fails to operate the system for seven (7) consecutive days without prior approval of the Grantor or without just cause, the Grantor may, at its option, operate the system or designate an operator until such time as Grantee restores service under conditions acceptable to the Grantor or a permanent operator is selected. If the Grantor is required to fulfill this obligation for the Grantee, then during such period as the Grantor fulfills such obligation, the Grantor shall be entitled to collect all revenues from the system, and the Grantee shall reimburse the Grantor for all reasonable costs or damages in excess of the revenues collected by the Grantor that are the result of the Grantee's failure to perform. (Prior code § 26-224, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.640 Identification of employees.

Every field representative of the Grantee shall be clearly identified on sight to the public as a representative of the Grantee. Every vehicle of the Grantee shall be similarly identified. (Prior code § 26-225, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.650 Books and records.

The Grantor, upon reasonable notice, shall have the right to inspect at any time during normal business hours, all books, records, maps, plans, service complaint logs, performance test results and other like materials of the Grantee which relate reasonably to Grantor's regulatory authority and are maintained at the local office required by Section 5.70.500, provided that the Grantor shall maintain the confidentiality of any trade secrets or other proprietary information in the possession of the Grantee and provided further, that records shall be exempt from inspection pursuant to this section to the extent required by applicable law regarding subscriber privacy and to the extent such records are protected by law against discovery in civil litigation.

If any of such books or records are not kept in the local office, or upon reasonable request made available to the Grantor, and if the Grantor shall determine that an examination of such records is necessary or appropriate to the performance of any of Grantor's duties, then all travel

and maintenance expense necessarily incurred in making such examination shall be paid by Grantee. (Prior code § 26-231, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.660 Records required.

A. In any event, the Grantee shall at all times maintain:

1. The complaint file required by Section 5.70.770 herein.

2. A full and complete set of plans, records and "as-built" maps showing the exact location of all Cable Television System equipment installed or in use in the franchise area, exclusive of subscriber service drops. (Prior code § 26-232, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.670 Right of inspection of construction.

The Grantor shall have the right to inspect all construction or installation work performed, subject to the provisions of the franchise, and to make such tests as it shall find necessary to ensure compliance with the terms of this franchise and other pertinent provisions of law. (Prior code § 26-241, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.680 Right of intervention.

The Grantor may, with the permission of the relevant court or administrative tribunal, intervene in any suit or proceeding involving the cable system franchise to which the Grantee is party. (Prior code § 26-242, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.690 Right of grantee and grantor.

In the event of any dispute between Grantee and Grantor over this chapter or the Franchise Agreement, or with respect to any rights or obligations arising therefrom, Grantee and Grantor shall first pursue and exhaust all available administrative remedies. Thereafter Grantee and Grantor may pursue any appropriate legal action. (Prior code § 26-243, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.700 Remedies for franchise violations.

If the Grantee fails to perform any material obligation under the franchise, or fails to do so in a timely manner, the Grantor may, at its option, and in its sole discretion:

A. Assess against the Grantee monetary damages up to the limits established in the Franchise Agreement for material breaches, said assessment to be levied against the security fund, hereinabove provided, and collected by Grantor after completion of the procedures specified in Section 5.70.710. The amount of such assessment shall be deemed to represent liquidation of damages actually sustained by Grantor by reason of Grantee's failure to perform. Such assessment shall not constitute a waiver by the Grantor of any other right or remedy it may have under the franchise or under applicable law including, without limitation, its right to recover from Grantee such additional damages, losses, costs and expenses, including actual attorney fees, as may have been suffered or incurred by Grantor by reason of or arising out of such breach of the franchise. This provision for assessment of damages is intended by the parties to be separate and apart from Grantor's right to enforce the provisions of the construction and performance bonds provided for within this section, commencing with Section 5.70.300, and is intended to provide compensation to Grantor for actual damages.

B. Terminate the franchise for any of the causes stated within this section, commencing with Section 5.70.040 above.

C. No remedy shall be imposed by Grantor against Grantee for any breaches of the franchise without Grantee being afforded due process of law, as provided for in Section 5.70.710 below.

Grantor may impose any or all of the above enumerated measures against Grantee, which shall be in addition to any and all other legal or equitable remedies it has under the franchise or under any applicable law. (Prior code § 26-251, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.710 Procedure for remedying franchise violations.

In the event that the Grantor determines that the Grantee has breached any material Requirement (as defined in Section 5.70.170 herein), the Grantor may make a written demand on the Grantee that it remedy such breach. If the breach is not remedied, or in the process of being remedied, to the satisfaction of the Grantor within thirty (30) days following such demand, the Grantor shall determine whether or not such Grantee's breach was excusable or inexcusable, in accordance with the following procedure:

A. An administrative hearing shall be held to review the alleged breach. If this hearing does not result in a satisfactory resolution, and/or the Grantee requests a public hearing, then a public hearing shall be held, and the Grantee shall be provided with an opportunity to be heard upon thirty (30) days written notice to the Grantee of the time and the place of the hearing provided and the allegations of franchise breaches.

B. If, after notice is given and, at the Grantee's option, a full public proceeding is held, the Grantor determines that such breach by the Grantee was excusable as provided in Section 5.70.720 below, the Grantor shall direct the Grantee to correct or remedy the same within such additional time, in such manner and upon such terms and conditions as the Grantor may reasonably direct.

C. If, after notice is given and, at the Grantee's option, a full public proceeding is held, the Grantor determines that such breach was inexcusable, then the Grantor may impose a remedy in accordance with Section 5.70.700 above. (Prior code § 26-252, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.720 Force majeure-Grantee's inability to perform.

In the event Grantee's performance of any Requirement (as the term is defined in Section 5.70.170) is prevented or impaired due to any cause beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof, provided Grantee has notified Grantor, in writing, within thirty (30) days of its discovery of the occurrence of such an event. Such causes beyond Grantee's reasonable control or not reasonably foreseeable shall include, but shall not be limited to, Acts of God and civil emergencies.

Grantor and Grantee, in the Franchise Agreement, may mutually define those conditions deemed subject to force majeure application. (Prior code § 26-253, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.730 Annual reports.

A. A summary of the previous year's (or in the case of the initial report year, the initial year's) activities in development of the cable system including, but not limited to, services begun or discontinued during the reporting year, and the number of subscribers for each category of service.

B. A revenue statement, audited by an independent certified public accountant, or certified by an officer of the Grantee.

C. A statement of projected construction, if any, for the next two (2) years.

D. A list of Grantee's officers, members of its board of directors, and other principals of Grantee.

E. A list of stockholders or other equity investors holding five percent (5%) or more of the voting interest in the Grantee and its parent, subsidiary and affiliated corporations and other entities, if any, unless the parent is a public corporation whose annual reports are publicly available. (Prior code § 26-261, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.740 Plant survey report.

At the Grantor's request, Grantee shall submit to the Grantor an annual plant survey report which shall be a complete survey of the Grantee's plans and a full report thereon. Said report shall include, but not be limited to, a description and "as-built" maps of the portions of the franchise area that have been cabled and have all services available, an appropriate engineering evaluation, including suitable electronic measurements conducted in conformity with such requirements, including supervision, as the Grantor may prescribe. Said report shall be in sufficient detail to enable the Grantor to ascertain that the service requirements and technical

standards of the franchise are achieved and maintained. If Grantor has valid reason to believe that portions or all of the system do not meet the technical standards incorporated into the Franchise Agreement, at Grantor's request, but no more often than once per three (3) years, the Grantee and the Grantor shall agree upon the appointment of a qualified independent engineer to evaluate and verify the technical performance of the cable system. The cost of such evaluation shall be borne equally by the Grantee and the Grantor. (Prior code § 26-262, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.750 Copies of federal and state reports.

The Grantee may be required to submit to the Grantor copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by the Grantee to, as well as copies of all decisions, correspondence and actions by, any federal, state and local courts, regulatory agencies and other government bodies relating to its cable television operations within the franchise area. Grantee shall submit such documents to the Grantor no later than thirty (30) days after receipt of a Grantor request. The Grantee hereby waives any right to claim confidential, privileged or proprietary rights to such documents unless such confidential rights have been "determined" to be confidential by a court or by the practices or decision of federal and state agencies. Such confidential data exempt from public disclosure shall be retained in confidence by the Grantor and its authorized agents and shall not be made available for public inspection. (Prior code § 26-263, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.760 Public reports.

If public reports are issued, a copy of each of Grantee's annual and other periodic public financial reports and those of its parent, subsidiary and affiliated corporation and other entities, as the Grantor requests, shall be submitted to the Grantor within thirty (30) days after receipt of a request. (Prior code § 26-264, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.770 Complaint file and reports.

An accurate and comprehensive file shall be kept by the Grantee of any and all complaints regarding the cable system which result in a service call. A procedure shall be established by the Grantee by the time of installation of the cable system to remedy complaints quickly and reasonably to the satisfaction of the Grantor. Complete records of Grantee's actions in response to all complaints shall be kept. These files and records shall remain open to the public during normal business hours, so that individuals are able to inspect their own files.

A. A summary of service call or repair requests, identifying the number and nature of the requests and their disposition, upon Grantor request, shall be completed for each month and submitted to the Grantor by the tenth (10th) day of the succeeding month.

B. A log and summary of all service interruptions.

C. If requested by the Grantor, the results of an annual opinion survey report which identifies satisfaction or dissatisfaction among subscribers with cable communications services offered by the Grantee shall be submitted to the Grantor no later than two (2) months after the end of Grantee's fiscal year. (Prior code § 26-265, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.780 Miscellaneous reports.

Grantee shall submit to the Grantor such other information or reports in such forms and at such times as the Grantor may reasonably request or require. (Prior code § 26-266, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.790 Inspection of facilities.

The Grantee shall allow the Grantor to make inspections of any of the Grantee's facilities and equipment at any time upon at least ten (10) days notice, or, in case of emergency, upon demand without prior notice. (Prior code § 26-267, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.800 Public inspection.

All reports subject to public disclosure, shall be available for public inspection at a designated Grantor office during normal business hours and upon twenty-four (24) hours' prior notice. (Prior code § 26-268, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.810 Failure to report.

The willful refusal or failure of the Grantee to file any of the reports reasonably required, or such other reports as the Grantor reasonably may request, may be deemed a material breach of the franchise, and may subject the Grantee to all remedies, legal or equitable, which are available to the Grantor under the franchise or otherwise. (Prior code § 26-269, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.820 False statements.

Any materially false or misleading statement or representation made knowingly and willfully by the Grantee in any report required under the franchise and not promptly corrected by Grantee, may be deemed a material breach of the franchise and may subject the Grantee to all remedies, legal or equitable, which are available to the Grantor under the franchise or otherwise. (Prior code § 26-270, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.830 Cost of reports.

One (a) copy of all reports and records required under this or any other Section shall be furnished at the sole expense of the Grantee. (Prior code § 26-271, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.840 Compliance with state and federal laws.

Notwithstanding any other provisions of the franchise to the contrary, the Grantee shall, at all times, comply with all laws and regulations of the state and federal government or any administrative agencies thereof. Provided, however, if any such state or federal law or regulation shall require the Grantee to perform any service, or shall permit the Grantee to perform any service, or shall prohibit the Grantee from performing any service, in conflict with the terms of the franchise or any law or regulation of the Grantor, then as soon as possible following knowledge thereof, the Grantee shall notify the Grantor of the point of conflict believed to exist between such regulation or law and the laws or regulations of the Grantor or the franchise. (Prior code § 26-281, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.850 Separability non-material provisions.

If any provision of this chapter or the Franchise Agreement is held by any court or by any federal, state or local agency of competent jurisdiction to be invalid as conflicting with any federal, state or local law, rule or regulation now or hereafter in effect, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such law, rule or regulation, and if said provision is considered non-material by the Grantor, said provision shall be considered a separate, distinct and independent part of this chapter, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed, so that the provision hereof or thereof which has been invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, provided that the Grantor shall give the Grantee thirty (30) days written notice of such change before requiring compliance with said provision. (Prior code § 26-282, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.860 Separability material provisions.

If any material section of the chapter or the Franchise Agreement is held to be invalid or preempted by federal, state or county regulations or laws, resulting in a material adverse consequence to either party, the Grantor and Grantee shall attempt to negotiate appropriate

modifications to the franchise to provide reasonable relief to the Grantor or Grantee from such invalidity or preemption. If the parties are unable to reach agreement on such modifications, then the dispute shall be submitted to a mutually agreeable arbitrator, in accordance with state law, who shall determine what modifications are appropriate. The arbitrator's decision shall be binding on the parties, provided, that no decision of the arbitrator shall require the Grantor or Grantee to be in violation of any federal or state law or regulation. (Prior code § 26-283, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.870 Notices.

Grantee shall maintain throughout the term of the franchise, a local address for service of notices by mail. (Prior code § 26-284, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.880 Captions.

The captions to sections throughout this chapter are intended solely to facilitate reading and reference. Such captions shall not affect the meaning or interpretation of this chapter. (Prior code § 26-285, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.890 No recourse against the Grantor.

The Grantee shall have no recourse whatsoever against the Grantor, its officials, boards, commissions, agents, or employees for any loss, costs, expenses, or damage arising out of any provision or requirement of the franchise or because of the enforcement of the franchise; provided, however, that nothing in this section shall deprive the Grantee of any equitable remedies available to redress negligence, misconduct or bad faith on the part of Grantor or any of its agents. (Prior code § 26-286, Ord. No. O94-026, Enacted, 08/02/1994)

5.70.900 Nonenforcement by the Grantor.

The Grantee shall not be relieved of its obligation to comply with any of the provisions of this chapter by reason of any failure of the Grantor to enforce prompt compliance. (Prior code § 26-287, Ord. No. O94-026, Enacted, 08/02/1994)