

CHAPTER 8

CABLE TELEVISION

ARTICLE I

GENERAL PROVISIONS

8-1-1 **TITLE.** This Chapter shall be known and may be cited as the "Cable Franchise", hereinafter "Franchise", and it shall become a part of the City Code of the City of McLeansboro, Illinois.

8-1-2 **DEFINITIONS.** For the purpose of this Chapter the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

(A) **Additional Service** shall mean cable television communications service provided by the Grantee or others over its Cable System for which a special charge is made based on program or service content, time or spectrum space usage, and shall include all cable television services offered by the Grantee that are not included within the "basic service tier".

(B) **Basic Service Tier** shall mean those subscriber services provided by the Grantee, pursuant to the Cable Television Consumer Protection and Competition Act of 1992, including the delivery of broadcast signals electing carriage and any public, educational and governmental access covered by the regular monthly charge paid by all subscribers, excluding optional services for which a separate charge is made.

(C) **Board/Council** shall mean the McLeansboro City Council, the governing body of the City of McLeansboro, Illinois.

(D) **Cable System (CS)** shall mean 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 provided for sale to or use by the inhabitants or businesses of the City.

(E) **Cable Mile** shall mean a linear mile of strand-bearing cable as measured on the street or easement from pole to pole or pedestal to pedestal.

(F) **City** is the City of McLeansboro, a municipal corporation of the State of Illinois.

(G) **Class IV Channel** shall mean a signaling path provided by a Cable System to transmit signals of any type from a subscriber terminal to another point in the cable system.

(H) **Converter** means an electronic device, which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and by use of an appropriate channel selector also permits a subscriber to receive all signals delivered at designated converter dial locations.

(I) **FCC** shall mean the Federal Communications Commission and any legally appointed or elected successor.

(J) **Franchise** shall mean the non-exclusive rights granted pursuant to this Chapter to construct and operate a Cable System along the public ways within all or a specified area in the City. Any such authorizations, in whatever form granted, shall not mean and include any license or permit required for the privilege of transacting and carrying on a business within the City as required by other ordinances and laws of this City.

(K) **Grantee** shall mean any "person" receiving a Franchise pursuant to this Chapter and its lawful successor, transferee or assignee.

(L) **Gross Receipts** shall mean all receipts derived directly or indirectly by the Grantee, from providing cable television services within the City, including, but not limited to, basic subscriber and additional service monthly fees, pay cable fees, installation and reconnection fees, leased channel fees, converter rentals, studio rental, production equipment and personnel fees, and advertising revenues; provided, however, that this shall not include any taxes or copyright fees on services furnished by the Grantee herein imposed directly upon any subscriber or user by the state, local or other governmental unit and collected by the Grantee on behalf of said governmental unit.

(M) **Installation** shall mean the connection of the system from feeder cable to subscribers' terminals.

(N) **Monitoring** means observing a communications signal, or the absence of a signal, where the observer is neither the subscriber nor the programmer, whether the signal is observed by visual or electronic means, for any purpose whatsoever. Provided, monitoring shall not include system-wide, non-individually addressed sweeps of the system for purposes of verifying system integrity, controlling return paths transmissions, or billing for services.

(O) **Person** shall mean an individual, partnership, association, organization, corporation, or any lawful successor, transferee or assignee of said individual, partnership, association, organization or corporation.

(P) **Public School** shall mean any school at any educational level operated within the City by any public, private or parochial school system, but limited to, elementary, junior high school, and high school.

(Q) **Reasonable Notice** shall be written notice addressed to the Grantee at its principal office or such other office as the Grantee has designated to the City as the address to which notice should be transmitted to it, which notice shall be certified and postmarked not less than **four (4) days** prior to that day in which the party giving such notice shall commence any action which requires the giving of

notice. In computing said **four (4) days**, Saturdays, Sundays and holidays recognized by the City shall be excluded.

(R) **Reasonable Order** shall be written orders not excessive or extreme as to costs or time to comply, governed by sound thinking.

(S) **Sale** shall include any sale, exchange, barter or offer for sale.

(T) **Service Area** shall mean the geographic area within Franchise territory having **forty (40) dwellings** per cable mile.

(U) **State** shall mean the State of Illinois.

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

(W) **Subscriber** shall mean any person receiving either basic service or additional service from the Grantee.

(X) **User** means a party utilizing a cable system channel for purposes of production or transmission of material to subscribers, as contrasted with receipt thereof in a subscriber capacity.

8-1-3 RIGHTS AND PRIVILEGES OF GRANTEE. The Franchise granted by the City pursuant to this Chapter shall grant to the Grantee the right and privilege to erect, construct, operate and maintain in, upon, along, across, above, over and under the streets, now in existence and as may be created or established during its terms; any poles, wires, cable, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of a cable system.

8-1-4 FRANCHISE TERRITORY. This nonexclusive Franchise relates to the City limits as presently defined and to any area henceforth added thereto during the term of this Franchise.

8-1-5 DURATION AND ACCEPTANCE OF FRANCHISE. The Franchise and the rights, privileges and authority hereby granted shall take effect and be in force from and after final passage thereof, as provided by law, and shall continue in force and effect for a term of **fifteen (15) years**, provided that within **thirty (30) days** after the date of final passage of the Franchise the Grantee shall file with the City its unconditional acceptance of the Franchise and promise to comply with and abide by all its provisions, terms, and conditions.

8-1-6 FRANCHISE REQUIREMENTS FOR OTHER FRANCHISE HOLDERS. In the event that City grants **one (1)** or more franchise(s) or similar authorizations, for the construction, operation and maintenance of any communication facility which shall offer services substantially equivalent to services offered by the CS it shall not make the grant on more favorable or less burdensome terms. If Grantee finds that the agreement(s) granting said other franchise(s) contain provisions imposing lesser obligations on the Company(s) thereof than are imposed by the provisions of this Franchise, Grantee may petition City for a modification of this Franchise. The Grantee shall be entitled, with respect to said lesser obligations to such modification(s) of this Franchise as may be determined to be necessary to insure fair and equal treatment by this Franchise and said other agreements.

In the event that a non-franchised multi-channel video programming distributor provides service to the residents of the City, the Grantee shall have a right to request Franchise amendments that relieve the Grantee of regulatory burdens that create a competitive disadvantage to the Grantee. In requesting amendments, the Grantee shall file a petition seeking to amend the Franchise. Such petitions shall:

- (A) Indicate the presence of a non-franchised competitor(s);
- (B) Identify the basis for Grantee's belief that certain provisions of the Franchise place Grantee at a competitive disadvantage;
- (C) Identify the regulatory burdens to be amended or repealed in order to eliminate the competitive disadvantage.

The City shall not unreasonably withhold granting the Grantee's petition and so amending the franchise.

8-1-7 FRANCHISE RENEWAL.

- (A) This Franchise may be renewed by the City upon application of the Grantee pursuant to applicable law.
- (B) A renewed Franchise may be granted pursuant to the Chapter as amended for an additional period of **ten (10) years.**

8-1-8 POLICE POWERS. In accepting this Franchise, the Grantee acknowledges that its rights hereunder are subject to the police power of the City 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 City pursuant to such power.

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

8-1-9 CABLE SYSTEM FRANCHISE REQUIRED, EXCLUSIVE CONTRACTS PROHIBITED.

(A) No CS shall be allowed to occupy or use the streets or public right-of-way of the City or be allowed to operate without a CS Franchise.

(B) No Grantee or other multi-channel video programming distributor shall enter into or enforce an exclusive contract for the provision of cable service or other multi-channel video programming with any Person, or demand the exclusive right to serve a Person or location, as a condition of extending service to that or any other Person or location.

No Grantee or other multi-channel video programming distributor shall engage in acts that have the purpose or effect of limiting competition for the provision of cable service or services similar to cable service in the City, except for such actions as are expressly authorized by law.

8-1-10 USE OF COMPANY FACILITIES. The City shall have the right, during the life of this Franchise, to install and maintain free of charge upon the poles owned by the Grantee any wire and pole fixtures that do not unreasonably interfere with the CS operations of the Grantee.

8-1-11 NOTICES. All notices from Grantee to the City pursuant to this Franchise shall be to the City Clerk. Grantee shall maintain with the City, throughout the term of this Franchise, an address for service of notices by mail.

8-1-12 INDEMNIFICATION AND INSURANCE.

(A) **Indemnification.** The Grantee shall, by acceptance of the Franchise granted herein, defend Grantor, its Officers, Boards, Commissions, Agents, and Employees for all claims for injury to any person or property caused by the negligence or alleged negligence of Grantee in the construction or operation of the cable system and in the event of a determination of liability shall indemnify and hold Grantor, its Officers, Boards, Commissions, Agents, and Employees harmless from any and all liabilities, claims, demands, or judgments growing out of any injury to any person or property as a result of the violation or failure of Grantee to observe its proper duty or because of the negligence or alleged negligence of Grantee arising out of the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the operation of the cable system.

(B) **Insurance.**

(1) The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

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

- (2) The City shall be added as an additional insured to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.
- (3) The Grantee shall furnish the City with current certificates of insurance evidencing such coverage.
- (4) The minimum amounts set forth herein for such insurance shall not be construed to limit the liability of the Grantee to the City under the Franchise issued hereunder to the amounts of such insurance.

8-1-13 RIGHTS OF INDIVIDUALS.

(A) Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, age 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 nondiscrimination which are hereby incorporated and made part of this Chapter by reference.

(B) Grantee shall strictly adhere to the equal employment opportunity requirements of the FCC and state and local regulations, as amended from time to time.

(C) No signals of a Class IV cable communications channel shall be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provision. Such written permission shall be for a limited period of time not to exceed **one (1) year**, which shall be renewable at the option of the subscriber. No penalty shall be invoked for a subscriber's failure to provide or renew such an authorization. The authorization shall be revocable at any time by the subscriber without penalty of any kind whatsoever provided that such revocation request may be required to be in writing by Grantee. Such authorization is required

for each type or classification of Class IV cable activity planned; provided however, that the Grantee shall be entitled to conduct system-wide or individually addressed "sweeps" for the purpose of verifying system integrity, controlling return-path transmission, or billing for services.

(D) The Grantee, or any of its agents or employees, shall not, without the specific written authorization of the subscriber involved, sell, or otherwise make available to any party;

- (1) lists of the names and addresses of such individual subscribers, or;
- (2) any list which identifies the viewing habits of individual subscribers.

(E) The CS 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 or other entities having a legitimate use for the network; and no one shall be arbitrarily excluded from its use; allocation of use of said facilities shall be made according to the rules or decisions of the Grantee and any regulatory agencies affecting the same.

(F) Grantee shall establish rates that are nondiscriminatory within the same general class of subscribers which must be applied fairly and uniformly to all subscribers in the franchise area for all services. Nothing contained herein shall prohibit the Grantee from offering:

- (1) discounts to commercial and multiple family dwelling subscribers billed on a bulk basis;
- (2) promotional discounts; or
- (3) reduced installation rates for subscribers who have multiple services.

8-1-14 PUBLIC NOTICE. Minimum public notice of any public meeting relating to this Franchise shall be by publication at least once in a newspaper of general circulation in the area at least **ten (10) days** prior to the meeting, posting at City Hall and by announcement on at least **one (1) channel** of the Grantee's CS for **five (5) consecutive days** prior to the meeting.

8-1-15 SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Chapter is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Chapter.

ARTICLE II

CS EXTENSION, OPERATION, STANDARDS AND PROCEDURES

8-2-1 **SERVICE AVAILABILITY.** The Grantee shall provide cable service throughout the entire Franchise area pursuant to the provisions of this Franchise and shall keep a record of all service extended by the Grantee. This record shall be available for inspection by the City at the local office of the Grantee during regular office hours.

(A)

Line Extensions.

- (1) In all areas of the Franchise territory, the Grantee shall be required to extend its system pursuant to the following requirements:
 - (a) Grantee must extend and make CS service available to every dwelling unit in all unserved, developing areas having at least **forty (40) dwelling units** per cable mile as measured from the existing system, and shall extend its system simultaneously with the installation of utility lines.
 - (b) Grantee must extend and make CS service available to any isolated resident requesting connection at the standard connection charge, if the connection to the isolated resident would require no more than a standard **one hundred fifty (150) foot** aerial drop line.
- (2) **Early Extension.** In areas not meeting the requirement for mandatory extension of service, Grantee shall provide, upon the written request of a potential subscriber desiring service, an estimate of the costs required to extend service to said subscriber. Grantee may require advance payment or assurance of payment satisfactory to Grantee. The amount paid by subscribers for early extension shall be nonrefundable, and in the event the area subsequently reaches the density required for mandatory extension, such payments shall be treated as consideration for early extension.
- (3) **New Development Underground.** In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give Grantee reasonable notice of such construction or development, and of the particular date on which open trenching will be available for Grantee's installation of

conduit, pedestals and/or vaults, and laterals 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, and laterals 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. Except for the notice of the particular date on which trenching will be available to Grantee, any notice provided to Grantee by City of a preliminary plat request shall satisfy the requirement of reasonable notice if sent to the local general manager or system engineer of Grantee prior to approval of the preliminary plat request.

(B) **Special Agreements.** Nothing herein shall be construed to prevent Grantee from serving areas not covered under this Section upon agreement with developers, property owners, or residents.

8-2-2 CONSTRUCTION AND TECHNICAL STANDARDS.

(A) **Construction Standard.**

- (1) **Compliance With Safety Codes.** All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970 and any amendments thereto as well as all state and local codes where applicable.
- (2) **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 Safety Code as amended.
- (3) **Antennas and Towers.** Antenna supporting structures (towers) shall be designed for the proper loading zone as specified in Electronics Industry Association's R.S.-22A Specifications.
- (4) **Compliance With Aviation Requirements.** Antenna supporting structures (tower) 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.
- (5) **Construction Standards and Requirements.** All of the Grantee's plant and equipment, including but not limited to the antenna site, head-end 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 with improvements the Municipality may deem proper to make, or to interfere in any manner with the rights of any property owner, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic on municipal properties.

- (6) **Safety, Nuisance, Requirements.** The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.

(B) **Network Technical Requirements.** The Cable System shall be operated so as to meet the following general objectives:

- (1) Capable of continuous **twenty-four (24) hour** daily operation;
- (2) Capable of operating over an outdoor temperature range of -20 degrees F to +120 degrees F and meeting all specifications as set forth herein over said temperature range without catastrophic failure or irreversible performance changes over variations in supply voltages from 105 to 130 volts AC;
- (3) Operated in such a manner as to avoid causing interference with reception of off-the-air signals by non-subscribers to the network;
- (4) Designed, installed and operated so as to assure the delivery to all subscribers of standard color and monochrome signals on the FCC-designed Class I channels without noticeable picture degradation or visible evidence of color distortion or other forms of interference directly attributable to the performance of the Cable System.

(C) **Performance Monitoring.**

- (1) Test procedures used in verification of the performance criteria set forth herein, if not as set forth in paragraph 76.609, Subpart K of the FCC Rules and Regulations shall be in accordance with good engineering practice and shall be fully described in an attachment to the annual certificate filed upon request with the City.
- (2) To the extent that the report of measurements as required above may be combined with any reports of measurements required by the FCC or other regulatory

agencies, the City shall accept such combined reports, provided that all standards and measurements herein or hereafter established by the City are satisfied.

- (3) At any time after commencement of service to subscribers the City may require additional tests, full or partial repeat tests, different test procedures, or test 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 will be limited to the particular matter in controversy. The City will endeavor to so arrange its requests for such special tests so as to minimize hardship or inconvenience to Grantee or to the subscriber.

(D)

Street Occupancy.

- (1) Grantee 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 the written approval of the City is obtained, which approval shall not be unreasonably withheld. However, no location of any pole or wire holding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the City reasonably determines that the public convenience would be enhanced thereby.
- (2) The facilities of the Grantee shall be installed underground in those areas of the City where existing telephone and electric services are both underground at the time of system construction. In areas where either telephone or electric utility facilities are installed aerially at the time of system construction, the Grantee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the City, the Grantee shall likewise place its facilities underground.
- (3) A Grantee shall notify the City at least **ten (10) days** prior to the intention of the Grantee to commence any construction in any streets. The City 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 City.

- (4) All transmission lines, equipment and structures 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 the Grantee shall be placed in such a manner as not to interfere with the usual travel on such public way.
- (5) Grantee shall, at its own expense, and in a manner approved by the City, restore to City standards and specifications any damage or disturbance caused to the public way as a result of its operations or construction on its behalf.
- (6) Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the Chief of the Fire Department or Chief of the Police Department to remove any of the Grantee's facilities, no charge shall be made by the Grantee against the City for restoration and repair, unless such acts amount to gross negligence by the City.
- (7) Grantee or its designee 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 City. Trimming of trees on private property shall require written consent of the property owner.
- (8) The Grantee at its expense shall protect, support, temporarily disconnect, relocate, or remove any property of Grantee when, in the opinion of the City the same is required by reason of traffic conditions, public safety, street vacation, freeway or street construction, change or establishment of street grade, 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 buildings, urban renewal and

redevelopment, and any general program under which the City shall undertake to cause all such properties to be located beneath the surface of the ground. The Grantee shall in all cases have the privilege, subject to the corresponding obligations, to abandon any property of Grantee in place. 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.

- (9) 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 reasonable satisfaction of the City, the City may, at its option, cause such work to be done and the Grantee shall pay to the City the cost thereof in the itemized amounts reported by the City to Grantee within **thirty (30) days** after receipt of such itemized report.
- (10) The Grantee shall make no paving cuts or curb cuts unless absolutely necessary, but only after written permission has been given by the City.
- (11) The Grantee shall install in conduit all cable passing under any major roadway.

8-2-3 SERVICE AND RATES.

(A) **Office and Phone.** The Grantee shall maintain an office located in Mt. Vernon, Illinois, which shall be open during all usual business hours, have a locally listed telephone and be so operated that complaints and requests for repairs or adjustments may be received at any time. In addition, the Grantee shall maintain a service during normal business hours, for the receipt of sums due by its subscribers and shall provide for regular billing of accounts.

(B) **Notification of Service Procedures.** The Grantee shall furnish each subscriber at the time service is installed, written instructions that clearly set forth procedures and furnish information concerning the procedures for making inquiries or complaints, including the Grantee's name, address and local telephone number. Grantee shall give the City **thirty (30) days** prior notice of any rate increases, channel lineup or other substantive service changes.

(C) **Rate Revision.** To the extent that Federal or State law or regulation may now, or as the same may hereafter be amended to, authorize the City to regulate the rates for any particular service tiers, service packages, equipment, or any other services provided by Grantee, the City shall have the right to exercise rate regulation to the full extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the City. If and when exercising rate regulation, the City shall abide by the terms and conditions set forth by the FCC.

8-2-4 CONTINUITY OF SERVICE.

(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 overbuild, rebuild, modify, or sell the system, or the City gives 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 unless circumstances are beyond the control of the Grantee, unforeseen circumstances, or acts of God.

In the event of a change of Grantee, or in the event a new operator acquires the system, the Grantee shall cooperate with the City, 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.

(B) In the event Grantee fails to operate the system for **seven (7) consecutive days** without prior approval of the City or without just cause, the City may, at its option, operate the system or designate an operator until such time as Grantee restores service under conditions acceptable to the City or a permanent operator is selected. If the City is required to fulfill this obligation for the Grantee, the Grantee shall reimburse the City for all reasonable costs or damages in excess of revenues from the system received by the City that are the result of the Grantee's failure to perform.

8-2-5 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 this 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.

8-2-6 FRANCHISE FEE. Grantee shall pay to the City an annual fee in an amount equal to **three percent (3%)** of the annual gross receipts. Such payment shall be in addition to any other payment, charge, permit fee or bond owed to the City/County by the Grantee and shall not be construed as payment in lieu of personal or real property taxes levied by state, county or local authorities.

8-2-7 PAYMENT TO CITY/COUNTY.

(A) **Method of Computation.** Sales taxes or any other taxes or fees including copyright fees which are collected from subscribers by the Grantee to be remitted by the Grantee to a governmental agency shall be deducted from the gross subscriber receipts prior to the computation of the annual Franchise fee. The fee due the City under the provisions of **Section 8-2-6** above shall be computed and paid quarterly, based on the Grantee's fiscal year, with the last quarter payment being

adjusted based on review of the Grantee's gross receipts and shall be paid not later than **ninety (90) days** after the end of the Grantee's fiscal year at the office of the Treasurer during its regular business hours. The payment period shall commence as of the effective date of the Franchise. In the event of a dispute, the City, if it so requests, shall be furnished a statement of said payment, by a Certified Public Accountant, reflecting the gross receipts and the above charges, deductions and computations for the period covered by the payment.

(B) **Acceptance by City.** No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a Franchise fee under this Chapter 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 payment is not made on or before the dates specified herein, Grantee shall pay as additional compensation:

- (1) an interest charged, computed from such due date, at the annual rate of **nine percent (9%)** per annum and;
- (2) a sum of money equal to **two percent (2%)** of the amount due in order to defray those additional expenses and costs incurred by the City by reason of delinquent payment.

8-2-8 TRANSFER OF OWNERSHIP OR CONTROL.

(A) The 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 consent of the City, and then only under such conditions as the City may establish. Such consent as required by the City shall, however, not be unreasonably withheld or delayed.

(B) The Grantee shall promptly notify the City of any actual or 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 by any person or group of persons of **ten percent (10%)** of the voting shares of the Grantee. Every change, transfer, or acquisition of control of the Grantee shall make the Franchise subject to cancellation unless and until the City shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the City may inquire into the qualification of the prospective controlling party, and the Grantee shall assist the City in any such inquiry.

(C) By its acceptance of this Franchise, the Grantee specifically grants and agrees that any such sale, assignment or transfer occurring without prior approval of the City Council shall constitute a violation of this Franchise by the Grantee.

(D) The foregoing requirements shall not apply to any sale, assignment or transfer to any Person which is owned or controlled by the Grantee, or any Person which owns or controls the Grantee. Grantee shall notify the City **thirty (30) days** prior to any sale, assignment or transfer.

8-2-9 RECORDS, REPORTS AND MAPS.

(A) **Reports Required.** The Grantee shall file with the City:

- (1) The Grantee's schedule of charges, contract or application forms for regular subscriber service, policy regarding the processing of subscriber complaints, delinquent subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Grantee's policy in connection with its subscribers shall be filed with the City upon request.
- (2) All petitions, applications and communications of all types submitted by Grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other Federal or State regulatory commission or agency having jurisdiction over any matter affecting operation of Grantee's system shall be submitted to the City upon request.
- (3) All rules, regulations, terms and conditions which Grantee adopted for the conduct of its business shall be submitted to the City upon request.

(B) **Records Required.** The Grantee shall at all times maintain:

- (1) A record of all complaints received and interruptions or degradation of service experienced shall be maintained for **one (1) year**.
- (2) A full and complete set of plans, records and "as-built" maps showing the exact locations of all CS equipment installed or in use in the City, exclusive of subscriber service drops.

(C) **Filing.** When not otherwise prescribed herein, all matters required to be filed with the City/County shall be filed with the City Clerk.

(D) **Other Records.** The City may impose reasonable requests for additional information, records and documents from time to time.

(E) **Inspection of Property and Records.** At all reasonable times, Grantee shall permit examination by any duly authorized representative of the City of all Franchise property, together with any appurtenant property of Grantee situated within or without the City. Grantee shall also permit any duly authorized representative of the City to examine and transcribe any and all maps and other records kept or maintained by Grantee or under its control concerning the operations or property of Grantee.

8-2-10 REMOVAL OF CS. At the expiration of the term for which this Franchise is granted, or upon its termination as provided herein, Grantee shall forthwith, upon notice by City, remove at its own expense the CS from all streets and public property within the City.

8-2-11 REQUIRED SERVICES AND FACILITIES. The Grantee agrees that the equipment used in fulfillment of its franchise obligation shall be maintained at the highest standards consistent with changes in the state of the art and Grantee shall regularly advise the City of its equipment changes and modifications to upgrade the system.

8-2-12 AREA-WIDE INTERCONNECTION. The Grantee shall cooperate with any interconnection corporation, regional interconnection authority or City, county, state and 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 City.

8-2-13 COMMUNITY PROGRAMMING. The Grantee shall maintain, without charge, **one (1) outlet** to each public school, located in the area served by the system and will provide free basic service, for so long as the system remains in operation in the area. Any such school may install, at its expense, such additional outlets for classroom purposes as it desires, provided that such installation shall not interfere with the operation of Grantee's system, and that the quality and manner of installation of such additional connections shall have been approved by the Grantee and shall comply with all City, state and federal laws and regulations.

In addition, the Grantee shall furnish to the City, without charge, that is, without installation or monthly charges, **one (1) outlet** to each Police and Fire Station, and to the City Hall.

ARTICLE III

ADMINISTRATION AND REGULATION

8-3-1 CITY/COUNTY RULES AND REGULATIONS.

(A) In addition to the inherent powers of the City to regulate and control this Franchise, and those powers expressly reserved by the City, or agreed to and provided for herein, the right and power is hereby reserved by the City to promulgate such additional regulations as it shall find necessary in the exercise of its lawful powers and in furtherance of the terms and conditions of this Franchise.

(B) The City may also adopt such regulations at the request of Grantee upon application.

8-3-2 PERFORMANCE EVALUATION SESSIONS.

(A) The City and the Grantee may hold performance evaluation sessions as may be required by federal and state law or by the City. All such evaluation sessions shall be open to the public.

(B) All evaluation sessions shall be announced in a newspaper of general circulation in accordance with general legal notice requirements. Grantee shall notify its subscribers of all evaluation sessions by announcement on at least **one (1) channel** of its system for **five (5) consecutive days** preceding each session.

(C) Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to, service rate structures; franchise fee; penalties; discounted services; application of new technologies; system performance; services provided; programming offered; customer complaints; privacy; amendments to this Chapter; judicial and FCC rulings; line extension policies; and Grantee or City rules.

8-3-3 FORFEITURE OR REVOCATION.

(A) **Grounds for Revocation.** The City reserves the right to revoke the Franchise granted hereunder and rescind all rights and privileges associated with the Franchise in the following circumstances, each of which shall represent a default and breach under this Chapter and the Franchise grant:

- (1) If the Grantee should default in the performance of any of its material obligations under this Chapter or under such documents, contracts and other terms and provisions entered into by and between the City and the Grantee.
- (2) If the Grantee should fail to provide or maintain in full force and effect, the liability and indemnification coverage's as required herein.
- (3) If the Grantee should frequently violate any orders or rulings of any regulatory body having jurisdiction over the

Grantee relative to this Franchise unless such orders or rulings are being contested by the Grantee in a court of competent jurisdiction.

- (4) If the Grantee fails to receive necessary FCC approval.
- (5) If the Grantee ceases to provide services for any reason within the control of the Grantee. The Grantee shall not be declared at fault or be subject to any sanction under any provision of this Chapter in any case in which performance of any such provision is prevented for reasons beyond the Grantee's control.
- (6) If the Grantee attempts to evade any of the provisions of this Chapter or the Franchise agreement or practices any fraud or deceit upon the City.

(B) **Procedure Prior to Revocation.**

- (1) The City shall make written demand by certified mail to the Grantee to comply with any such requirement, limitation, term, condition, rule or regulation and shall provide the Grantee with minimum of **thirty (30) days** to cure the City's complaint. If the default, failure, refusal or neglect of the Grantee continues for a period of **thirty (30) days** following such written demand, the City may place its request for termination of the Franchise upon a regular Council meeting agenda. The City shall cause to be served upon Grantee, at least **ten (10) days** prior to the date of such Council 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 by the City Clerk at least once, **ten (10) days** before such meeting in a newspaper of general circulation within the City.
- (2) The Council shall hear any persons interested therein, and shall determine, in its discretion, whether or not any default, failure, refusal or neglect by the Grantee was with just cause.
- (3) If such default, failure, refusal or neglect by the Grantee was with just cause, the Council shall direct the Grantee to comply within such time and manner and upon such terms and conditions as are reasonable.
- (4) If the Council shall determine such default, failure, refusal or neglect by the Grantee was without just cause, then the Council may, by resolution, declare that the Franchise of Grantee shall be terminated.

(C) **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 prevailed prior to the Grantee's removal of its equipment and appliances without

affecting the electrical or telephone cable wires, or attachments. The City shall inspect and approve the condition of the public ways and public places; and cables, wires, attachments and poles after removal. The liability, indemnity and insurance as provided herein shall continue in full force and effect during the period of removal and until full compliance by the Grantee with the terms and conditions of this paragraph and this Chapter.

(D) **Restoration by City, Reimbursement of Costs.** In the event of a failure by the Grantee to complete any work required by **Section 8-2-10** and/or subsection (C) above, or any other work required by City law or ordinance within the time as may be established and to the reasonable satisfaction of the City, the City may cause such work to be done and the Grantee shall reimburse the City the reasonable cost thereof within **thirty (30) days** after receipt of an itemized list of such costs. The City shall be permitted to seek legal and equitable relief to enforce the provisions of this Section.

(E) **Extended Operation.** Upon the revocation of a Franchise, the City may require the Grantee to continue to operate the system for a period of time not to exceed **three (3) months** from the date of such revocation. The Grantee shall, as trustee for its successor in interest, continue to operate the CS under the terms and conditions of this Chapter and the Franchise and to provide the regular subscriber service and any and all of the services that may be provided at that time. The City shall be permitted to seek legal and equitable relief to enforce the provisions of this Section.

(F) **Rights Not Affected.** The termination and forfeiture of any Franchise shall in no way affect any of the rights of the City or Grantee under the Franchise or any provision of law.

8-3-4 RECEIVERSHIP AND FORECLOSURE.

(A) The Franchise herein granted shall at the option of the City, 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 any agreement duly approved by the Court having jurisdiction in the premises, whereby

such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the Franchise herein granted.

(B) In the case of a foreclosure or other judicial sale of the plant, property and equipment of the Grantee, or any substantial part thereof, including or excluding this Franchise, the Council may serve notice of termination upon the Grantee and the successful bidder at such sale, in which event the Franchise herein granted and all rights and privileges of the Grantee hereunder shall cease and terminate **thirty (30) days** after service of such notice, unless:

- (1) The Council shall have approved the transfer of this Franchise, as and in the manner in this Chapter provided and;
- (2) Such successful bidder shall have covenanted and agreed with the City to assume and be bound by all the terms and conditions of this Franchise.

8-3-5 COMPLIANCE WITH STATE AND FEDERAL LAWS.

Notwithstanding any other provisions of this 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 which relate to the conduct of Grantee's system business.

8-3-6 INTEGRATION. This Agreement sets forth the entire agreement between the parties respecting the subject matter hereof. All agreements, covenants, representations and warranties, express and implied, oral and written, of the parties with regard to the subject matter hereof are contained herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party to another with respect to the matter of this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties with respect to the subject matter hereof are waived, merged herein and therein and superseded hereby and thereby. This is an integrated Agreement.

(Ord. No. 02-819; 09-10-02)