

ITEM DROPPED 11/21/06

ORDINANCE NO. 27905

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 15.28 OF TITLE 15 OF THE SAN JOSE MUNICIPAL CODE TO REGULATE THE OCCUPANCY AND USE OF PUBLIC RIGHTS-OF-WAY BY CABLE SYSTEMS AND OPEN VIDEO SYSTEMS, TO PROVIDE FOR ESTABLISHMENT OF CUSTOMER SERVICE STANDARDS; ESTABLISHING FRANCHISE AND LICENSING REQUIREMENTS FOR OPERATORS OF SUCH SYSTEMS AND TO PRESCRIBE MINIMUM CHARGES, TERMS, AND CONDITIONS FOR AND UPON THE CONSTRUCTION, MAINTENANCE, AND REPAIR OF SUCH SYSTEMS

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

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

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

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

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

WHEREAS, City wishes to promote the availability of high-quality and diverse services to City residents, businesses, City, and other public institutions; and to promote the availability of diverse information resources to the community, including through the development of advanced systems that can support public, educational, and governmental programming, that can support two way interactive services, including broadband data transfers and that can be interconnected to other communications systems; and

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

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

WHEREAS, this ordinance was found to be categorically exempt from environmental review, per the provisions of Section 15308 of the California Environmental Quality Act of 1970, as amended, on _____, 2006, under File No.

_____.

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

Chapter 15.28 of Title 15 of the San José Municipal Code is hereby amended to read as follows:

**CHAPTER 15.28
CABLE SYSTEMS AND OPEN VIDEO SYSTEMS**

**Part 1
General**

15.28.010 Definitions

- A. The definitions set forth in this Part shall govern the application and interpretation of this Chapter.
- B. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; and words in the singular number include the plural number; and the masculine gender includes the feminine gender.
- C. Subject to the provisions of Section 1.04.020 of Title 1 of the Municipal Code, the words “shall” and “will” are mandatory, and “may” is permissive.
- D. Words not defined in this Chapter shall have the same meaning as in Title VI of Title 47 of the United States Code as it may be amended from time to time, and, if not defined therein, their common and ordinary meaning.
- E. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority.

- F. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision.
- G. Unless otherwise specified, references to "applicable laws" shall be interpreted broadly to include laws, ordinances, resolutions and regulations now in force or hereinafter enacted or amended.

15.28.020 Access, PEG Access, or PEG Use

“Access,” “PEG access,” or “PEG use” refers to the availability of a cable system or OVS for public, education or government use (including Institutional Network use) by various agencies, institutions, organizations, groups, and individuals, including the City and its designated access providers, to acquire, create, and distribute programming not under a franchisee's editorial control, including, but not limited to the access or use described in Sections 15.28.030, 15.28.040 and 15.28.050 below.

15.28.030 Public Access or Public Use

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

15.28.040 Education Access or Education Use

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

15.28.050 Government Access or Government Use

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

15.28.060 Affiliate

“Affiliate” means a person that owns or controls, is owned or controlled by, or is under common ownership or control with, another person.

15.28.070 Basic Service

“Basic service” means any service tier regularly provided on a cable communications system to all subscribers which includes the retransmission of local television broadcast signals.

15.28.080 Cable Act

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

15.28.090 Cable Communications System

“Cable communications system” refers to open video systems (OVS) and cable systems.

15.28.100 Cable Service

“Cable service” shall have the same meaning as in Title VI of Title 47 of the United States Code, as amended from time to time.

15.28.110 Cable System

“Cable system” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within the City, but such term does not include:

- A. A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
- B. A facility that serves subscribers without using, or without connecting to a facility that uses, any public right-of-way within City;
- C. A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II (Common Carriers) of the federal Communications Act of 1934, as amended, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;
- D. Any facilities of any electric utility used solely for operating its electric utility systems; or
- E. An OVS that complies with 47 U.S.C. Section 573 and FCC regulations promulgated thereunder.

15.28.120 Channel

“Channel” means a portion of the electromagnetic frequency spectrum which is used in a cable system or OVS and which is capable of delivering a standard video programming service whether in an analog or digital format. The definition does not restrict the use of any channel to the transmission of analog television signals.

15.28.130 City

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

15.28.140 Construction, Operation or Repair

“Construction, operation or repair” and similar formulations of that term means the named actions interpreted broadly, encompassing, among other things, installation, extension, maintenance, replacement of components, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, excavation, and its operations and work performed in connection with the same (including but not limited to restoration of property affected by the construction, operation or repair of the cable system).

15.28.150 FCC

“FCC” means the Federal Communications Commission.

15.27.160 Franchise

“Franchise” refers to an authorization granted by City to the operator of a cable communications system giving the operator the non-exclusive right to occupy the space,

or use facilities upon, across, beneath, or over public rights-of-way in City, to provide specified services within a franchise area. A permit is not a franchise.

15.28.170 Franchise Area

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

15.28.180 Franchisee

“Franchisee” refers to a person holding a cable communications system franchise granted by City.

15.28.190 Gross Revenues

“Gross revenues” means any and all revenue, as accounted for in accordance with generally accepted accounting principles, derived from the operation of a cable communications system to provide cable service; the term encompasses revenue sources existing as of the effective date of this ordinance or revenue sources that may develop in the future.

15.28.200 Operator

“Operator” when used with reference to a cable communications system, refers to a person or group of persons (a) who directly or through one (1) or more affiliates provides cable service over a cable communications system and directly or through one (1) or more affiliates owns a significant interest in such system; or (b) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable communications system.

15.28.210 OVS

“OVS” means an open video system. A reference to an OVS includes pedestals, equipment enclosures (such as equipment cabinets), amplifiers, power guards, nodes, cables, fiber optics and other equipment necessary to operate the OVS, or installed in conjunction with the OVS.

15.28.220 OVS Agreement

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

15.28.230 Person

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

15.28.240 Public Property

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

15.28.250 Public Rights-of-Way

“Public rights-of-way” means the surface of and the space above and below any street, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, parkstrip, drive, right-of-way or public easement generally available to and used by utilities, communication companies, or for travel by the public now or hereafter existing within City which may be properly used, and that City has authority to allow the use of, for the purpose of installing, maintaining, and operating a cable communications system; and any other property, including, without limitation, rights of way and easements that a franchisee is entitled by state or federal law to use by virtue of the grant of a franchise.

15.28.260 School

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

15.28.270 Subscriber

“Subscriber” means City or any person within the City who is lawfully receiving, for any purpose or reason, any cable service via a cable communications system, whether or not a fee is paid for such service.

15.28.280 User

“User” means a person or City utilizing a channel, capacity or equipment and facilities of a cable communications system for purposes of producing or transmitting material, as contrasted with the receipt thereof in the capacity of a subscriber.

Part 2
General Provisions

15.28.300 Franchise Required

No person may construct, begin to construct, operate, or repair a cable communications system in City without first obtaining a franchise therefor from City pursuant to the terms and provisions of the City Charter and this Chapter.

15.28.310 Form of Franchise

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

15.28.320 Scope of Franchise

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

- A. A franchise shall not convey rights other than as expressly specified in this Chapter, by operation of law, or in a franchise ordinance; no rights shall pass by implication.

- B. A franchise shall not be a substitute for:

1. Complying with requirements of general applicability for the privilege of transacting and carrying on a business within City;
 2. Complying with any lawful requirements, if any, for use or occupancy of the rights of way to construct, operate or repair facilities in connection with the provision of non-cable service;
 3. Any permit, agreement or authorization required in connection with construction, operation or repair on or in public rights-of-way or public property;
 4. Any permits or agreements for occupying any other property of City or private entities to which access is not specifically granted by the franchise.
- C. If there is a conflict between an express provision of a franchise and any provision of this Chapter, the franchise shall control, otherwise a franchise does not relieve a franchisee of its duty to comply with all City ordinances, resolutions, written policies, and regulations, and every franchisee must comply with the same. The rights granted under a franchise ordinance are subject to the exercise of police and other powers City now has or may later obtain, including but not limited to the power of eminent domain. The terms of every franchise granted shall be subordinate to all the requirements of the San Jose Charter as of the date the franchise became effective. Nothing herein prevents a franchise from raising a claim or defense that a particular provision of the City Charter, a City ordinance, resolution, written policy, or regulation is unlawful or is unlawful as applied to the franchisee.
- D. A franchise does not convey title, equitable or legal, in the public rights-of-way or public property.

15.28.330 Franchise Non-Exclusive

No franchise shall be exclusive, or prevent City from issuing other franchises or authorizations, or prevent City from itself constructing, operating, or repairing its own cable communications system. If the City issues a franchise to another party for the purpose of operating a cable communications system in the City's Public Rights-of-Way, the material terms of that franchise, considered as a whole, shall no be substantially more favorable or substantially less burdensome than the Franchise issued to any existing Franchisee.

15.28.340 Franchise Term

Every franchise shall be for a term of years set forth in the franchise ordinance.

15.28.350 Costs Borne by Franchisee

Unless otherwise specifically stated in a franchise ordinance or required by law, all acts which a franchisee is required to perform under the franchise ordinance or applicable law must be performed at the franchisee's expense and at no cost to the City provided that nothing contained in this Section 15.28.350 is intended to restrict or limit a Franchisee's rights under applicable law to offset costs against franchise fees, to recover costs from third parties, or assess or pass-through costs to its subscribers.

15.28.360 Failures to Perform

If a cable communications system operator fails to perform work that it is required to perform within the time provided for performance, City may perform the work or cause the work to be performed and bill the operator therefor. The operator shall pay the reasonable costs incurred within thirty (30) days after a bill is submitted to the operator by the City. City will not unreasonably deny a request for an extension of time to

perform, where the director of Public Works finds that the delay will not adversely affect the work, the City, third parties affected by the work, or the public.

15.28.370 Administration of Ordinance; Adoption of Regulations

- A. City may from time to time adopt regulations in a manner consistent with this Chapter to implement the provisions of this Chapter. This Chapter, and any regulations adopted pursuant to this Chapter are not contracts with any franchisee, and may be amended at any time by City.
- B. Except where this Chapter specifically directs that action be taken by the City Council, the city manager is hereby authorized to administer and enforce the provisions of this Chapter and any franchise issued pursuant hereto, to provide any notices (including non-compliance notices), and to take any action on City's behalf that may be required hereunder or under applicable law.
- C. The failure of City, upon one (1) or more occasions, to exercise a right or to require compliance or performance under a franchise ordinance or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing.
- D. City may designate one (1) or more persons, including itself, to control and manage the use of public, educational or government access channels, facilities and equipment.

15.28.380 Transfers

- A. No transfer of a franchise, franchisee, or cable communications system, or of control over the same (including, but not limited to, transfer by forced or voluntary sale, merger, consolidation, receivership, or any other means) shall occur unless

prior application is made by the franchisee to City and City's prior written consent is obtained, pursuant to this Chapter and the franchise ordinance, and only then upon such terms and conditions as City deems necessary and proper to protect the public interest. The granting of approval for a transfer in one instance shall not render unnecessary approval of any subsequent transfer.

- B. A change of control of a franchise, franchisee, or cable communications system will be deemed to have occurred whenever there is a change, acquisition or transfer of control of more than a ten percent (10%) ownership in the franchisee or its direct or indirect parents by any person, or a group of persons acting in concert, except where (1) such persons or groups of persons are affiliates of the ultimate parent of Franchisee, (2) such a transfer does not materially alter Franchisee's financial capacity to meet its obligations under this Franchise, and (3) such transfer is to a cable operator subject to the City's regulatory authority under the Cable Act. However, a transfer also occurs whenever there is a change in actual working control, in whatever manner exercised, over the affairs of a franchisee or its direct or indirect parents. Without limiting the above, any change in the general partners of a franchisee will be presumed a change in control.
- C. Notwithstanding any other provision of this Chapter, pledges in trust or mortgages of the assets of a cable communications system to secure the construction, operation, or repair of the system may be made without application and without City's prior consent. However, no such arrangement may be made if it would in any respect under any condition: (1) prevent the cable communications system operator or any successor from complying with, this Chapter, the franchise ordinance or other applicable law or regulation; or (2) permit a third party to own or control the system, or the franchise, without the prior consent of City. Any mortgage, pledge or lease shall be subject to and subordinate to the rights of City under any franchise, this Chapter, or other applicable law.

15.28.390 General Conditions Upon Construction, Operation and Repair

- A. The construction, operation, and repair of cable communications systems shall be performed in compliance with all applicable laws, ordinances, resolutions, departmental rules, regulations, written policies, and practices affecting such system. By way of example, and not limitation, this includes Title 20 of the San Jose Municipal Code (i.e., the City's zoning ordinance), ordinances, regulations and policies to preserve or protect the public safety, construction standards, regulations for providing notice to persons that may be affected by system construction, and directives governing the time, place and manner in which facilities may be installed in the public rights-of-way. Persons engaged in the construction, operation, or repair of cable communications systems shall exercise reasonable care in the performance of all their activities and shall use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.
- B. A franchise is required before a permit may be issued for work associated with the construction, operation or repair of a cable communications system. Any permit issued for such work to a person that does not hold a franchise shall vest no rights in the permittee; the permit may be revoked at will, and the permittee shall remove all facilities installed under the permit upon and in full compliance with City's demand.
- C. Construction, operation, or repair of a cable communications system shall not commence until all required permits have been obtained from the proper City officials and all required fees have been paid. All work performed will be performed in strict accordance with the conditions of the permit. Upon order of City, any work and/or construction undertaken that is not completed in compliance with City's requirements, or which is installed without obtaining necessary permits and approvals shall be removed in accordance with the

reasonable timeline set forth by City. For any project where a franchisee will be working in the public rights-of way for thirty (30) days or more, franchisee must provide at least one hundred twenty (120) days advance notice of the project to the City prior to submission of permits, and comply with all requirements under the City code applicable to major and special projects, including but not limited to agreeing to pay for additional personnel and equipment costs associated with City work in connection with the project.

- D. Interference with the use of the public rights-of-way by others, including others that may be installing cable communications systems, must be minimized. When planning construction in the public rights-of-way, franchisee shall investigate opportunities for coordinating construction with other users of the public rights-of-way. The City may, except as prohibited by law or the franchise, require a person using the public rights-of-way to engage in joint trenching and to enter into other arrangements to minimize adverse impacts on the public rights-of-way.
- E. Additional poles may not be installed in the public right-of-way without the permission of the City Engineer. The City may require a cable communications system operator to use existing conduit unless the cable communications system operator shows that it is not technically possible to do so.
- F. Undergrounding
 - 1. Whenever all existing utilities are located underground in an area in City, every cable communications system operator installing its system in the same area must locate its cable communications system underground.
 - 2. Whenever the owner of a pole locates or relocates its cables, wires or fiber optics underground within an area of City, every cable communications system operator in the same area shall concurrently

relocate its cables, wires or fiber optics underground. In such instances, other facilities such as equipment cabinets will be placed underground as directed by the City Engineer.

3. A Franchisee may request the City Engineer to grant a waiver of the undergrounding requirement. To obtain a waiver, a Franchisee must show that (a) undergrounding the facility would materially and adversely affect the technical ability of the cable system to provide service; (b) it has reviewed alternative routing, and the possibility of placement of facilities on private property and is unable to avoid placement of the facility in the right of way, or (c) it is otherwise in the public interest as determined by City. Further, Franchisee must show that it has taken all reasonable steps to minimize the impact of the aboveground placement (including by way of example and not limitation, by planning to place portions of the facility underground and using cabinets with small footprints) and must propose a plan for shielding the facility. The City Engineer will not unreasonably withhold consent to a waiver.
4. In addition, the City Engineer may exempt a particular cable communications system or facility or group of cable communications systems or facilities from the obligation to locate or relocate the cable communications system or facility underground, where relocation is impractical, or where the interest in protecting against visual blight can be protected in another manner.
5. Nothing in this Section 15.28.390 prevents City from ordering cable communications system facilities to be located or relocated underground under other provisions of the Municipal Code.

G. Damage to property

Any and all public rights-of-way, other public property, or private property that is disturbed or damaged in connection with or as a result of the construction, operation or repair of a cable communications system shall be repaired by the operator to a condition that complies with the then-current Municipal Code and that is as good or better than its prior condition, in a manner and within a time approved or specified by the Director of Public Works. Without limiting the foregoing, the operator shall compensate any entity whose property is damaged in the course of construction, operation or repair of a cable communications system where the property is not restored by the operator to a condition as good or better than existed before the damage.

H. Relocation

1. A cable communications system operator shall, by a time and in a manner specified by City, protect, support, temporarily disconnect, relocate, or remove any of its property when requested by City by reason of traffic conditions; public safety; public right-of-way construction and repair (including regrading, resurfacing or widening); public right-of-way vacation; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned system or utility, public work, public facility, or public improvement; or for any other public purpose where the work involved would be aided by the removal or relocation of the cable communications system. Collectively, such matters are referred to below as the "public work." The City, on request, will cooperate with each cable communications system operator in providing access to public documents so that the cable communications system operator can research future projects affecting location of facilities in the public right-of-way prior to the operator's installation of its property. The

City's right to require relocation shall not apply to any work of City to install a cable system.

2. City shall provide written notice describing where the public work is to be performed and a deadline for completing the work at least fifteen (15) days prior to the deadline by which a cable communications system operator must protect, support, temporarily disconnect, relocate or remove its facilities. The cable communications system operator may seek an extension of the time to perform the work where it cannot be performed by the deadline even with the exercise of due diligence, and such request for an extension will not be unreasonably denied.
 3. In an emergency, or where a cable communications system creates or is contributing to an imminent danger to public health, safety, or property, City may protect, support, temporarily disconnect, remove, or relocate any or all parts of that cable communications system without prior notice and charge the cable communications system operator for reasonable costs incurred; however, City will make reasonable efforts, considering the circumstances, provide prior notice.
- I. Construction Activities of Others
1. To accommodate the construction, operation, or repair of the facilities of another person authorized to use the public rights-of-way or public property, a franchisee shall, by a time specified by such person, protect, support, temporarily disconnect, relocate or remove its facilities. The franchisee shall be given written notice describing where the construction, operation or repair is to be performed at least fifteen (15) days prior to the time by which its work must be completed. Unless the matter is governed by a valid contract or a state or federal law or regulation, or unless the cable communications system that is being requested to move was not

properly installed, the reasonable cost of the same shall be borne by the person requesting the protection, support, temporary disconnection, removal, or relocation and at no charge to the City, even if the City makes the request for such action. In cases where the requesting person is required under this Section 15.28.390(l)(1) to bear the cost of relaying, relocation or temporary removal, a franchisee may require the person to agree, before the work is performed, to pay the reasonable actual cost of the work, If the franchise does so, it must provide an estimate of the cost of the work and support that estimate.

2. A cable communications system operator shall, on the request of any person holding a valid permit issued by a governmental authority, temporarily raise or lower its wires by a time specified to permit the moving of buildings or other objects. A cable communications system operator shall be given not less than fifteen (15) days advance notice to arrange for such temporary wire changes. The cable communications system operator, as a condition of complying with such request, may require the requesting person to pay the reasonable materials and labor expense of such temporary removal or raising or lowering of wires provided that the operator provides an estimate of the cost of the work and support for that estimate. In cases where the requesting person is required under this Section 15.28.390(l)(2) to bear the cost of raising or lowering wires, the operator may require payment of the estimated expense in advance.

J. Abandonment

1. A cable communications system operator may abandon any property in place in the public rights-of-way or upon public property upon written notice to City and separate notice to the Director of Public Works. However, if, within ninety (90) days of the receipt of written notice of

abandonment, City determines, that the safety, appearance, functioning or use of the public right-of-way or public property and facilities in the public right-of-way or on public property will be adversely affected, the property must be removed by a date reasonably specified by City in light of the amount of work to be performed.

2. A cable communications system operator that abandons its property must, upon request, transfer ownership of the property to City at no cost, and execute necessary quitclaim deeds; provided that nothing in the preceding sentence prevents a cable communications system operator from bringing an action in a court of competent jurisdiction if it believes that the cable communications system was not abandoned. Whether or not ownership is transferred, the operator must indemnify City against future costs associated with mitigating or eliminating any hazard associated with the abandoned property.
- K. Every cable communications system shall be subject to inspection and testing by City. Each operator must timely and fully respond to requests for information regarding its system and plans for the system as City may from time to time issue, including requests for information regarding its plans for construction, operation and repair and the purposes for which the plant is being constructed, operated, or repaired.
- L. Each operator of a cable communications system that places facilities underground shall be a member of the regional notification center for subsurface installations (Underground Services Alert) and shall field mark the locations of its underground communications facilities upon request. The operator shall locate its facilities for public projects when requested by City at no charge.
- M. At least ninety (90) days prior to commencing construction, each cable communications system operator shall provide City a plan for any initial cable

communications system construction, operation or repair or for any substantial rebuild, upgrade or extension of its cable communications system, which shall show its timetable for construction of each phase of the project, and the areas of City that will be affected.

- N. Except to the extent that a Franchise has been expressly relieved of this obligation in a Franchise, upon request of City, every cable communications system shall be required to interconnect with every other cable communications system within City, or adjacent to City, on fair and reasonable terms for purposes of providing PEG and I-Net services. In the event of a dispute, the public works director may issue an order establishing the terms and conditions under which interconnection shall occur, and any franchisee shall comply with the order.

- O. A franchisee shall, upon written request from the City and subject to any confidentiality restrictions, file with the City clerk copies of all contracts which it may have with all public utility companies, whereby franchisee is granted any right to use any of the property, equipment or facilities of such utility or utilities located in the public right-of-way in the conduct of any operations pursuant to the franchise or franchise renewal awarded to said franchisee.

15.28.400 Protection of City and Residents

- A. No franchise shall be valid or effective until and unless City obtains an adequate indemnity from the franchisee. The indemnity must, to the extent permitted by law:
 - 1. Release City from and against any and all liability and responsibility in or arising out of the construction, operation, repair or maintenance of the cable communications system; and

2. Indemnify and hold harmless City, its trustees, elected and appointed officers, agents, and employees, from and against any and all claims, demands, or causes of action of any kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees sustained by City or any indemnified party arising out of, or by reason of, or resulting from or of the acts, errors, or omissions of the cable communications system operator, or its agents, independent contractors or employees related to or in any way arising out of the construction, operation or repair of the system except for those claims which arise out of the gross negligence or willful misconduct of City.
 3. Nothing in this Section is intended to waive or limit any of City's governmental immunities.
- B. Unless otherwise specified in its Franchise, a Franchisee (or those acting on its behalf) shall not commence construction or operation of the cable communications system without first obtaining insurance in amounts and of a type specified herein. The required insurance must be obtained and maintained for the entire period the franchisee has facilities in the public rights-of-way or on public property. If the franchisee, its contractors, or subcontractors do not have the required insurance, City may order such persons to stop operations until the insurance is obtained and approved.
- C. Certificates of insurance, reflecting evidence of the required insurance and naming City as an additional insured, and other proofs as City may find necessary, shall be filed with City. For persons issued franchises after the effective date of this Chapter, certificates and other required proofs shall be filed within thirty (30) days of the issuance of a franchise and once a year thereafter, and whenever there is any change in coverage. For persons that have facilities in the public rights-of-way as of the effective date of this Chapter, the certificate

shall be filed within sixty (60) days of the effective date of this Chapter, annually thereafter, and whenever there is any change in coverage, unless a pre-existing franchise ordinance expressly provides for filing of certificates in a different manner. Each franchisee's insurance coverage shall be primary insurance as respects the City. Any insurance or self-insurance maintained by the City shall be excess of the franchisee's insurance and shall not contribute with it.

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

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

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

2. BODILY INJURY

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

Property Damage

- a. Each Occurrence \$1,000,000

b. Annual Aggregate	\$3,000,000
<u>Personal Injury</u>	
Annual Aggregate	\$3,000,000

Completed operations and products liability shall be maintained for two (2) years after the termination of the franchise (in the case of the cable communications system owner or operator) or completion of the work for the cable communications system owner or operator (in the case of a contractor or subcontractor).

Property damage liability insurance shall include coverage for the following hazards: X - explosion, C - collapse, U - underground.

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

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

4. COMMERCIAL AUTO LIABILITY
Bodily Injury

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

Property Damage

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

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

- F. Every operator of a cable communications system shall obtain and maintain a performance bond to ensure the faithful performance of its responsibilities under this Chapter and any franchise ordinance. In the case of any franchise ordinance that requires the cable communications system operator to initially build, rebuild or to upgrade a system, the amount of the bond shall be in an amount sufficient to ensure that the required construction is satisfactorily completed. The City Manager may permit the cable communications system operator to eliminate or reduce the amount of the bond upon successful completion of the required construction and after the system performs as promised for one year after completion, if the City Manager determines that (i) the operator has substantially complied with its obligations under its franchise and applicable law; and (ii) the letter of credit maintained by the operator, plus any remaining amount of the bond will be adequate to ensure performance. The amount of the performance bonds shall be set by the City Manager or may be set in a franchise ordinance in light of the nature of the work to be performed pursuant to or under the franchise. The bond is not in lieu of any additional bonds that may be required through any permitting process. The bond shall be in a form acceptable to the City Attorney. Bonds must be obtained prior to the effective date of any franchise, transfer or franchise renewal, unless a franchise ordinance specifically provides otherwise.
- G. Every cable communications system operator shall establish and maintain a cash security fund or provide City an irrevocable letter of credit in an amount specified in the Franchise ordinance but no less than one hundred thousand dollars (\$100,000) to secure the payment of fees owed, to secure any other performance promised in a franchise ordinance, and to pay any taxes, fees or liens owed to

City. The letter of credit shall be in a form and with an institution acceptable to City's director of finance and in a form acceptable to the City Attorney. Should City draw upon the cash security fund or letter of credit, the cable communications system operator shall, within fourteen (14) days, restore the fund or the letter of credit to the full required amount unless a court of competent jurisdiction has stayed this obligation. This security fund/letter of credit may be waived or reduced by City for a franchisee where City determines in its reasonable discretion that a particular franchisee's operations are sufficiently limited that a security fund/letter of credit is not necessary to secure the required performance. City may from time to time require a franchisee to change the amount of the required security fund/letter of credit to reflect changed risks to City and to the public, including delinquencies in taxes or other payments to City. The cash security fund or letter of credit must be obtained prior to the effective date of any franchise, transfer or franchise renewal, unless a franchise ordinance specifically provides otherwise.

15.28.410 Enforcement and Remedies

- A. The City Council may revoke a franchise if it finds, after a hearing, that a cable communications system operator has not complied with any material provision of this chapter; has committed a material breach of its franchise ordinance or repeatedly failed to comply with its franchise ordinance; has defrauded or attempted to defraud City or subscribers; or has attempted to evade the requirements of this chapter or its franchise ordinance. Before conducting a hearing to revoke the franchise: (1) the City Manager must have given written notice of a claimed violation, breach, default or failure and a description of the claimed violation; and (2) the franchisee must have been given at least thirty (30) days to cure the claimed default, or if the default cannot be cured in 30 days, franchisee must submit and implement a plan to cure the default within a period that is reasonable, except as provided herein. An opportunity to cure is not required where the City finds that the defect in performance is due to willful

misconduct or is an adjudicated violation of criminal law. The franchisee will be given at least thirty (30) days written notice of the hearing date, and will be provided an opportunity to be heard at the hearing.

- B. To the extent not prohibited by the U.S. Bankruptcy Code, a franchise will terminate automatically by force of law one hundred twenty (120) calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding. However, the franchise may be reinstated within that one hundred twenty (120) day period, if: (1) such assignment, receivership or trusteeship has been vacated; or (2) such assignee, receiver or trustee has fully complied with the terms and conditions of this Chapter and the franchise ordinance, and has executed an agreement, approved by any court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of this Chapter and the franchise ordinance. In the event of foreclosure or other judicial sale of any of the facilities, equipment or property of a franchisee, City may revoke the franchise following a public hearing before the City Council, by serving notice upon the franchisee and the successful bidder at the sale, in which event the franchise and all rights and privileges thereunder will be revoked and will terminate thirty (30) calendar days after serving such notice, unless: (1) City has approved the transfer of the franchise to the successful bidder; and (2) the successful bidder has covenanted and agreed with City to assume and be bound by the terms and conditions of the franchise ordinance and this Chapter.
- C. Upon termination or forfeiture of a franchise, whether by action of City as provided above, or by passage of time, City may do one or a combination of the following.
1. The Franchisee must, as City so directs, stop using the cable communications system for the purposes authorized by the franchise.

2. City may require the former franchisee to remove all of a portion of its facilities and equipment at the former franchisee's expense, subject to franchisee's right to abandon property in place. If the former franchisee fails to do so within a reasonable period of time, City may have the removal done at the former franchisee's and/or surety's expense.
3. City, by resolution of the City Council, may acquire ownership or effect a transfer of all or a portion of the cable communications system at the prices and conditions contemplated by 47 U.S.C. 547.
4. Subsection 15.28.410(D)(3) of this Section does not apply to an intentional abandonment. If a cable communications system or any part thereof is intentionally abandoned by franchisee, City may require the franchisee to transfer title to the all or some of the abandoned portions to it, as City may direct, at no charge, free and clear of encumbrances, and the same will become City's property and City may keep, sell, assign, or transfer all or part of the assets of the cable communications system, or otherwise dispose of those assets as it sees fit. The cable communications system or a part thereof, will be deemed intentionally abandoned if (i) the cable communications system operator notifies the City of its intent to abandon; (ii) the facility or equipment is not used or useful in the provision of then-existing or planned cable services, or any other lawfully authorized service; or (iii) the cable communications system operator does not provide services over the cable communications system or a part of the system for 96 consecutive hours, and is not restoring actually working to restore service with all due diligence.
5. Notwithstanding the foregoing, City may not, pursuant to this Section, issue an order that violates 47 U.S.C. § 541(b)(3)(c).

- D. Each franchise shall contain a provision specifying liquidated damages payable to City in the event of a breach of a franchise obligation where damages would otherwise be difficult to ascertain.

15.28.420 Books and Records

Unless otherwise specified in a franchise, the following provisions regarding books and records shall apply:

- A. The City shall have the right to inspect and copy books and records: related in whole or in part to the construction, operation or repair of the cable communications system; that City deems relevant to monitoring compliance with the terms of this ordinance, a franchise or other applicable law; or that the City deems relevant to the exercise of any right or duty of the City under the same. Each cable communications system operator is responsible for maintaining control over such books and records whether created by franchisee, or by those acting on its behalf. It is responsible for producing these records upon City's request, for City's inspection and copying in accordance with Section 15.28.420(B). The records that franchisee may be required to produce shall include, but are not limited to revenue records, and other records related to compliance with any provision of this Chapter or a franchise ordinance. Books and records must be maintained for a period of five (5) years, except that a franchise ordinance may specify a shorter period for certain categories of voluminous books and records where the information contained therein can be derived simply from other materials. The phrase "books and records" shall be read expansively to include information in whatever format stored.
- B. Books and records requested shall be produced to City by a time and at a location in City designated by the City Manager or designated in a franchise ordinance. However, if the requested books and records are too voluminous, or for security reasons cannot be copied and moved, or if the requested books and

records contain trade secrets, then the franchisee may request that the inspection take place at some other location within California, mutually agreeable to City and the franchisee, and City will not unreasonably deny the request, provided that (1) the franchisee makes necessary arrangements for copying documents selected by City after its review; and (2) the franchisee pays travel and additional copying expenses actually incurred by City (above those that would have been incurred had the documents been produced in City) in inspecting those documents or having those documents inspected by its designee.

- C. Any proprietary information received by City from a franchisee must be clearly marked as proprietary information which the franchisee asserts is not required to be disclosed pursuant to the California Public Records Act. If a third party seeks release of a document held by City marked as provided in this Section 15.28.420(C), City will notify the franchisee so that the franchisee may seek court protection against the release of the document.

15.28.430 Reports

Unless otherwise specified in a franchise, the following provisions regarding reports shall apply:

- A. The City Manager may from time to time direct a franchisee to prepare reports related to the provisions of applicable law or the franchise, or the construction, operation or repair of the cable communications system and to submit those reports by a date certain, in a format reasonably prescribed by the City Manager, in addition to those required by this Chapter.
- B. Unless an exemption is granted by the City Manager, no later than ninety (90) days after the end of its fiscal year, a franchisee shall submit the following

information, except that the information required by Section 15.28.430(B)(3).
need only be provided where there has been a change from the preceding year:

1. An annual audited financial report under generally accepted accounting principles (GAAP) by an independent, certified public accountant in accordance with generally accepted auditing standards (GAAS) and a report by an officer of franchisee who is authorized and qualified to make binding representations on behalf of the franchisee, of Gross Revenues from the previous calendar year for the cable communications systems attributable to the franchise area, and a certified statement setting forth the computation of gross revenues used to calculate the franchise fee for the preceding year and a detailed explanation of the method of computation showing (i) gross revenues by category (e.g., basic, pay, pay-per-view, advertising, installation, equipment, late charges, miscellaneous, other); and (ii) what, if any, deductions were made from gross revenues in calculating the Franchise fee (e.g., bad debt, credits and refunds), and the amount of each deduction; and (iii) in the case of revenues allocated to the system, the total revenues, the allocation methodology used, and the resulting revenues allocated to the system.
2. A report showing, for each applicable customer service standard, the franchisee's performance with respect to that standard for each quarter of the preceding year. In each case where franchisee concludes it did not comply fully, the franchisee will describe the corrective actions it is taking to assure future compliance. In addition, the report should identify the number and nature of the customer service complaints received and an explanation of their dispositions.
3. An ownership report, indicating all persons who at the time of filing control or own an interest in the franchisee of ten percent (10%) or more.

- C. Within ten (10) days of their receipt or (in the case of documents created by the cable communications system operator or a person acting on its behalf) filing, a franchisee shall provide City:
1. notices of deficiency or forfeiture related to the operation of the cable communications system other than notices of deficiency or forfeiture from City; and
 2. any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the franchisee or by any partnership or corporation that owns or controls the franchisee directly or indirectly.

15.28.440 Maps Required

Each franchisee shall maintain accurate maps and improvement plans that show the routing and a general description of all facilities installed in the public rights-of-way or on public property. Each franchisee shall provide a map to City showing the location of its facilities, in standard detail and scale as may be reasonably directed by the City's Director of Public Works and update the map at least annually, and whenever the facility expands or is relocated. Copies of maps shall be provided on disk, in a commercially available electronic format specified by the City's Director of Public Works.

15.28.450 Other Records Required

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

- A. Records of all complaints received within the prior three (3) years, their nature and resolution. The term "complaints" refers to complaints about any aspect of the franchisee's construction, operation or repair activities;

- B. Records of outages known to the franchisee, their cause and duration;
- C. Records of service calls for repair and maintenance indicating the nature of the call for service, the date and time service was requested, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was solved;
- D. Records of installation/reconnection and requests for service extension, indicating date of request, date of acknowledgment, and the date and time service was extended;
- E. Records sufficient to show whether the franchisee has complied with each customer service standard that applies to it.

15.28.460 Exemptions

The City Manager may temporarily exempt any franchisee from its obligations under Sections 15.28.430 - 15.28.450 if the City Manager determines that the requirement would be unduly burdensome or unnecessary, and that City and subscriber interests may be adequately protected in some other manner.

15.28.470 Privacy

A franchisee shall take all reasonable steps required so that it is able to provide reports, books and records to City, including by providing appropriate subscriber privacy notices. Each franchisee shall be responsible for redacting data that applicable law prevents it from providing to City. Nothing in this Section shall be read to require a franchisee to violate state or federal subscriber privacy laws.

15.28.480 Procedures for Paying Franchise Fees and Fees In Lieu of Franchise Fees

- A. The franchise fee paid pursuant to Part 3, and the fee in lieu of franchise fee paid pursuant to Part 4 shall be paid monthly unless otherwise specified in a franchise. Payment for each month shall be made to City by electronic transfer not later than forty-five (45) days after the end of each calendar month.
- B. Unless a franchise ordinance expressly provides otherwise, a franchisee or other person subject to a fee under Part 3 or 4 shall file with City within thirty (30) days of the end of each calendar month a statement showing gross revenues during the preceding month and the number of subscribers served.
- C. No acceptance by City of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such payment be construed as a release of any claim City may have for additional sums payable or otherwise related to that payment.
- D. Neither the franchise fee under Part 3, nor the fee paid in lieu of the franchise fee under Part 4, is a payment in lieu of any tax, fee or other assessment.
- E. In the event that a fee payment is not received by City on or before the due date set forth in this Section or in a franchise ordinance, or the fee owed is not fully paid within that time, the person subject to the fee will be charged interest on the outstanding amount owed from the due date at an interest rate equal to three percent (3%) above the rate for three-month Federal Treasury Bills at the most recent United States Treasury Department sale of such Treasury Bills occurring prior to the due date of the franchise fee payment.
- F. Within ninety (90) days of the date a franchisee ceases operations under a franchise (whether because of franchise termination, transfer, bankruptcy or for

any other reason), the franchisee (or its successor in interest) shall: (A) make a final franchise fee payment, covering the period from the end of prior calendar month to date the franchisee ceased operations; and (B) file a final statement of gross revenues covering the period from the beginning of the calendar year in which the operations ceased to the date operations ceased. The statement shall contain the information and be certified as required by Section 15.28.40(C)(1).

Part 3

Special Rules Applicable To Cable Systems

15.28.500 Applications - Generally

- A. An application must be filed for an initial and renewal cable system franchise, or for approval of a transfer. All applications under this provisions of this chapter shall be in writing and shall be filed in the Office of the City Clerk. These requirements do not apply to a renewal proposal submitted pursuant to 47 U.S.C. Section 546(h) as may be amended.

- B. Information Required
 - 1. The City Manager may specify the information that must be provided in connection with an application, and the form in which the information is to be provided.

 - 2. At a minimum, each application must identify the applicant, show that the applicant is financially, technically and legally qualified to construct, maintain and operate the cable system, contain a pro forma showing capital expenditures and expected income and expenses for the first five (5) years the applicant is to hold the franchise, and show that the applicant is willing to comply with this Chapter and its franchise obligations. In

addition, any application for an initial or renewal franchise must describe in detail the cable system that the applicant proposes to build or maintain, show where it is or will be located, set out the system construction or rebuild schedule, and show that the applicant will provide adequate channels, facilities and other support for public, educational and government use (including institutional network use) of the cable system. To be accepted for filing, an original and six (6) copies of a complete application must be submitted. All applications shall include the names and addresses of persons authorized to act on behalf of the applicant with respect to the application.

3. City may at any time demand, and applicant shall provide, such supplementary, additional or other information as the City may deem reasonably necessary to determine the applicant's qualifications.
- C. An application may be rejected if it is incomplete, or if the response to requests for information is not timely and complete.

15.28.510 Application for an Initial Franchise or Renewal Franchise

- A. This Section establishes additional provisions that apply to an application for an initial franchise, or a renewal franchise application that is not governed by 47 U.S.C. Section 546(a)-(h) as the same may be amended.
- B. Any person may apply for an initial or renewal franchise by submitting an application therefor on that person's own initiative, or in response to a request for proposals issued by City. If City receives an unsolicited application, it may choose to issue a request for additional proposals, and require the applicant to amend its proposal to respond thereto. City may conduct such investigations as are necessary to act on an application.

- C. Before taking final action on an application, the City shall conduct a public hearing in accordance with applicable state and federal law.
- D. In determining whether to grant a franchise, City may consider:
1. the extent to which an applicant for renewal has substantially complied with the applicable law and the material terms of any existing cable franchise ordinance;
 2. whether an applicant for renewal's quality of service under its existing franchise ordinance, including signal quality, response to customer complaints, billing practices, and the like has been reasonable in light of the needs of the community;
 3. where the applicant has not previously held a cable system franchise in City, whether the applicant's record in City or other communities indicates that it can be relied upon to provide high-quality service throughout any franchise term and to comply with its obligations under applicable law and its franchise;
 4. whether the applicant has the financial, legal, and technical ability to provide the services, facilities, and equipment set forth in an application, and to satisfy any minimum requirements established by City;
 5. whether the applicant's application is reasonable to meet the future cable-related needs and interests of City, taking into account the cost of meeting such needs and interests;
 6. whether issuance of a franchise is warranted in the public interest considering the immediate and future effect on streets, public property, and private property that will be used by the applicant's cable system;

7. whether issuance of the franchise would reduce competition in the provision of cable service in City;
 8. whether the applicant has proposed to provide adequate facilities, equipment, channels and other support for PEG use of the cable system;
 9. such other matters as City is authorized or required to consider, including California Govt. Code Section 53066.3, to the extent that it applies.
- E. If City determines that issuance of a franchise would be in the public interest considering the factors described in this Section, it may proffer a franchise ordinance to the applicant.
- F. Within thirty (30) days after the effective date of the ordinance awarding a franchise or franchise renewal, or within such extended period of time as the City Council in its discretion may authorize, the successful applicant or Franchisee shall file with the City Clerk an unconditional written acceptance, in form satisfactory to the City Attorney, of the franchise or franchise renewal. Such acceptance shall be acknowledged before a notary public and shall in form and content be satisfactory to and approved by the City Attorney.

15.28.520 Application for Renewal Franchise Filed Pursuant to 47 U.S.C. Section 546

- A. This Section establishes provisions that apply to applications for renewal governed by 47 U.S.C. Section 546(a)-(h) as the same may be amended.
- B. A franchisee that intends to exercise rights under 47 U.S.C. 546(a)-(g) as the same may be amended shall submit a notice in writing to City in a timely manner clearly stating that it is activating the procedures set forth in those sections. City

shall thereafter commence any proceedings that may be required under federal law, and upon completion of those proceedings, City may issue a request for proposals and an application may be submitted for renewal. City may preliminarily deny the application by resolution, and if the application is preliminarily denied, City may conduct such proceedings as may be required by federal law, and by resolution establish such procedures and appoint such individuals as may be necessary to conduct any proceedings to review the application in conformance with the requirements of federal law.

- C. An application for renewal pursuant to 47 U.S.C. §546(h) may be submitted at any time, and may be rejected by the City at any time after public hearing, for any reason.

15.28.530 Application for Transfer

- A. This Section establishes provisions that apply to applications for transfer approval.
- B. An application for transfer must contain all the information required by Section 15.28.500(B)(1)-(2), all information required by the FCC Form 394 or if there is no such form or successor form, all information required by the FCC form 394 as it existed on January 1, 2002, and all information that it is required to file under applicable federal or state law.
- C. Subject to limitations under applicable law, in determining whether a transfer application should be granted, denied, or granted subject to conditions, City may consider the legal, financial, and technical qualifications of the transferee to operate the cable system; any potential impact of the transfer on subscriber rates or services; whether the incumbent cable operator is in compliance with its franchise; whether the transferee owns or controls any other cable system in City; whether the transfer may eliminate or reduce competition in the delivery of

cable service in City; and whether operation by the transferee or approval of the transfer would otherwise adversely affect subscribers, the public, or City's interest under this Chapter, the franchise ordinance, or other applicable law. The proposed transferee shall pay all reasonable costs incurred by City in reviewing and evaluating the applications.

- D. No application for the transfer of the franchise shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of this Chapter and the franchise ordinance, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous franchisee for all purposes, except for purposes of Cable Act renewal proceedings to the extent that such a condition is prohibited by Section 626 of the Cable Act, 47 U.S.C. 546. Notwithstanding the foregoing, if the nature of the transfer is such that the franchisee will not change (i.e., a change of control), transferee shall not have the obligation to accept the franchise or assume the obligations of the franchisee, such obligations will continue to be the responsibility of franchisee.

15.28.540 Legal Qualifications

A. Applicant Qualifications

1. The applicant must be willing to comply with the provisions of this Chapter and applicable laws; and to comply with such requirements of a franchise ordinance as City may lawfully require.
2. The applicant must not have had any cable system or OVS franchise revoked by City for cause within three (3) years preceding the submission of the application. If franchisee challenges a revocation, it may not apply while the appeal is pending, or for three years after the final resolution of the appeal if the revocation is valid.

3. The applicant may not have had an application to City for an initial or renewal cable system franchise denied on the ground that the applicant failed to propose a cable system meeting the cable-related needs and interests of the community, or as to such franchising decision were finally resolved (including any appeals) adversely to the applicant, within three (3) years preceding the submission of the application; and may not have had an application for an initial or renewal OVS franchise denied on any grounds within three (3) years of the application. This restriction may be waived for good cause, or otherwise at the City's discretion.
4. The applicant shall not be issued a franchise if, at any time during the ten (10) years preceding the submission of the application, applicant was convicted of fraud, racketeering, anti-competitive actions, unfair trade practices or other conduct of such character that the applicant cannot be relied upon to deal truthfully with City and the subscribers, or to substantially comply with its obligations.
5. Applicant must have the necessary authority under California and federal law to operate a cable system, or show that it is in a position to obtain that authority.
6. The applicant shall not be issued a franchise if it files materially misleading information in its application or intentionally withholds information that the applicant lawfully is required to provide.
7. For purposes of Section 15.28.540(A)(2)-(4), the term applicant includes any affiliate of applicant to the extent that affiliate was associated with the applicant at the time of such adverse action.

- B. Notwithstanding Section 15.28.540(A), an applicant shall be provided a reasonable opportunity to show that a franchise should issue even if the requirements of Section 15.28.540(A)(2)-(4) are not satisfied, by virtue of the circumstances surrounding the matter and the steps taken by the applicant to cure all harms flowing therefrom and prevent their recurrence, the lack of involvement of the applicant's principals, or the remoteness of the matter from the operation of a cable system.

15.28.550 Franchise Fee

Each cable system operator shall pay to City a franchise fee in an amount equal to five (5) percent of such cable system operator's gross revenues derived from the operation of the cable system to provide cable services, or such other amount as may be specified in the franchise ordinance; *provided, however*, that if the franchise ordinance specifies an amount, that amount shall be subject to increase should federal limits on fee payments be eliminated or changed. Unless, otherwise provided in the franchise, where revenues are not reasonably attributable wholly to the operation of the cable system in the franchise area (as might be the case with sales of advertising, where the sale is for the carriage of the advertising in several franchise areas) revenues shall be allocated to City on a per capita basis. For example, if an advertiser is charged \$10,000 for carriage of an advertisement across systems serving 300,000 subscribers, a franchisee would divide the number of subscribers in City by 300,000 and multiply the resulting percentage times \$10,000 to determine the revenues allocable to City.

15.28.560 No Exclusivity

- A. It is the policy of City to ensure that every cable system provides service in its franchise area upon request to any person or any government building. Each franchisee shall extend service upon request within its franchise area, provided that, a franchise ordinance may permit a franchisee to require a potential subscriber to contribute a fair share of the capital costs of installation or

extension as a condition of extension or installation in cases where such extension or installation may be unduly expensive. Service must be provided within time limits specified in Section 4.7 of the Customer Service Standards Resolution.

- B. A cable system within City shall meet or exceed the technical standards set forth in 47 C.F.R. § 76.601 and any other applicable technical standards as may be amended.
- C. Each cable operator shall perform at its expense such tests of its facilities as may be reasonably necessary: to show whether or not the Franchisee is in compliance with applicable technical standards; to resolve customer complaints; or to demonstrate compliance with its franchise or applicable law.
- D. Each franchisee shall, during the term of its franchise, ensure that subscribers are able to receive continuous service. In the event the franchise is revoked or terminated, the franchisee may be required to continue to provide service for a reasonable period to assure an orderly transition of service from the franchisee to another person. A franchise ordinance may establish more particular requirements under which these obligations will be satisfied.

15.28.570 Rate Regulation and Consumer Protection

- A. City may regulate any cable operator's rates and charges to the extent allowed by law. City will regulate rates in accordance with FCC rules and regulations, where applicable. Except to the extent FCC rules provide otherwise, all rates and charges that are subject to regulation, and changes in those rates or charges must be approved in advance. The City Manager may take any required steps to file complaints, toll rates, issue accounting orders or take any other steps required to comply with FCC regulations. The City Council shall be responsible for issuing rate orders that establish rates or order refunds. A franchisee must

comply with all rate orders issued by the City Council pending appeals by the franchisee unless a stay order has been issued by the FCC.

- B. Except to the extent City may not enforce such a requirement, a cable operator is prohibited from unlawfully discriminating in its rates or charges or from granting undue preferences to any subscriber, potential subscriber, or group of subscribers or potential subscribers; *provided, however*, that a franchisee may offer bona fide promotional discounts in order to attract or maintain subscribers, so long as such discounts are offered on a non-discriminatory basis to similar classes of subscribers throughout the franchise area; and a franchisee may offer discounts for the elderly, the disabled, or the economically disadvantaged; and such other discounts as it is entitled to provide under federal and state law, if such discounts are applied in a uniform and consistent manner.
- C. A cable operator shall not deny access or charge different rates to any group of subscribers or potential subscribers because of the income of the residents of the local area in which such group resides.
- D. Cable Operator Standards
 - 1. Each cable system operator must satisfy FCC, state and city cable system customer service standards or consumer protection standards. City cable system customer service standards may be adopted by resolution. In the case of a conflict among standards, the stricter standard shall apply.
 - 2. For each violation of a cable system customer service standard, penalties will be imposed as follows and shall not be charged or passed-through to subscribers:

- (a) Two hundred dollars (\$200) for each day of each material breach, not to exceed six hundred dollars (\$600) for each occurrence of material breach.
 - (b) If there is a subsequent material breach of the same provision within twelve (12) months, four hundred dollars (\$400) for each day of each material breach, not to exceed twelve hundred dollars (\$1200) for each occurrence of the material breach.
 - (c) If there is a third or additional material breach of the same provision within twelve (12) months of the first, one thousand dollars (\$1000) for each day of each material breach, not to exceed three thousand dollars (\$3000) for each occurrence of the material breach.
3. Any penalty assessed under this Section will be reduced dollar for dollar to the extent any liquidated damage provision of a franchise imposes a monetary obligation on a franchisee for the same customer service failures, and no other monetary damages may be assessed. A citation may be served on the franchisee by providing a copy to the person to whom notices are to be sent under the franchise. Penalties will be imposed pursuant to procedures set forth in the Franchise or as set forth in the Municipal Code, applied in a manner consistent with Cal. Govt. Code Sec. 53088(2)(r).

Part 4
Open Video Systems

15.28.600 Applications for Grant or Renewal of Franchises

A. Written Application

1. A written application shall be filed with the City Clerk for grant of an initial or renewal OVS franchise.
2. To be acceptable for filing, a signed original of the application shall be submitted together with six (6) copies. The application must conform to any applicable request for proposals, and contain all information required under Section 15.28.500-(B)(2). All applications shall include the names and addresses of persons authorized to act on behalf of the applicant with respect to the application.

B. The City Manager may specify the information that must be provided in connection with a request for proposals or an application for an initial or renewal OVS franchise. At a minimum, each application must: identify the applicant, where it plans to construct its OVS, and the OVS construction schedule; show that the applicant will provide adequate channels, facilities and other support for public, educational and government use (including institutional network use) of the OVS; and show that the applicant is financially, technically and legally qualified to construct and operate the OVS.

C. Receipt of Application by City

1. A person may apply for an initial or renewal OVS Franchise on its own initiative or in response to a request for proposals. Upon receipt of an application, City may conduct such investigations as are necessary to

consider the application. City may request such additional information as it deems appropriate.

2. An applicant shall respond to requests for information completely, and within the time directed by City, and must strictly comply with procedures, instructions, and requirements City may establish.
3. An application may be rejected if it is incomplete or the applicant fails to follow procedures or respond fully to information requests.

D. In evaluating an OVS franchise application, City may consider the following:

1. The extent to which the applicant has substantially complied with the applicable law and the material terms of any existing City OVS franchise;
2. Whether the applicant has the financial, technical, and legal qualifications to hold an OVS franchise;
3. Whether the application satisfies any minimum requirements established by City for, or will otherwise provide adequate public, educational, and governmental use capacity, facilities, or financial support (including with respect to institutional networks);
4. Whether issuance of an OVS franchise would require replacement of property or involve disruption of property, public services, or use of the public rights-of-way;
5. Whether the approval of the application may eliminate or reduce competition in the delivery of cable service in City; and
6. Such other matters as it is required or entitled to consider.

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

15.28.610 Transfers

- A. No transfer of an OVS franchise shall occur without prior written notice to and approval of the City Council.
- B. Information Required
 - 1. An OVS franchisee shall promptly notify City of any proposed transfer, and submit an application for its approval at least 120 days in advance of the proposed and anticipated transfer date.
 - 2. The City Manager may specify information that must be provided in connection with a transfer application. At a minimum, an application must: describe the persons involved in the transaction and the person that will hold the OVS franchise; describe the chain of ownership before and after the proposed transaction; show that the person that will hold the OVS franchise will be legally, financially, and technically qualified to do so; attach complete information on the proposed transaction, including the contracts or other documents that relate to the proposed transaction, and all documents, schedules, exhibits, or the like referred to therein; and attach any shareholder reports or filings with the Securities and Exchange Commission (“SEC”) that discuss the transaction.

3. For the purposes of determining whether it shall consent to a transfer, City or its agents may inquire into all qualifications of the prospective transferee and such other matters as City may deem necessary to determine whether the transfer is in the public interest and should be approved, denied, or conditioned. If the transferee or OVS franchisee refuse to provide information, or provide incomplete information, the request for transfer may be denied.

C. Consideration of Transfer

1. In deciding whether a transfer application should be granted, denied or granted subject to conditions, City may consider the legal, financial, and technical qualifications of the transferee to operate the OVS; whether the incumbent OVS Operator is in compliance with its OVS agreement and this Chapter and, if not, the proposed transferee's commitment to cure such noncompliance; whether the transferee owns or controls any other OVS or cable system in City, and whether operation by the transferee may eliminate or reduce competition in the delivery of cable service in City; and whether operation by the transferee or approval of the transfer would adversely affect subscribers, the public, or City's interest under this Chapter, the OVS agreement, or other applicable law.
2. No application shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of this Chapter and the OVS agreement , and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous franchisee for all purposes. The proposed transferee shall pay all reasonable costs incurred by City in reviewing and evaluating the applications.

15.28.620 Legal Qualifications

A. In order to be legally qualified:

1. The applicant must be willing to comply with the provisions of this Chapter and applicable laws, and to comply with such requirements of an OVS agreement as City may lawfully require.
2. The applicant must not hold a cable system franchise, or have pending an application for a cable system franchise.
3. The applicant must not have had any cable system or OVS franchise revoked by City within three (3) years preceding the submission of the application. If franchisee challenges a revocation, it may not apply while the appeal is pending, or for three years after the final resolution of the appeal if the revocation is valid.
4. The applicant may not have had an application for an initial or renewal cable system franchise to City denied on the ground that the applicant failed to propose a cable system meeting the cable-related needs and interests of the community, or as to which any challenges to such franchising decision were finally resolved (including any appeals) adversely to the applicant, within three (3) years preceding the submission of the application.
5. The applicant may not have had an application for an initial or renewal OVS franchise denied on any grounds within three (3) years of the applications.
6. The applicant shall not be issued an OVS franchise if, at any time during the ten (10) years preceding the submission of the application, applicant

was convicted of fraud, racketeering, anti-competitive actions, unfair trade practices or other conduct of such character that the applicant cannot be relied upon to deal truthfully with City and the subscribers, or to substantially comply with its obligations.

7. Applicant must have the necessary authority under California and federal law to operate an OVS, and must be certified by the FCC under Section 653 of the Cable Act as may be amended.
 8. The applicant shall not be issued an OVS franchise if it files materially misleading information in its application or intentionally withholds information that the applicant lawfully is required to provide.
 9. For purposes of Section 15.28.620(A)(2)-(6), the term applicant includes any affiliate of applicant.
- B. Notwithstanding Section 15.28.620(A), an applicant shall be provided a reasonable opportunity to show that an OVS franchise should issue even if the requirements of Section 15.28.620(A)(3)-(6) are not satisfied, by virtue of the circumstances surrounding the matter and the steps taken by the applicant to cure all harms flowing therefrom and prevent their recurrence, the lack of involvement of the applicant's principals, or the remoteness of the matter from the operation of an OVS.

15.20.630 Minimum Requirements

- A. No OVS operator shall be issued a franchise, or may commence construction of an OVS, until (A) it agrees to match or exceed in all respects the highest PEG obligations borne by any cable system operator in City; or (B) it agrees to PEG obligations acceptable to City.

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

15.28.640 Fee In Lieu of Franchise Fee

- A. In lieu of the franchise fee required by Part 3, an OVS franchisee shall pay to City a fee of five percent (5%) of gross revenues.

B. Use Payments.

1. A person leasing capacity from an OVS operator, other than a person whose revenues are included in the payment made under Section 15.28.640(a) shall pay City a fee in lieu of the franchise fee required by part 3 of five percent (5%) of the gross revenues of such person. For purposes of this Section 15.28.640(b)(1), the term gross revenues means all revenues, whether cash, in-kind or in any other form, of the person leasing capacity, or its affiliates, derived from use of the OVS to provide cable service in the City.
2. Notwithstanding the foregoing, where a person, other than an affiliate, pays an OVS franchisee to use its franchisee's OVS (the "use payments"); and that person recovers those use payments through charges to its subscribers that are included in that person's gross revenues; and the OVS franchisee pays a franchise fee on those use charges; then that person may deduct from its gross revenues the use payments it makes.

15.28.650 Exclusive Contracts

An OVS franchisee may not directly or indirectly require a subscriber or a building owner or manager to enter into an exclusive contract as a condition of providing or continuing service, nor may an OVS franchisee enter into any arrangement that would effectively prevent other persons from using the OVS to compete in the delivery of cable services with an OVS franchisee or its affiliates. A franchisee must provide service on a month to month basis, however, nothing in this Section prevents a franchisee from entering into a longer term contract with a subscriber in exchange for discounted rates.

Part 5
Miscellaneous

15.28.700 Captions

The captions to sections throughout this Chapter are intended solely to facilitate reading and reference to the sections and provisions of this Chapter. Such captions shall not affect the meaning or interpretation of this Chapter.

15.28.710 Calculation of Time

Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this chapter or any franchise, and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time.

15.28.720 Severability

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

15.28.730 Connections to Cable System; Use of Antennae

- A. To the extent consistent with federal law, subscribers shall have the right to attach VCR's, receivers, and other terminal equipment to a franchisee's cable

communications system. Subscribers also shall have the right to use their own remote control devices and converters, and other similar equipment.

- B. A Franchisee shall not, as a condition of providing service, require a subscriber or potential subscriber to remove any existing antenna or satellite dish, or disconnect an antenna or satellite dish except at the express direction of the subscriber or potential subscriber, or prohibit installation of a new antenna or connection to any other multi-channel video provider's system.
- C. Subject to the foregoing, it shall be unlawful for any person to make any unauthorized connection, whether physically, acoustically, inductably or otherwise, with any part of a franchisee's cable communications system or facilities, with the intent of enabling the reception of any service for which the person has not paid or is not otherwise authorized to receive.

15.28.740 Discrimination Prohibited

- A. A cable communications system operator shall not discriminate among persons or City or take any retaliatory action against a person or City because of that person's exercise of any right it may have under federal, state, or local law, nor may the operator require a person or City to waive such rights as a condition of taking service.
- B. A cable communications system operator shall comply with all federal, state, and local laws and regulations governing equal employment opportunities, and hiring practices, as the same may be amended from time to time.

15.28.750 Transitional Provisions

- A. The operator of any cable communications system installed as of the effective date of this Chapter, for which a franchise is required under this Chapter, shall

have three (3) months from the effective date of this Chapter to file one (1) or more applications for a franchise. Any operator timely filing such an application under this Section shall not be subject to a penalty for failure to have such a franchise so long as said application remains pending; *provided, however*, nothing herein shall relieve any cable communications system operator of any liability for its failure to obtain any permit or other authorization required under other provisions of the San Jose Municipal Code, and nothing herein shall prevent City from requiring removal of any facilities installed in violation of the San Jose Municipal Code.

- B. Any person holding an existing franchise for a cable communications system may continue to operate under the existing franchise to the conclusion of its present term (but not any renewal or extension thereof) with respect to those activities expressly authorized by the franchise; and *provided further* that, such person shall be subject to the other provisions of this Chapter to the extent permitted by law.
- C. Pending applications shall be subject to this Chapter. A person with a pending application shall have thirty (30) days after receipt of a written request from the City to submit additional information to comply with the requirements of this Chapter governing applications.

PASSED FOR PUBLICATION of title this 14th day of November, 2006, by the following vote:

AYES: CHAVEZ, CHIRCO, LeZOTTE, NGUYEN, PYLE,
REED, WILLIAMS, YEAGER; GONZALES

NOES: NONE

ABSENT: CAMPOS, CORTESE

DISQUALIFIED: NONE

RON GONZALES
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk

CUSTOMER SERVICE STANDARDS

Section 1. Office Availability.

1.1 Walk-in Hours

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

1.2 Service Call Hours

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

Section 2. Telephones.

2.1 Telephone Hours

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

2.2 Telephone Answering Time

Under normal operating conditions, telephone answering time will not exceed thirty (30) seconds or four (4) rings, and the time to transfer the call to a customer service representative (including hold time) will not exceed an additional thirty (30) seconds.

2.3. Busy Signal

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

2.4 Meeting Standards

The standards set out in Section 2.2 and 2.3 will be met ninety (90) percent of the time, measured quarterly. The phrase “of the time, measured quarterly” refers to a percentage of calls to the Franchisee during the quarter, during normal operating conditions, so that if 1000 calls are received by the Franchisee, 900 of those calls must be answered within the time limits specified in Section 2.2; and fewer than 970 should receive a busy signal as specified in Section 2.3.

Section 3. Scheduling Work.

3.1 Appointments

All appointments for service, installation, or disconnection will be specified by date. Each Franchisee will specify a specific time at which the work will be done, or offer a choice of time blocks, which will not exceed four (4) hours in length. A Franchisee may also, upon request, schedule service installation calls outside normal business hours, for the express convenience of the customer.

3.2 Rescheduling Appointments

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

3.3 Missed Appointments

The Franchisee will offer and fully describe to Subscribers who have experienced a missed appointment (except where the missed appointment was the Subscriber’s fault) that the Subscriber may choose between the following options where a fee was to be charged:

- (A) For an installation a credit for the standard installation charge for the service ordered, or for a service call, the amount of the service call, if the appointment was for an installation or service call for which a fee was to be charged;
- (B) One (1) month or a credit equal to one (1) month of the most widely subscribed to service tier free of charge for other appointments; and

- (C) An opportunity to elect remedies under California Civil Code 1722 as may be amended, if applicable.

Section 4. Service Standards.

4.1 Acknowledging Service Request

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

4.2 Acknowledging Other Inquiries

A Franchisee will respond to all other inquiries (including billing inquiries) within five (5) business days of the inquiry or complaint.

4.3 Repairing Outages

Under normal operating conditions, repairs and maintenance for outages or service interruptions must be completed within twenty-four (24) hours after the outage or interruption becomes known to Franchisee where the Franchisee has adequate access to facilities and premises to which it must have access in order to remedy the problem and as promptly as possible where the Franchisee cannot obtain adequate access to facilities and premises in order to resolve the problem within 24 hours.

4.4 Service Problem Repairs

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

4.5 Abnormal Operating Conditions

When normal operating conditions do not exist, a Franchisee will complete the work in the shortest time possible.

4.6 Cancellation of Appointments

A Franchisee will not cancel a service or installation appointment with a customer after the close of business on the business day preceding the scheduled appointment.

4.7 Time for Extension

Except as a Franchise otherwise provides, service must be extended upon request to any Person or to any government building in a Franchisee's Franchise area

(i) within seven (7) days of the request, where service can be provided by activating or installing a drop, or where the entity requesting service is less than 250 feet from the Franchisee's distribution system; (ii) within ninety (90) days of the request where an extension of one-half mile or less is required and 4.7(i) does not apply; or (iii) within six (6) months where an extension of one-half mile or more is required. *Provided that* where a permit is require to install the facilities necessary to extend service under 4.7(i), and a permit request is properly submitted to the City, the time for extending service will be increased by the number of days the permit is pending.

4.8 Service Upgrades

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

4.9 Service Standards To Be Met

The service standards set out in Sections 3.1 and 4.1 through 4.8 will be met at least ninety-five percent (95%) of the time, measured on a quarterly basis. The phrase "of the time" refers to the number of service requests received by the Franchisee, so that if Franchisee receives 100 service requests, at least 95 of those requests must be scheduled and/or completed within the time limits specified in Sections 3.1 and 4.1 through 4.8.

4.10 Sufficient Service Staff Required

The failure of the Franchisee to hire sufficient staff or to properly train its staff will not justify a Franchisee's failure to comply with this provision.

Section 5. Disabled Services.

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

Section 6. Notice to Subscribers regarding Service.

A Franchisee will provide each Subscriber at the time service is installed, and annually thereafter, clear and accurate written information:

- (A) On placing a service call, filing a complaint, or requesting an adjustment (including when a Subscriber is entitled to refunds for outages and how to obtain them);
- (B) Showing the telephone number of City office responsible for administering the Cable Television Franchise;
- (C) Providing a schedule of rates and charges (which listing must identify any discounts offered), Channel positions, services provided, a copy of the service contract, delinquent Subscriber disconnect and reconnect procedures; notifying Subscribers of the availability of parental control devices, and the conditions under which they will be provided and the cost (if any) charged;
- (D) Describing conditions that must be met to qualify for discounts;
- (E) Describing any other of the Franchisee's policies in connection with its Subscribers; and
- (F) Describing any discounts, services, or specialized equipment available to Subscribers with disabilities; explaining how to obtain them; and explaining how to use any accessibility features.

Section 7. Notices to City.

Franchisee will provide City with copies of all notices provided to its Subscribers pursuant to this article.

Section 8. Changes in Noticed Information.

Franchisee will provide City Manager (or designee) and all Subscribers at least thirty (30) days, written notice of any material changes in the information required to be provided under this article, except that, if federal law establishes a shorter notice period and preempts this requirement, the federal requirement will apply. The notice to the City Manager shall be provided by fax or other electronic method in a manner designed to provide immediate receipt of the notification, or by mail five (5) days prior to customer notification.

Section 9. Truth in Advertising.

Each Franchisee will take appropriate steps to ensure that all written Franchisee promotional materials, announcements, and advertising of residential Cable Service to

Subscribers and the general public, where price information is listed in any manner, clearly and accurately discloses price terms. In the case of telephone orders, a Franchisee will take appropriate steps to ensure that price terms are clearly and accurately disclosed to potential customers in advance of taking the order.

9.1 Public Inspection of File

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

Section 10. Interruptions of Service.

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

Section 11. Prorated Billing.

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

Section 12. Billing Statement.

12.1 Clear Billing Statement

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

12.2 Payment Due Date Specified

A Franchisee's billing statement must show a specific payment due date not earlier than the tenth (10th) day of the service period for which the bill is rendered.

12.3 Late Fee

A late fee or administrative fee (collectively referred to below as a "late fee") may not be imposed except in accordance with California Government Code Sections 53088.6, 53088.7, and 53088.8.

12.4 Franchisee's Billing Errors

Subscribers will not be charged a late fee or otherwise penalized for any failure by a Franchisee, including failure to timely or correctly bill the Subscriber, or failure to properly credit the Subscriber for a payment timely made.

12.5 Payment by Mail or in Person

A Franchisees bill must permit a Subscriber to remit payment by mail or in person at the Franchisees local office.

Section 13. Credit for Service Impairment.

13.1. Prorated Credit

A Subscriber's account will be credited a prorated share of the monthly charge for the service upon Subscriber request if a Subscriber is without service or if service is substantially impaired for any reason for a period exceeding four (4) hours during any twenty-four (24) hour period; or automatically if the loss of service or impairment is for twenty-four (24) hours or longer.

13.2. Impairment Caused by Subscriber

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

Section 14. Billing Complaints.

Franchisee will respond to all written billing complaints from Subscribers within thirty (30) days.

Section 15. Billing Refunds.

Refunds to Subscribers will be issued no later than:

- (A) The earlier of the Subscribers next billing cycle following resolution of the refund request, or thirty (30) days; or
- (B) Within thirty (30) days of the date of return of all equipment to Franchisee, if Cable Service has been terminated.

Section 16. Credits for Cable Service.

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

Section 17. Disconnection and Downgrades.

17.1 Subscriber Termination

A Subscriber may terminate service at any time.

17.2. Disconnection Upon Subscriber Termination

A Franchisee will promptly disconnect from the Franchisee's Cable System or downgrade any Subscriber who so requests. No charges for service may be made after the Subscriber requests disconnection. No period of notice before voluntary termination or downgrade of Cable Service may be required of Subscribers by any Franchisee. There will be no charge for disconnection, except for the collection fee authorized by state law, and any downgrade charges will conform to Applicable Law.

Section 18. Security Deposit.

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

Section 19. Disconnection due to Nonpayment.

19.1. Disconnection for Nonpayment

A Franchisee may not disconnect a Subscriber's Cable Service for non-payment unless:

- (A) The Subscriber is delinquent in payment'
- (B) A separate, written notice of impending disconnection, postage prepaid, has been sent to the Subscriber at least twenty (20) days before the date on which service may be disconnected, at the premises where the Subscriber requests billing, which notice must identify the names and address of the Subscriber whose account is delinquent, state the date by which disconnection may occur if payment is not made, and the amount the Subscriber must pay to avoid disconnection, and a telephone number of a representative of the Franchisee who can provide additional

information concerning and handle complaints or initiate an investigation concerning the services and charges in question;

- (C) The Subscriber fails to pay the amounts owed to avoid disconnection by the date of disconnection; and
- (D) No pending inquiry exists regarding the bill to which Franchisee has not responded in writing.

19.2 No Disconnection if Payment Made

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

19.3 Reinstating Service

After disconnection (except as noted below), upon payment by the Subscriber in full of all proper fees or charges, including the payment of the reconnection charge, if any, the Franchisee will promptly reinstate service. Franchisee may require a deposit.

Section 20. Immediate Disconnection.

A Franchisee may immediately disconnect a Subscriber if:

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

20.1 Restoration of Service

After disconnection, the Franchisee will restore service after the Subscriber provides adequate assurance that it has ceased the practices that led to disconnection, and paid all proper fees and charges, including any reconnect fees, deposits and all amounts owed the Franchisee for damage to its Cable System or equipment. Provided that, no reconnection fee may be imposed on a Subscriber disconnected pursuant to

this article if the leakage was the result of the Franchisee's acts or omissions; or in any case unless the Franchisee notifies the Subscriber of the leakage at least three (3) business days in advance of disconnection, and the Subscriber has failed to correct the leakage within that time.

Section 21 Franchisee's Property.

Except as Applicable Law may otherwise provide, a Franchisee may remove its property from a Subscriber's premises within thirty (30) days of the termination of service. If a Franchisee fails to remove its property in that period, the property will be deemed abandoned unless the Franchisee has been denied access to the Subscriber's premises during normal business hours, for a reasonable period required to perform the work, or the Franchisee has a continuing right to occupy the premises under Applicable Law.

Section 22. Deposits.

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

Section 23. Parental Control Option.

Without limiting a Franchisee's obligations under Federal law, after March 1, 1999, a Franchisee must provide parental control devices at no charge to all Subscribers who request them that enable the Subscriber to block the video and audio portion of any Channel or channels of programming.

Section 24. Relief from Obligations.

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

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

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

Section 25. Terms.

The term "normal operating conditions" has the same meaning as under federal law, except the term only refers to conditions in the City of San Jose, and is not determined by reference to conditions in other communities that may share customer service resources.