CHAPTER 5.16

CABLE COMMUNICATIONS

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5.16.010 Title.

This chapter shall be known as the Cable Communications Ordinance. (Ord. 15460 §1; March 5, 1990: P.C. §5.67.010: Ord. 13986 §1; November 5, 1984).

5.16.020 Purpose.

The purposes of this ordinance are to:

(a) Provide for the franchising and regulation of cable television within the City of Lincoln;

(b) Provide for a cable communications system that will meet the current needs of the City and that can be improved and upgraded to meet future needs;

(c) Provide for the payment of fees and other valuable consideration to the City for the use of the public ways and for the privilege to construct and operate cable communications systems;

(d) Provide for the regulation by the City of certain rates to be charged to subscribers for certain cable communications services;

(e) Provide for the development of cable communications as a means to improve communication between and among the members of the public and public institutions of the City; and

(f) Provide remedies and prescribe penalties for violation of this ordinance and any franchise granted hereunder. (Ord. 15460 §2; March 5, 1990: P.C. §5.67.020: Ord. 13986 §2; November 5, 1984).

5.16.030 Applicability.

This ordinance is applicable to any application for a cable franchise filed on or after the effective date of this ordinance and to any such franchise granted thereafter. Any franchise granted prior to the effective date of this ordinance shall be subject to the provisions of this chapter. (Ord. 15460 §3; March 5, 1990: P.C. §5.67.030: Ord. 13986 §3; November 5, 1984).

5.16.040 Definitions.

For the purpose of this ordinance, the following terms, phrases, words, and their derivations shall have the following meanings:

Access channel shall mean any channel set aside for public use, educational use, or governmental use without a channel usage charge.

Access user shall mean any person or entity entitled to make use of an access channel consistent with the intended purpose of the channel.

Application shall mean a proposal seeking authority to construct and operate a cable communications system within the City pursuant to this ordinance. It shall include the initial proposal plus all related subsequent amendments and correspondence with the City.

Basic service shall mean subscriber cable television services which includes the delivery of local television broadcast signals as required by the FCC, access channels, leased channels, and local origination channels, as covered by the regular monthly charge paid by all subscribers to any service tier, excluding premium services, two-way services, and FM radio services.

Cable television services shall mean the one-way transmission of video programming and associated non-video signals to subscribers together with subscriber interaction, if any, which is provided in connection with the video programming.

Cable communications system shall mean a nonbroadcast facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment, under common ownership and control, that distributes or is designed to distribute to public subscribers cable television services, institutional services, or other communications services, but such term shall not include:

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

(b) A facility or combination of facilities that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities use any public right-of-way;

(c) A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended; except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or

(d) Any facilities of any electric utility used solely for operating its electric utility system.

Connection shall mean the attachment of the drop to the radio or television set or other communications device of the subscriber.

Converter shall mean an electronic tuning device which converts transmitted signals to a frequency which permits their reception on an ordinary television receiver.

Drop shall mean the cable that connects a subscriber's premises to the nearest feeder line of the cable communications system.

Easement shall mean a right to use all public rights-of-way, including public utility easements.

Feeder line shall mean the coaxial or fiber optic cable running from the trunk line to line-extenders and taps for the purpose of interconnection to individual subscribers.

FCC shall mean the Federal Communications Commission or any legally appointed or designated agent or successor.

File shall mean the delivery, by mail or otherwise, to the appropriate office, officer or agent of the City of any document or other thing which this chapter or the franchise requires the franchisee to file with the City. The date of receipt by the City shall be considered the filing date. Unless specified to the contrary, the filing shall be with the office of the telecommunications officer.

Gross revenues shall mean all operating revenue from the cable communication system derived directly or indirectly by a franchisee, its affiliates, subsidiaries, parent, and any person in which the franchisee has a financial interest in association with the provision of cable communication services within the City, including, but not limited to service tier monthly fees, premium service fees, institutional service fees, installation and reconnection fees, leased channel fees, converter rentals, studio rental, production equipment and personnel fees, advertising revenues, copyright fees; provided, however, that this shall not include any taxes on services furnished by the franchisee payable to the State of Nebraska or any other governmental unit and collected by the franchisee on behalf of said governmental unit, or any revenues from the provision of cable communication services outside the City, or any revenues from sale of capital assets or lease of property for purposes unrelated to cable communication systems.

Installation shall mean the connection of the system at the subscriber's premises.

Institutional services shall mean one- and two-way nonentertainment transmission services for businesses, public agencies, and community institutions. Such services include, but are not limited to, video transmission and voice and data communications.

Leased channel or **leased access channel** shall mean any channel, or part of a channel, available for commercial use on a fee basis by persons or entities other than a franchisee.

Franchise shall mean the nonexclusive right and authority to construct, maintain, and operate a cable communications system through use of the public streets, dedications, public utility easements, other public rights-of-way, or public places in the City pursuant to a contractual agreement executed by the City and a franchisee.

Franchisee or **grantee** refers to an entity authorized to construct, or operate, or both, a cable communications system within the City pursuant to this chapter, including any lawful successor, transferee, or assignee of the original grantee.

Monitoring shall mean observing a communications signal carried on a cable communications system, or the absence of such a signal, by any person without regard to whether such observation is by visual or electronic means. Monitoring shall not include system-wide sweeps of the cable communications system for purposes of verifying the integrity of the system and controlling return path transmissions.

Premium service shall mean pay television offered on a per-channel or per-program basis.

Service tier shall mean a specific set of cable subscriber services which are made available as, and only as, a group for purchase by subscribers at a specified rate for the group.

Street or **public way** shall mean the surface of and the space above and below any public street, road, highway, path, sidewalk, alley, court, or easement now or hereafter held by the City for the purpose of public travel or public utilities and shall include public easements or rights-of-way.

Subscriber shall mean a recipient of cable television service or other services provided over a cable communications system.

User shall mean a party utilizing a cable communication system's facilities for purposes of production or transmission of material or information to subscribers. (Ord. 15460 §4; March 5, 1990: P.C. §5.67.040: Ord. 13986 §4; November 5, 1984).

5.16.050 Requirement of a Franchise.

It shall be unlawful to construct, install, maintain, or operate a cable communications system or part of a cable communications system within the City without a valid franchise obtained pursuant to the provisions of this chapter. (Ord. 15460 §5; March 5, 1990: P.C. §5.67.050: Ord. 13986 §5; November 5, 1984).

5.16.060 General Franchise Characteristics.

Any franchise issued pursuant to the provisions of this chapter shall be deemed to:

(a) Authorize use of the public ways for installing cables, wires, lines, and other facilities in order to operate a cable communications system, but shall neither expressly nor impliedly be deemed to authorize the grantee to provide service to, or install cables, wires, lines, or any other equipment or facilities upon private property without owner consent, or to utilize publicly- or privately-owned utility poles or conduits without a separate agreement with the owners therefor.

(b) Be nonexclusive, and shall neither expressly nor impliedly be deemed to preclude the issuance of subsequent franchises to operate one or more other cable communications systems within the City; and

(c) Convey no property right to the franchisee or right to renewal. (Ord. 15460 §6; March 5, 1990: P.C. §5.67.060: Ord. 13986 §6; November 5, 1984).

5.16.070 Franchise as a Contract.

A franchise issued pursuant to the provisions of this chapter shall be deemed to constitute a contract between the franchisee and the City. The franchisee shall be deemed to have contractually committed itself to comply with the terms, conditions, and provisions of the franchise documents, and with all rules, orders, regulations, and determinations applicable to the franchise which are issued, promulgated, or made pursuant to the provisions of this chapter. (Ord. 15460 §7; March 5, 1990: P.C. §5.67.070: Ord. 13986 §7; November 5, 1984).

5.16.080 Conflicts.

(a) All terms, conditions, and provisions of this chapter and the application for a franchise shall be deemed to be embodied in a franchise, and conflicts in terms, conditions, or provisions between these documents shall be resolved as follows:

(1) The express terms of this chapter shall prevail over conflicting or inconsistent provisions of the franchise;

(2) The express terms of the franchise shall prevail over conflicting or inconsistent provisions in the application and any request for proposals; and

(3) The express terms of any request for proposals shall prevail over conflicting or inconsistent provisions in the application for the franchise.

(b) The provisions of the franchise shall be liberally construed in order to effectuate its purposes and objectives consistent with this chapter and the public interest. In the event one or more provisions of the franchise or this chapter are subsequently found to be unlawful, null and void or unenforceable, the City shall, at its sole option, have the right to consider said provision(s) severed from the franchise so as to continue the franchise's effectiveness, or to declare the franchise a nullity and terminate it in accordance with

Section 5.16.210(e) of this chapter. A franchise agreement will be construed under the laws of the State of Nebraska. (Ord. 15460 §8; March 5, 1990: P.C. §5.67.080: Ord. 13986 §8; November 5, 1984).

5.16.090 Company Subject to Police Power.

A franchisee shall, at all times during the life of a franchise, be subject to all lawful exercise of the police power by the City and to such lawful regulations as the City shall hereafter enact. The construction, operation, and maintenance of the system shall also be in full compliance with all other applicable rules and regulations now in effect or hereafter adopted by the United States, the State of Nebraska, or any agency of said governments. (Ord. 15460 §9; March 5, 1990: P.C. §5.67.090: Ord. 13986 §9; November 5, 1984).

5.16.100 Franchise Validity.

A grantee shall agree, by the acceptance of a franchise, to accept the validity of the terms and conditions of this ordinance and the franchise in their entirety and that the grantee will not, at any time in any claim or proceeding, challenge any term or provision of this ordinance or the franchise as unreasonable or arbitrary or argue that the City did not have the authority to impose such term or condition. (Ord. 15460 §10; March 5, 1990: P.C. §5.67.100: Ord. 13986 §10; November 5, 1984).

5.16.110 Filing of Applications.

Applications for a cable communications franchise will be considered pursuant to the following procedures:

(a) An application may be filed at any time or pursuant to a request for proposals issued by the City.

(b) Where an application not filed pursuant to a City-issued request for proposals is submitted, the City shall publish notice of the filing in a local daily newspaper. Any person wishing to file an application to be considered simultaneously with the unsolicited application shall, within fifteen days of the date of notice of the first application, request the City to accept its application. Said request shall:

(1) Identify the applicant's principals;

(2) Briefly describe the cable system it wishes to construct and the anticipated service area;

(3) Explain why simultaneous consideration with the unsolicited application is sought;

(4) Summarize the applicant's cable experience and financial resources; and

(5) State when it would be prepared to submit an application.

(c) In response to a notification under subparagraph (b), the City may, at its option:

(1) Issue a request for proposals under which other applications may be filed;

(2) Notify the second applicant that it will accept its application on a specified date; or

(3) Deny the request.

(d) The City may request additional information from an applicant for a franchise at any time.

(e) All applications to be acceptable for filing must be accompanied by a filing fee of $15,000.00. The City shall apply all filing fees received against all costs associated with its evaluation of any pending application(s) pursuant to Section 5.16.140 of this chapter. In the event that total costs are

less than total filing fees, the City shall refund a portion of the filing fee on a pro rata basis for each applicant. (Ord. 15460 §11; March 5, 1990: P.C. §5.67.110: Ord. 13986 §11; November 5, 1984).

5.16.120 Content of Applications.

To be acceptable for filing, an application must conform to any applicable request for proposals and all the information specified therein. Where an application is not filed pursuant to a request for proposals, it shall contain, at minimum, the following information:

(a) Identification of the ownership of the applicant, if not a natural person, including the names and addresses of all persons with one percent or more ownership interest and the ultimate controlling natural persons and identification of all officers and directors and any other primary business affiliation of each.

(b) An indication whether or not the applicant, or any entity controlling the applicant, including any officer of a corporation or major stockholder thereof, has been adjudged bankrupt, has had a cable franchise revoked, or been found guilty by any court or administrative agency in the United States of: (1) a violation of a security or antitrust law; or (2) a felony or any other crime involving moral turpitude. Identify any such person or entity and fully explain the circumstances.

(c) A demonstration of the applicant's technical and financial ability to construct and operate the proposed cable facility.

(d) A description of the physical facility proposed, including channel capacity, one-way and two-way, if any, the area to be served, a summary of technical characteristics, and headend and access facilities.

(e) A description relating how any construction will be implemented, identification of areas having above-ground or below-ground cable facilities, the proposed construction schedule, and a description, where appropriate, indicating how service will be converted from any existing facility to a new facility.

(f) A description of the services to be provided over the system, including identification of television signals, both broadcast and non-broadcast, to be carried and all nontelevision services to be provided initially. Where service will be offered by tiers, identify the signals, or services, or both, to be included on each tier.

(g) The proposed rates to be charged, including rates for each service tier, as appropriate, and charges for installation, converters, and other services.

(h) Information as necessary to demonstrate compliance with all relevant requirements contained in this chapter, including the means of complying with Section 5.16.340 of this chapter.

(i) A demonstration stating how the proposal is reasonable to meet the future cable-related community needs and interests. In particular, the application should describe how the proposal will satisfy the needs as analyzed in any recent community needs assessment commissioned by the City.

(j) A demonstration that the proposal is designed to be consistent with all federal and statement requirements. In particular, the applicant shall describe how any proposed access and institutional service support meets the FCC's standards for extra service packages and does not constitute a franchise fee payment-in-kind.

(k) Pro forma financial projections for each year of the franchise term. The projections shall include a statement of income, balance sheet, statement of sources and uses of fund, and schedules of

capital additions. All significant assumptions shall be explained in notes or supporting schedules that accompany the projections.

(l) A complete list of all cable communications systems in which the applicant, or a principal thereof, holds an equity interest.

(m) An affidavit of the applicant or duly authorized officer thereof, certifying, in a form acceptable to the City, the truth and accuracy of the information contained in the application and acknowledging the enforceability of application commitments.

(n) In the case of an application by an existing franchisee for a renewed franchise, a demonstration that said franchisee has substantially complied with the material terms of the existing franchise and with the applicable law.

(o) Other information that the City, or its agents, may request of the applicant. (Ord. 15460 §12; March 5, 1990: P.C. §5.67.120: Ord. 13986 §12; November 5, 1984).

5.16.130 Applicant Representatives.

Any person who files an application with the City for a cable communications franchise shall forthwith, at all times, disclose to the City, in writing, the names, addresses, and occupations of all persons who are authorized to represent or act on behalf of the applicant in those matters pertaining to the application. The requirement to make such disclosure shall continue until the City shall have rejected an applicant's application or until an applicant withdraws its application. (Ord. 15460 §13; March 5, 1990: P.C. §5.67.130: Ord. 13986 §13; November 5, 1984).

5.16.140 Consideration of Applications.

(a) The City shall consider each application for a franchise where the application is found to be acceptable for filing and in substantial compliance with the requirements of this chapter and any applicable request for proposals. In evaluating an application, the City will consider, among other things, the applicant's past service record in other communities, the nature of the proposed facilities and services, including rates to be charged therefor, and whether the proposal would adequately serve the public needs and the overall interests of the citizens of the City. Where the application is for a renewed franchise, the City shall consider whether:

(1) The cable operator has substantially complied with the material terms of the existing franchise and with applicable law;

(2) The quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix, quality, or level of cable services or other services provided over the system, has been reasonable in light of community needs;

(3) The operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and

(4) The operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

(b) Where the City determines that an applicant's proposal, including the proposed service area, would serve the public interest, it may grant a franchise to the applicant. The franchise agreement will constitute a contract, freely entered into, between the City and the grantee. Said franchise agreement shall incorporate by reference the relevant provisions of this chapter. Any such franchise must be approved by ordinance of the City Council pursuant to Article II, Section 2(21) of the City Charter.

(c) In the course of considering an application for renewed franchise, the Council shall hold a public hearing, consistent with the provisions of 47 U.S.C. § 626 as existing or as may from time to time be amended.

(d) A franchise granted pursuant to this chapter shall not take effect until the applicant pays a grant fee to the City. The grant fee shall be equal to the City's reasonable direct costs in the franchising process, less the application filing fee received. The City shall provide to the grantee a statement summarizing such costs prior to the execution of the franchise. (Ord. 15460 §14; March 5, 1990: P.C. §5.67.140: Ord. 13986 §14; November 5, 1984).

5.16.150 Acceptance.

A franchise and its terms and conditions shall be accepted by a grantee by written instrument, in a form acceptable to the City Attorney, and filed with the City Clerk within thirty days after the granting of the franchise by the City. In its acceptance, the grantee shall declare that it has carefully read the terms and conditions of this ordinance and the franchise and accepts all of the terms and conditions of this ordinance and the franchise and agrees to abide by same. In accepting a franchise, a grantee shall indicate that it has relied upon its own investigation of all relevant facts, that it was not induced to accept the franchise, and that it accepts all reasonable risks related to the interpretation of the franchise. (Ord. 15460 §15; March 5, 1990: P.C. §5.67.150: Ord. 13986 §15; November 5, 1984).

5.16.160 Franchise Term.

The term of a franchise shall be as specified in the franchise agreement, but it shall not exceed fifteen years. If a franchisee seeks authority to operate a cable system in the City beyond the term of its franchise, it shall file an application for a renewed franchise not later than thirty months prior to the expiration of its franchise. (Ord. 15460 §16; March 5, 1990: P.C. §5.67.160: Ord. 13986 §16; November 5, 1984).

5.16.170 Franchise Fee.

(a) A franchisee, in consideration of the privilege granted under a franchise for the use of public ways and the privilege to construct and operate a cable communications system, shall pay to the City five percent of its annual gross revenues during the period of its operation under the franchise.

(b) A franchisee shall file with the City, thirty days after the last day of each quarter, a financial statement showing the gross revenues received by franchisee during the preceding quarter. A franchisee shall pay the quarterly portion of the franchise fee to the City on or before the time such financial statement is due to be filed. A franchisee shall also file, no later than ninety days after the end of each of the franchisee's fiscal years, the franchisee's financial statements for the preceding year, audited by an independently contracted certified public accountant. The franchisee shall bear the cost of such audit. Any franchise fee payment in adjustment for any shortfall of the total quarterly payments for the year shall be made at that time. Adjustments for any overpayment shall be by credit to subsequent quarterly payments.

(c) The City shall have the right, consistent with the provisions of Section 5.16.270 of this chapter, to inspect a franchisee's income records, to audit any and all relevant records, and to recompute any amounts determined to be payable under the franchise and this ordinance.

(d) In the event that any franchise payment is not received by the City on or before the applicable dates, interest shall be charged from such due date at an annual interest rate then chargeable for

unpaid federal income taxes (26 U.S.C. § 6621). In addition to the foregoing, the franchisee shall pay a late charge of five percent of the amount of such payment. Interest and late charges will not be chargeable to the franchisee for additional payment required under the yearly adjustment, provided that such payment does not exceed ten percent of the total monthly payments made during the year. In the event such payment exceeds ten percent, the franchisee shall be liable for interest and late charges for the entire amount.

(e) In the event a franchise is revoked or otherwise terminated prior to its expiration date, the franchisee shall file with the City, within ninety days of the date of revocation or termination, an audited financial statement showing the gross revenues received by the franchisee since the end of the previous year and shall make adjustments at that time for the franchise fees due up to the date of revocation or termination. (Ord. 15460 §17; March 5, 1990: P.C. §5.67.170: Ord. 13986 §17, September 5, 1984).

5.16.180 Insurance, Bonds, Indemnity.

(a) Upon the granting of a franchise and following simultaneously with the filing of the acceptance of the franchise and at all times during the term of the franchise, including the time for removal of facilities or management as a trustee as provided for herein, the franchisee shall obtain, pay all premiums for, and deliver to the City written evidence of payment of premiums for and the originals of the following:

(1) A general comprehensive public liability policy or policies indemnifying, defending, and saving harmless the City, its officers, boards, commissions, agents, or employees from any and all claims by any person whatsoever, including the costs, defenses, attorney fees, and interest arising therefrom, on account of injury to or death of a person or persons occasioned by the operations of the franchisee under the franchise herein granted, or alleged to have been so caused or occurred, with a minimum liability of $1,000,000 per personal injury or death of any one person, and $3,000,000 for personal injury or death of any two or more persons in any one occurrence. The policy shall be endorsed adding coverage against all claims for personal injury liability offenses.

(2) A property damage insurance policy or policies indemnifying, defending, and saving harmless the City, its officers, boards, commissions, agents, and employees from and against all claims by any person whatsoever, including the costs, defenses, attorney fees, and interest arising therefrom, for property damage occasioned by the operation of the franchisee under the franchise herein granted, or alleged to have been so caused or occurred, with a minimum liability of $500,000 for property damage to the property of any one person and $1,000,000 for property damage to the property of two or more persons in any one occurrence.

(3) A performance bond or bonds in favor of the City with good and sufficient surety approved by the City in the sum set forth in the franchise agreement conditioned upon the faithful performance and discharge of the obligations imposed by this ordinance and the franchise awarded hereunder from the date thereof. The amount of the bond may be reduced as any construction that is required is completed, consistent with the franchise agreement.

(b) All bonds and insurance policies called for herein shall be in a form satisfactory to the City Attorney. The City may at any time, if it deems itself insecure, require a franchisee to provide additional sureties to any and all bonds or to replace existing bonds with new bonds with good and sufficient surety approved by the City.

(c) A franchisee shall, at its sole cost and expense, indemnify and hold harmless the City, its officials, boards, commissions, agents, and employees against any and all claims, suits, causes of action,

proceedings, and judgments for damage arising out of the operation of the cable communications system under the franchise. These damages shall include, but not be limited to, penalties arising out of copyright infringements and damages arising out of any failure by a franchisee to secure consents from the owners, authorized distributors, or licensees of programs to be delivered by the franchisee's communication system whether or not any act or omission complained of is authorized, allowed, or prohibited by the franchise. Indemnified expenses shall include, but not be limited to, all out-of-pocket expenses, such as costs and attorney fees, and shall also include the reasonable value of any services rendered by the City Attorney or assistants of the City Attorney or any employees of the City.

(d) No franchisee shall permit any policy or bond to expire and a franchisee, not less than thirty days prior to its expiration, shall deliver to the City a substitute renewal or replacement policy or bond in conformance with the provisions of this ordinance. (Ord. 15460 §18; March 5, 1990: P.C. §5.67.180: Ord. 14303 §1; January 13, 1986: prior Ord. 13986 §18; November 5, 1984).

5.16.190 Letter of Credit.

(a) The City may at its discretion require that a franchisee obtain a letter of credit. When and if the City should so require, the franchisee shall deposit with the City a letter of credit from a financial institution approved by the City in the amount of $50,000.00. The letter of credit may not be revoked or terminated during the term of the franchise except with written approval of the City. The form and content of such letter of credit shall be approved by the City Attorney. The letter of credit shall be used to ensure the faithful performance by the franchisee of all provisions of the franchise and this ordinance; compliance with all orders, permits, and directions of any agency, commission, board, department, division, or office of the City having jurisdiction over its acts or defaults under the license; and the payment by the franchisee of any claims, liens, and taxes due the City or other municipalities which arise by reason of the construction, operation, or maintenance of the system.

(b) The letter of credit shall be maintained by the franchisee at $50,000.00 during the entire term of the franchise, as the City may require, even if funds are drawn against it pursuant to this ordinance.

(c) The letter of credit shall contain the following endorsement:

> It is hereby understood and agreed that this letter of credit may not be canceled by the surety nor the intention not to renew be stated by the surety until thirty days after receipt by the City Attorney, by certified mail, of a written notice of such intention to cancel or not to renew.

(d) At the City's option, it may draw against the letter of credit for any unpaid liquidated damages, franchise fees, or other amounts owing to it under the franchise which are thirty days or more past due. The City shall notify the franchisee in writing at least ten days in advance of drawing upon the letter of credit. (Ord. 15460 §19; March 5, 1990: P.C. §5.67.190: Ord. 13986 §19; November 5, 1984).

5.16.200 Liquidated Damages.

(a) Because a franchisee's failure to comply with the certain provisions of this ordinance and its franchise will result in injury to the City and because it will be difficult to estimate the extent of such injury, the City and any franchisee shall agree upon and specify in the franchise certain amounts which represent both parties' best estimate of the damages resulting from such injury.

(b) The City Attorney shall calculate the amount of any damages and mail notice thereof to the franchisee. Such a notice may provide for damages sustained prior to the notice and subsequent thereto pending compliance by the franchisee.

(c) The liquidated damages provided pursuant to this section shall annually increase or decrease commencing on January 1 of each year in the same percentage as any increase or decrease in the urban consumer price index for the Omaha metropolitan area, as compiled by the United States department of labor, bureau of labor, bureau of labor statistics, utilizing the consumer price index for the calendar year in which the franchise was granted as the base period.

(d) The City shall not allow any franchisee to include any liquidated damage payments or the loss of revenues resulting therefrom when considering a request for a rate increase.

(e) The liquidated damages provided in a franchise shall be the exclusive monetary remedy for the named breaches. Neither the right to liquidated damages nor the payment of liquidated damages shall bar or otherwise limit the right of the City in a proper case to:

(1) Obtain judicial enforcement of the franchisee's obligations by means of specific performance, injunctive relief, mandate, or other remedies at law or in equity;

(2) Consider any violation as grounds for forfeiture and termination of the franchise pursuant to this ordinance; and

(3) Consider any violation as grounds for nonrenewal or nonextension of the franchise or issuance of a new franchise. (Ord. 15460 §20; March 5, 1990: P.C. §5.67.200: Ord. 13986 §20; November 5, 1984).

5.16.210 Forfeiture and Termination.

(a) In addition to all other rights and powers retained by the City under this ordinance and any franchise issued pursuant thereto, the City reserves the right to forfeit and terminate the franchise and all rights and privileges of the franchisee in the event of a substantial breach of its terms and conditions. A substantial breach by the franchisee shall include, but shall not be limited to, the following:

(1) An uncured violation of any material provision of this ordinance or franchise issued thereunder, or any material rule, order, regulation, or determination of the City made pursuant thereto;

(2) An attempt to evade any material provision of the franchise or practice of any fraud or deceit upon the cable communication system customers and subscribers or upon the City;

(3) Failure to begin or substantially complete any system construction or system extension as set forth in the franchise;

(4) Failure to provide the mix, quality, and level of services promised in the application or specified in the franchise, or a reasonable substitute therefor;

(5) Failure to restore service after ten consecutive days of interrupted service, except when approval of such interruption is obtained from the City;

(6) Material misrepresentation of fact in the application for, or during negotiation relating to, the franchise.

(7) Failure to provide surety and indemnity as required by the franchise or this chapter.

(b) None of the foregoing shall constitute a major breach if a violation occurs which is without fault of the franchisee or occurs as a result of circumstances beyond the franchisee's control. The franchisee shall not be excused by mere economic hardship nor by nonfeasance or malfeasance of its directors, officers, agents, or employees; provided, however, that damage to equipment causing service interruption

shall be deemed to be the result of circumstances beyond the franchisee's control if it is caused by any negligent act or unintended omission of its employees, assuming proper training, or agents, assuming reasonable diligence in their selection, or sabotage or vandalism or malicious mischief by its employees or agents. The franchisee shall bear the burden of proof in establishing the existence of such conditions.

(c) The City shall make a written demand by certified mail that the franchisee comply with any such provision, rule, order, or determination under or pursuant to the franchise. If the violation by the franchisee continues for a period of thirty days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the City may consider terminating the franchise; provided, however, a written notice thereof shall be given to the franchisee at least fifteen days in advance and the franchisee must be given an opportunity to appear before the council to present its arguments.

(d) Should the City determine, following the public hearing, that the violation by the franchisee was the fault of the franchisee and within the franchisee's control, the City may, by resolution, declare that the franchise be forfeited and terminated; provided, however, the City may, in its discretion, provide an opportunity for the franchisee to remedy the violation and come into compliance with the franchise and this ordinance so as to avoid the termination.

(e) In the event that one or more substantive provisions of the franchise become unenforceable or unlawful under federal or state law and the franchisee is unable or unwilling to comply with said provisions, the City may, at its option, terminate the franchise after a public hearing if it finds that the unenforceable or unlawful provisions represent a substantial failure of consideration for the franchise agreement. Where the City is to consider possible termination of the franchise hereunder, the franchisee shall be given at least fifteen days prior written notice and an opportunity to appear and make arguments at the public hearing before the Council. Any determination by the City to so terminate shall be appealable to the district court in accordance with the provisions of Neb. Rev. Stat., § 15-1201, et seq., as existing or as may from time to time be amended. (Ord. 15460 §21; March 5, 1990: P.C. §5.67.210: Ord. 13986 §22; November 5, 1984).

5.16.220 Foreclosure.

Upon the foreclosure or other judicial sale of all or a substantial part of the cable communications system facilities, or upon the termination of any lease covering all or a substantial part of the cable communications system, or upon the occasion of additional events which effectively cause termination of the system's operation, the franchisee shall notify the City of such fact, and such notification or the occurrence of such terminating events shall be treated as a notification that a change in control of the franchisee has taken place, and the provisions of this ordinance governing the consent of the City to such change in control of the franchisee shall apply. (Ord. 15460 §22; March 5, 1990: P.C. §5.67.220: Ord. 13986 §22; November 5, 1984).

5.16.230 Receivership.

The City shall have the right to cancel a franchise issued 120 days after the appointment of a receiver, or trustee, to take over and conduct the business of the franchisee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days, or unless:

(a) Within 120 days after the election or appointment, such receiver or trustee shall have fully complied with all of the provisions of this ordinance and remedied any defaults thereunder; and

(b) Within said 120 days, such receiver or trustee shall have executed an agreement duly approved by the court having jurisdiction whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this ordinance and the franchise granted to the franchisee. (Ord. 15460 §23; March 5, 1990: P.C. §5.67.230: Ord. 13986 §23; November 5, 1984).

5.16.240 Removal of Cable Communications System.

At the expiration of the term for which a franchise issued hereunder is granted, or upon its termination as provided herein, the franchisee shall forthwith, upon notice by the City, remove at its own expense all designated portions of the cable communications system from all streets and public ways within the City, and shall restore said streets and public ways to their former condition; provided, however, the franchisee shall have the right to sell its physical plant to a subsequent franchisee, subject to City approval, in which case said plant need not be removed. If the franchisee fails to remove its facilities upon request, the City may perform the work at the franchisee's expense. (Ord. 15460 §24; March 5, 1990: P.C. §5.67.250: Ord. 13986 §24; November 5, 1984).

5.16.250 Transfer of Ownership or Control.

(a) A franchise issued pursuant to this chapter shall not be sold, assigned, transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation, or hypothecated in any manner, nor shall title thereto, either legal or equitable, or any right, interest, or property therein pass to or vest in any person or entity, or the controlling interest in any corporation holding a franchise hereunder be changed without the prior consent of the City, and then only under such conditions as may be required by the City. Such a transfer of control is not limited to major interest holders but includes actual working or de facto control by minor interest holders in whatever manner exercised. Every change, transfer, or acquisition of control of the franchisee shall make the franchise subject to cancellation unless and until the City shall have consented.

(b) The franchisee shall promptly notify the City of any proposed change in control of the franchisee. A formal application for approval of a proposed transfer of control shall be filed within thirty days of such notification. The application shall include, among other things, a copy of any and all documents relating to the sale or transfer, including any appraisal of the value of the system, and any filings by any party to the transaction at any state or federal agency including, but not limited to, the FCC, the Department of Justice, the Federal Trade Commission, and the Securities and Exchange Commission. An original and three copies of the text of the application shall be filed and additional copies as the City may request.

(c) The proposed purchaser, transferee, or assignee must show financial responsibility as determined by the City and must agree to comply with all provisions of the franchise, including any provisions which the City may amend or add prior to approval of the transfer.

(d) For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the City may inquire into all qualifications of the prospective controlling party, and the franchisee shall assist the City in any such inquiry. Approval for transfer may be withheld by the City if, among other reasons, the transfer would result in a rate increase attributable to the purchase price paid for the system. The City may require any conditions which it deems necessary at the time of review to

ensure that the cable communications system will satisfy the public interest of the City and its citizens for the balance of the term of the franchise.

(e) Section 5.16.140 of this chapter shall apply to any transfer as if the transferee were an application for a new franchise. (Ord. 15460 §25; March 5, 1990: P.C. §5.67.260: Ord. 13986 §26; November 5, 1984).

5.16.260 Subscriber Fees and Rates.

(a) It is the intention of the City, by the adoption of these provisions, to follow the regulations established by the Federal Communications Commission for the regulation of rates.

(b) The initial fees to be charged to subscribers for all services, including installation fees and other one-time charges, shall be specified in any franchise agreement issued pursuant hereto.

(c) Those fees and charges subject to regulation by the City pursuant to state and federal law shall not be increased without prior approval of review by the City.

(d) In order to obtain City review for rate increases, the franchisee shall file a revised schedule of rates with the City at least thirty days in advance of a proposed rate increase. This filing shall specify the rates or fees to be increased and associated regulations which may affect charges to the subscriber and the justification for said increases and charges. The franchisee shall promptly submit any additional supporting information requested by the City.

(e) Within thirty days of the rate increase filing, the City shall schedule two public meetings before the Council to hear ratepayer and franchisee comment on the proposed increase. Following the public meetings, the Council may determine whether or not to grant the proposed increase or a portion thereof prior to the expiration of the thirty-day period, unless the thirty-day deadline is tolled by the City for an additional ninety days to consider the request.

(f) At least thirty days prior to the proposed rate increase, each ratepayer or subscriber shall be notified in writing by the franchisee of the changes in rates proposed.

(g) Rates and charges may be reduced at any time without prior City approval, provided that the reductions do not result in rates which are unreasonably discriminatory to any subscriber or class of subscribers. Where temporary reductions are put into effect for promotional purposes for a specified time period, the return to the permanent rates shall not be considered a rate increase for purpose of this chapter. The City shall be notified of all reductions in rates, whether permanent or temporary.

(h) Rates and charges not subject to regulation by the City under state or federal law or regulation may be changed by the franchisee following a minimum thirty days prior notice to the City and the subscribers. (Ord. 16522 §1; November 29, 1993: prior Ord. 15460 §26; March 5, 1990: P.C. §5.67.270: Ord. 13986 §27; November 5, 1984).

5.16.270 Reports.

(a) Annual Report. No later than ninety days after the end of each of the franchisee's fiscal years, the franchisee shall file a written report with the City, which shall include:

(1) A summary of the previous calendar year's activities in development of this system, including but not limited to services begun or dropped, number of subscribers, including gains and losses, homes passed, and miles of cable distribution plants in service, including different classes if applicable.

(2) An audited financial statement, including a statement of income, a balance sheet, and a statement of sources and applications of funds. The statement shall include notes that specify all

significant accounting policies and practices upon which it is based, including, but not limited to, depreciation rates and methodology, overhead and intrasystem cost allocation methods, and basis for interest expense. A summary shall be provided comparing the current year with the three previous years. The statement shall contain a summary of franchise fee payments and any adjustment thereto as specified in Section 5.16.170 of this chapter. If the franchisee operates other cable systems, then, in lieu of audited financial statements of the system, the franchisee may submit the financial statement referred to above as supplementary information to the audited financial statements of its entire operations. Such audited financial statements of a multiple system operator shall contain an accountant's report stating what procedures have been applied to the supplementary information and the accountant's opinion on the supplementary information in relation to the basic financial statements taken as a whole. The franchisee shall obtain written permission from the City in advance in order to submit his financial statements in this manner, and an officer of the company shall attest to the accuracy of the financial information provided.

(3) A current statement of cost of any construction by component category.

(4) An operating budget for the system for the next year and capital expenditures budget for the next two years. All significant assumptions upon which the budgets and underlying projections are based should be duly noted.

(5) A reconciliation between previously projected estimates and actual results.

(6) A summary of complaints, identifying the number and nature of complaints and their disposition.

(7) If the franchisee is a corporation, a list of officers and members of the board and the officers and board members of any parent corporation.

(8) A list of all partners or stockholders holding one percent or more ownership interest in the franchisee and any parent corporation; provided, however, that when any parent corporation has in excess of 1,000 shareholders and its shares are publicly traded on a national stock exchange, then a list of the twenty largest stockholders of the voting stock of such corporation shall be disclosed.

(9) A report of franchisee's employees in the City designed to demonstrate compliance with Section 5.16.500 of this chapter upon a form prescribed by the City.

(10) A copy of all the franchisee's rules and regulations applicable to subscribers and users of the cable communications system.

(11) A report relating to all copyright fees paid and copies of all reports or documents submitted to the copyright office of the Library of Congress.

(b) The City may specify the form and details of all reports, with the franchisee given an opportunity to comment in advance upon such forms and details. The City may change the filing dates for reports upon reasonable request of the franchisee. (Ord. 15460 §27; March 5, 1990: P.C. §5.67.280: Ord. 13986 §28; November 5, 1984).

5.16.280 Records.

Upon reasonable notice to the franchisee, the City shall have the right to inspect all records relating to the cable operations at any time during normal business hours. All records required by the City for such inspection shall be made available within the City of Lincoln, Nebraska, within a reasonable time after such request. Access to such records will not be denied because of claimed proprietary information; provided,

however, the City will not make public such information reasonably claimed by the franchisee to be proprietary. (Ord. 15460 §28; March 5, 1990: P.C. §5.67.290: Ord. 13986 §29; November 5, 1984).

5.16.290 Filings.

The franchisee shall mail or deliver a copy of all filings it makes with state and federal agencies to the City Clerk. Said copies shall be mailed or delivered on the filing date. (Ord. 15460 §29; March 5, 1990: P.C. §5.67.300: Ord. 13986 §30; November 5, 1984).

5.16.300 System Technical Standards.

The cable communications system to be installed by a franchisee shall comply in all respects with the technical performance requirements set forth in the application and part 76 of the FCC's rules and regulations and the franchise agreement. If the FCC should delete said requirements, the City reserves the right to amend the franchise or this ordinance to incorporate comparable technical standards. At minimum, the cable communications system shall be designed to provide picture quality of TASO grade 2 or better and superior reliability. (Ord. 15460 §30; March 5, 1990: P.C. §5.67.310: Ord. 13986 §31; November 5, 1984).

5.16.310 Access and Local Programming.

(a) Applications for a franchise shall include proposals for the provision of public, education, and local government access channels, including facilities and support services sufficient to meet community needs. Applicants are encouraged to include proposals for local origination programming by the franchisee. All local programming equipment, facilities, and support services, whether supplied directly by a franchisee or through grant funds provided by the grantee, shall be available to all users in the community, including the franchisee. All proposals shall conform to the following minimum requirements:

(1) A franchisee shall provide equipment, directly or through grants, for local program production by all cable users for live and video-taped presentation over the cable television system in addition to providing automated services.

(2) The franchisee shall have no control over the content of access programs. The City may require a franchisee or a non-profit corporation or other entity selected to manage the access program to establish reasonable rules for the use of access channels consistent with the requirements of this ordinance, the franchise and the intended purpose of such channels. Such rules shall be subject to review and approval by the City.

(3) Any public access channel shall be made available to any member of the public on a nondiscriminatory basis with priority to local access production at no charge for channel or equipment use. Use of personnel for production of public access programming shall be made available consistent with the goal of affording users a low-cost means of television access and the requirements of the franchise.

(4) Any education access channel shall be made available free of charge for the transmission of local educational programming.

(5) Any local government access channels shall be made available free of charge for the transmission of government related programming.

(6) The franchisee shall provide for a training program for access users sufficient to meet the demand for such a program.

(b) The City shall promulgate rules under which channel capacity dedicated to access may be used by the franchisee when it is not being used for access purposes. (Ord. 15460 §31; March 5, 1990: P.C. §5.67.320: Ord. 13986 §32; November 5, 1984).

5.16.320 Leased Access.

A franchisee shall make channels available for leased or commercial use as specified in the franchise consistent with federal requirements. The franchisee shall facilitate leased access use by assuring that lessees will have full use of the system's technical capabilities, including but not limited to addressability and code formats for data transmission. The franchisee is encouraged to also make available for lease narrow band channels. Leased access shall be offered under price, terms, and conditions which are reasonable and in good faith. A channel designated for leased access may be utilized by the franchisee until such time as there is a demand for commercial leased use of the channel. (Ord. 15460 §32; March 5, 1990: P.C. §5.67.330: Ord. 13896 §33; November 5, 1984).

5.16.330 Public Drops.

A franchisee shall provide without charge within the franchise area one drop activated for basic subscriber cable television service to each fire station, public school, police station, public library, and other such buildings used for public purposes as may from time to time be designated by executive order of the Mayor of the City. A franchisee shall be permitted to recover, at the franchisee's actual cost, for any additional converters required and the franchisee's direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than 250 feet of drop cable. (Ord. 15460 §33; March 5, 1990: P.C. §5.67.340: Ord. 13986 §34; November 5, 1984).

5.16.340 Parental Control.

(a) The City believes that parents should have the greatest discretion possible in controlling the viewing of programming by their minor children. The franchise shall provide to subscribers the best available means to accomplish this objective.

(b) Any television signals which the franchisee elects to offer on a coded or "scrambled" basis shall have, at a minimum, visual signals coded or scrambled; provided, however, that upon the rebuilding of any cable communications system existing on November 20, 1984, the franchisee thereof shall, when electing to offer any television signal on a coded or scrambled basis, have both the audio and visual signals coded or scrambled. (Ord. 15460 §34; March 5, 1990: P.C. §5.67.350: Ord. 14303 §2; January 13, 1986: prior Ord. 13986 §35; November 5, 1984).

5.16.350 Institutional Services.

A franchisee is encouraged to provide institutional services over the cable system subject to the terms specified in the franchise and the following requirements.

(a) Institutional services shall be provided upon reasonable request to businesses, institutions, governmental entities and others that are passed on institutional cable trunk or feeder line.

(b) Institutional services shall not be subsidized by the cable television services.

(c) Each public building provided cable television service drops without charge shall also be provided drops for institutional service without charge if the institutional cable trunk or feeder line passes said building. (Ord. 15460 §35; March 5, 1990: P.C. §5.67.360: Ord. 13986 §36; November 5, 1984).

5.16.360 Construction Standards.

(a) Any cable system constructed within the City shall meet or exceed all technical standards consistent with this chapter, the franchise agreement, and the franchisee's application.

(b) The franchisee shall submit a copy, at its expense, of the final report on each proof of performance test required by part 76, subpart K of the rules and regulations of the FCC to the City within five working days of completion of such reports. The City subsequently may require a full report on any deficiencies as disclosed by the proof of performance test within such reasonable period of time as it may designate.

(c) The City may require annual proof of performance tests. The tests and verification shall be at the expense of the franchisee.

(d) The franchisee shall submit to the City, as the City may request, a copy of all maps and charts of cable locations prepared by or for the franchisee during the duration of this franchise. (Ord. 15460 §36; March 5, 1990: P.C. §5.67.370: Ord. 13986 §37; November 5, 1984).

5.16.370 Construction and Installation Work.

(a) The City shall have the right to inspect all construction and installation work performed by the franchisee subject to this chapter as it shall find necessary to ensure compliance with governing ordinances and the franchise.

(b) All construction, installation, and maintenance must comply with the national electrical safety code, the national electrical code as adopted by the City, the Bell system code of pole line construction, all state and local regulations, and good and accepted industry practices.

(c) Worker facilities, conditions, and procedures shall comply with the standards of the Occupational Safety and Health Administration. (Ord. 15460 §37; March 5, 1990: P.C. §5.67.380: Ord. 13986 §38; November 5, 1984).

5.16.380 Location of Structures, Lines, and Equipment.

(a) A franchisee shall utilize existing poles, conduits, and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities whether on public property or on privately owned property until approval of the property owner or appropriate governmental authority is obtained. However, the location and installation of any pole, conduit, or other facility by a franchisee shall not create a vested interest, and such poles, structures, or facilities shall be removed, replaced, or modified by a franchisee at its own expense whenever the council or other governmental authority determines that the public interest so necessitates.

(b) All transmission and distribution structures, lines, and equipment installed by the franchisee within the City shall be located so as to cause minimum interference with the proper use of streets, alleys, and other public ways and places and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the streets, alleys, or other public ways or places and where they will not interfere with any gas, electric, telephone, water, or other pre-existing utility facility.

(c) All such poles and other fixtures in any street or public way shall be placed in accordance with Chapter 14.64 of the municipal code.

(d) In those areas of the City where electric and telephone utility lines have been placed underground, a franchisee shall place its lines and installations underground. In areas where either telephone or electric facilities are above ground at the time of installation, the franchisee may install its

service above ground; provided, that at such time as both of those other facilities are placed underground, the franchisee shall forthwith place its facilities underground, and the cost of such shall be borne by the franchisee, with no special charge being imposed upon any subscriber for such change. In new housing developments, a franchisee shall install distribution cables at the same time utility facilities are being installed, if reasonably possible.

(e) When the franchisee uses any poles which are municipally owned, the rate shall be fair, reasonable, and nondiscriminatory. (Ord. 15460 §38; March 5, 1990: P.C. §5.67.390: Ord. 13986 §38; November 5, 1984).

5.16.390 Replacement of Paving.

The franchisee at its own cost and expense and in the manner approved by the City shall replace and restore all paving, sidewalks, driveways, or surface of any street or alley disturbed, in as good a condition as before the work was commenced and shall maintain the restoration in an improved condition for a period of one year. Failure of the franchisee to replace or restore such paving, sidewalk, driveway, or street surface within forty-eight hours after completion of work shall authorize the City to cause the proper restoration to be made at the franchisee's expense. (Ord. 15460 §39; March 5, 1990: P.C. §5.67. 400: Ord. 13986 §39; November 5, 1984).

5.16.400 Alteration of Streets by City.

If the City shall lawfully decide to alter or change the grade of any street, alley, or other public way, the franchisee, upon reasonable notice by the City, shall, in a timely manner as requested by the City, remove and relocate its poles, wires, cables, underground conduits, and other facilities at its own expense. (Ord. 15460 §40; March 5, 1990: P.C. §5.67.410: Ord. 13986 §40; November 5, 1984).

5.16.410 Moving of Buildings.

A franchisee shall, on the request of any person holding a valid housemoving permit, temporarily raise or lower its wires or cables to permit the moving of buildings or other large objects. The expense of such temporary raising or lowering of wires shall be paid by the person making the request, and the franchisee shall have the authority to require such payment in advance. The franchisee shall be given not less than forty-eight hours advance notice to arrange for such temporary wire changes. (Ord. 15460 §41; March 5, 1990: P.C. §5.67.420: Ord. 13986 §42; November 5, 1984).

5.16.420 Trimming Trees.

A franchisee shall have the authority to trim trees upon an overhanging of streets, alleys, sidewalks , and public places of the City so as to prevent the branches of such trees from coming in contact with wires and cables and other television conductors and fixtures of the franchisee. The City may require all trimming to be done under its supervision and direction and at the expense of the franchisee. (Ord. 15460 §42; March 5, 1990: P.C. §5.67.430: Ord. 13986 §43; November 5, 1984).

5.16.430 Provision of Service.

A franchisee shall provide subscriber service on the following basis:

(a) A franchisee shall not deny service, access, or otherwise discriminate against persons, including subscribers and users, on the basis of race, color, religion, sex, disability, national origin, ancestry,

age, or marital status. A franchisee shall comply at all times with all other applicable federal, state, and local laws and regulations.

(b) In providing service, a franchisee shall:

(1) Operate an office within the City open during normal business hours Monday through Friday, excluding legal holidays.

(2) Provide a local toll-free telephone service capable of receiving subscriber service complaints, on a seven days a week, 24-hour a day basis.

(3) Establish a maintenance service capable of promptly locating and correcting system malfunctions. Service trucks shall be equipped for voice communication with the franchisee's dispatcher. In order to permit a rapid response to any system-wide outage, the franchisee shall have service trucks available for emergency duty to repair system outages during non-business hours.

(4) Make every attempt to respond to customer complaints upon receipt, but in no case later than the next working day. The franchisee, whenever reasonably practicable, shall make system repairs and testing, which would result in any interruption of service to subscribers, at times which will least affect typical subscriber television viewing habits; provided, however, a franchisee shall not be required to conduct such system repairs and testing during non business hours.

(5) In those cases where service is not restored within twenty-four hours, the reasons for the delay shall be fully documented in a complaint log. If after twenty-four hours, service is not restored to a subscriber, a franchisee shall, upon subscriber request, provide a refund or credit to such subscriber as hereinafter set forth for such full 24-hour periods and subsequent fractions thereof. The refund or credit shall be in the amount of one-thirtieth the monthly charge for each tier of service and each premium service which is unavailable to the subscriber per each 24-hour period.

(6) Billing complaints shall be responded to promptly. Written complaints shall be responded to within seven days of receipt.

(c) As subscribers are connected or reconnected to the system, a franchisee shall, by appropriate means such as a card or brochure, furnish general subscriber information, including but not limited to, terms of service, 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 furnish information concerning the City office responsible for the administration of the franchise, including the address and telephone number of said office.

(d) When similar complaints have been made by a number of subscribers, or where other evidence exists which, in the judgment of the City, casts doubt on the reliability or quality of the cable service, the City shall have the right and authority to require that the franchisee test, analyze, and report on the performance of the system. The franchisee shall fully cooperate with the City in performing such testing and shall prepare a written report of the results, if requested, within thirty days after notice.

(e) Where the franchisee provides service which is not subject to rate regulation by the City, it shall give at least thirty days prior notice to the City and all subscribers or users before implementing any rate increases. (Ord. 15460 §43; March 5, 1990: P.C. §5.67.440: Ord. 13986 §44; November 5, 1984).

5.16.440 Refunds and Service Terminations.

(a) A franchisee shall establish and conform to the following policy regarding refunds to subscribers and users:

If the franchisee collects a deposit or advance charge on any service or equipment requested by a subscriber or user, the franchisee shall provide such service or equipment within thirty days of the collection of the deposit or charge, or the franchisee shall refund such deposit or charge within five business days thereafter. Nothing in this section shall be construed: (i) to relieve a franchisee of any responsibility it may have under separately executed contracts or agreements with subscribers or users; (ii) as limiting a franchisee's liability for liquidated damages, if any, which may be imposed under the franchise for the violation or breach of any provisions thereof; or (iii) to limit the franchisee's liability for damages, if any, because of its failure to provide the service for which the deposit or charge was made.

(b) The following requirements shall apply to subscriber disconnection:

(1) There shall be no charge for disconnection of any installation service or outlet. All cable communications equipment shall be removed within a reasonable time from a subscriber's property upon the subscriber's request, such time not to exceed thirty days from the date of request.

(2) If any subscriber fails to pay a properly due monthly subscriber's fee, or any other properly due fee or charge, the franchisee may disconnect the subscriber's service; provided, however, that such disconnection shall not be effected until thirty days after the due date of the monthly subscriber fee or charges and shall include a minimum ten days written notice to the subscriber of the intent to disconnect. After disconnection, upon payment in full of all proper fees or charges, including the payment of any reconnection charge, the franchisee shall promptly reinstate the service. (Ord. 15460 §44; March 5, 1990: P.C. §5.67.450: Ord. 13986 §44; November 5, 1984).

5.16.450 Service Area.

A franchisee shall offer full cable television service to all areas of the City unless specifically authorized to serve a lesser area. A franchise issued pursuant hereto shall require that all dwelling units within the franchise territory shall be offered service on the same terms and conditions; provided, however, multiple-family dwelling complexes, apartments, or condominiums may be served on a master-billed basis; and further, service to motels, hotels, hospitals, and similar businesses or institutions may be offered on terms and conditions different from single resident subscribers. In the event that subsequent to the issuance of a franchise, the City annexes additional territory, a franchisee shall extend its cable television services into the annexed area upon reasonable request of the City. (Ord. 15460 §45; March 5, 1990: P.C. §5.67. 460: Ord. 13986 §45; November 5, 1984).

5.16.460 Protection of Privacy.

Protection of subscriber privacy shall be assured consistent with the provisions of 47 U.S.C. § 631 as existing or as may from time to time be amended. (Ord. 15460 §46; March 5, 1990: P.C. §5.67.470: Ord. 13986 §47; November 5, 1984).

5.16.470 Continuity of Service.

(a) Where a franchisee rebuilds, modifies, or sells its system, it shall ensure that all subscribers receive continuous, uninterrupted services regardless of the circumstances.

(b) As long as it is entitled to revenues from the operation of the cable system, a franchisee shall maintain continuity of service during any temporary transition in the franchise, including but not limited to, the following circumstances:

(1) Revocation of the franchise;

(2) Nonrenewal of the franchise;

(3) Transfer of the cable system to the City or another entity. (Ord. 15460 §47; March 5, 1990: P.C. §5.67.480: Ord. 13986 §48; November 5, 1984).

5.16.480 Transitional Operation.

In the event a franchisee continues to operate the system in a transitional period, with City acquiescence, following the expiration, revocation, or other termination of the franchise, it shall be bound by all the terms, conditions, and obligations of the franchise as if it were in full force and effect. The terminating franchisee shall cooperate with the City and any subsequent franchisee in maintaining and transferring service responsibility. (Ord. 15460 §48; March 5, 1990: P.C. §5.67.490: Ord. 13986 §49; November 5, 1984).

5.16.490 Equal Opportunity Employment.

Equal opportunity in employment shall be afforded by a franchisee to all qualified persons, and no person shall be discriminated against in employment because of race, color, religion, sex, disability, national origin, ancestry, age, or marital status. A franchisee shall establish, maintain, and carry out a positive, continuing program of specific practices designed to assure equal opportunity in every aspect of company employment policy and practice. A franchisee shall immediately comply with all federal, state and local equal opportunity employment acts and practices and shall forthwith comply with the equal employment opportunity program of the City. (Ord. 15460 §49; March 5, 1990: P.C. §5.67.500: Ord. 13986 §50; November 5, 1984).

5.16.500 Administration.

(a) For the purpose of providing day-to-day municipal administration of telecommunications operations within the City, the Council, through the budgetary process, may consider at the request of the Mayor or on its own motion, the establishment of a position in the classified service designated as telecommunications officer who shall be assigned to an existing department of the City. The officer's power and responsibilities may include, but not be limited to, the following functions:

(1) Assisting in the preparation of invitations to bid for a franchise; establishing criteria for review and ranking of franchise applications; reviewing and screening applications for franchises and making recommendations to the City Council and Mayor.

(2) Monitoring the timely performance of a franchisee in making application for and obtaining all certificates, permits, and agreements as provided for in this chapter.

(3) Monitoring the performance of a franchisee in meeting the construction timetable as provided for a franchise or franchisee.

(4) Advising and making recommendations to the City Council and Mayor on violations of a franchise and on matters which may constitute grounds for revocation of a franchise in accordance with this chapter.

(5) Monitoring and reviewing changes in subscriber fees and rates for conformity to the franchise and of this chapter and advising and making recommendations to the City Council and Mayor thereon.

(6) Advising and making recommendations to the City Council and Mayor on technical, engineering, and police power regulations of cable operations within the City.

(7) Cooperating with other systems and governmental units in the development of and in the supervision of the interconnection of systems.

(8) Receiving and reviewing all franchise records and reports as required by this chapter, as well as all franchise reports filed with the FCC, and, in the officer's discretion, requiring the preparation and filing of information in addition to that required therein, as may reasonably be required to accomplish the purposes of a franchise and this chapter.

(9) Monitoring performance of a franchisee under any other terms of a franchise agreement and this chapter.

(10) Making an annual report to the City Council and Mayor which shall include among other things, an account of franchise fees received, the total number of hours of utilization of public channels with hourly subtotals for various programming categories, and a review of any plans submitted during the year by the franchisee for development of new services.

(11) Conducting evaluations of a cable system in conjunction with the cable advisory board pursuant to the requirements of this chapter and reporting to the council and Mayor. Assisting in any franchise negotiations or renegotiations.

(12) Enforcing the requirements of this chapter and the franchise, with the assistance of the City Attorney or through other appropriate legal counsel, as necessary, including the recovery of liquidated damages.

(13) Receiving subscriber complaints and advising a franchisee of the receipt of subscriber complaints affecting the franchisee's system.

(14) Assisting and advising the Cable Advisory Board.

(15) Providing assistance and guidance to City departments in the use of the cable communications systems.

(16) Providing assistance and guidance to the public in the use of access facilities.

(17) Developing a program for utilization of any government access channels and assisting City departments in their use.

(18) Drafting and monitoring regulations pertaining to a franchisee's use of channels dedicated to access use when they are not being used for that purpose.

(b) Unless specified to the contrary elsewhere in this chapter or the franchise, all filings, submissions, and notifications by the franchisee to the City shall be delivered to, or mailed to, the officer. Where the original of any such filing, submission, or notification is made to another City office pursuant to this chapter or the franchise, a copy shall be simultaneously provided to the officer. (Ord. 15460 §50; March 5, 1990: P.C. §5.67.510: Ord. 13986 §51; November 5, 1984).

5.16.510 Cable Advisory Board.

(a) There is hereby established a Cable Advisory Board, which shall consist of eleven members, including a chairperson, appointed by the Mayor, subject to confirmation by majority vote of the City Council, for staggered three-year terms. Present members of the Cable Television Advisory Board shall be deemed to be members of the Cable Advisory Board established hereunder and shall serve until their present terms expire. Board members shall be broadly representative of the City's population with diverse backgrounds and a reasonable knowledge of cable communications. No board member shall be affiliated with a local cable franchisee in any way.

(b) Reasonable expenses of the Cable Advisory Board, including any necessary support staff, shall be provided by the City through the telecommunications officer.

(c) The board's powers and functions shall include the following:

(1) Consider unresolved complaints and disagreements between franchisee and subscribers or users of the cable communications system and issue rulings thereon.

(2) Advise the City Council and Mayor on the regulation of rates in accordance with the provisions of this chapter.

(3) Advise the City Council and Mayor regarding general policy relating to the cable services provided subscribers and the operation and use of access and leased access channels with a view to maximizing the diversity and usefulness of programs and services to subscribers.

(4) Review, or assist in the drafting of, rules governing use of any public access channels and access production equipment.

(5) Recommend policies to encourage use of access and leased access channels among the widest range of institutions, groups including minorities, and individuals within the City in cooperation with the franchisee.

(6) Perform such other duties as the council and Mayor may from time to time assign to the board. (Ord. 15460 §51; March 5, 1990: P.C. §5.67.520: Ord. 13986 §52; November 5, 1984).

5.16.520 Periodic Reevaluation and Renegotiations.

(a) Since the field of cable communications is rapidly evolving and many technological, regulatory, financial, marketing, legal, competitive, and other changes are likely to occur during a franchise term, a degree of flexibility is needed in order to achieve and maintain a modern and efficient cable communications system that adequately serves the public intent. To this end, the City, with cooperative assistance from a franchisee, shall periodically reevaluate the system operation and negotiate appropriate franchise changes.

(b) The City shall reevaluate the franchisee's cable operations and service three years following the award date of the franchise and every three years thereafter for the life of the franchise. The franchisee shall cooperate with the City in such evaluation and provide information as may be necessary for the evaluation.

(c) Following the public release of a reevaluation report, the City and the franchisee shall meet to discuss the reevaluation and possible means of improving service to the public. At that time, the parties shall negotiate any changes in the franchise that may be necessary or desirable.

(d) The City and the franchisee may meet at other times to discuss and negotiate possible changes to the franchise pursuant to an agenda agreed to in advance by both parties. Such special sessions are intended to provide a mechanism for effecting franchise changes necessitated by major events affecting cable communications, such as state or federal legislation, new or revised state or federal regulation, or an extraordinary change in circumstances.

(e) Members of the general public may seek to add topics to a renegotiations agenda, either by working through the negotiating parties or by presenting a petition. If such a petition bears the valid signatures of fifty or more qualified electors of the City, the proposed topic or topics shall be added to the agenda of topics to be discussed at the renegotiation session. (Ord. 15460 §52; March 5, 1990: P.C. §5.67.530: Ord. 13986 §53; November 5, 1984).