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**43.005. Intent.**

(a) The City of Salem, pursuant to applicable Federal and State law, is authorized to grant one or more non-exclusive franchises to construct, operate, maintain and reconstruct cable television systems within the City limits.

(b) The Common Council finds that the development of cable television and communications system has the potential of having real benefit and impact upon the residents of Salem. Because of the complex and rapidly changing technology associated with cable television, the City further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the City or such persons as the City shall designate. It is the intent of this chapter and subsequent amendments to provide for and specify the means to attain the best possible public interest and public purpose in these matters and any franchise issued pursuant to this chapter shall be deemed to include this finding as an integral part thereof. (Ord No. 38-87; Ord No. 63-94)

**43.010. Short Title.** This chapter shall be known and may be cited as the "Salem Cable Communications Franchise Code." (Ord No. 38-87)

**43.015. Definitions.**

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

- (1) "Agency Subscriber" means a government or public agency, school, or designated non-profit organization which receives a service from a cable communications system.
- (2) "Basic Cable Service" means any service tier which includes the retransmission of local television broadcast signals.
- (3) "Basic Radio Service" means the provision of audio programs to subscribers at a monthly rate.
- (4) "Broadcast Signal" means a television or radio signal that is transmitted over the

air to a wide geographic audience and is received by a cable communications system and retransmitted to subscribers. The term broadcast signal does not refer to any

signal received by a cable system by means of a microwave or satellite delivery system.

**(5)** "Cablecast Signal" means a nonbroadcast signal that originates within the facilities of the cable communications system.

**(6)** "Cable Communications System" or "System" also referred to as "Cable Television System", "Cable System", "CATV System" or "Community Antenna TV System" means a facility crossing or using the public rights-of-way, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:

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

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

**(C)** A facility of a common carrier, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or

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

**(7)** "Cable-mile" means a linear mile of strand-bearing cable as measured on the street or easement from pole to pole or pedestal to pedestal.

**(8)** "Cable Service" means the total of the following:

**A.** The one-way transmission to subscribers of video programming, or other programming services; and

**B.** Subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

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

**(10)** "City Manager" means the City Manager of the City of Salem or any designee thereof.

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

**(12)** "Commence Operation" means that time and date when operation of the cable communications system is considered to have commenced which shall be when sufficient distribution facilities have been installed so as to permit the offering of full service to a dwelling unit located within the franchise area and such services are actually subscribed to by a resident of the franchise area.

**(13)** "Commercial Use" means the channel capacity designated for commercial use as defined and required by federal law.

- (14) "Completion of Construction" means that point in time when all distribution facilities have been installed by the Grantee so as to permit the offering of cable service to all of the potential subscribers to whom the system has access in the franchise area, as well as the provision, in an operational state, of any facilities required by the franchise agreement and which meet reasonable density requirements as specified in the franchise agreement.
- (15) "Converter" means an electronic device which converts signal carriers from one form to another.
- (16) "Council" means the governing body of the City of Salem.
- (17) "Educational Access Channel" means a channel on which the primary programmers are noncommercial educational institutions.
- (18) "FCC" means the Federal Communications Commission and any legally appointed or elected successor.
- (19) "Franchise" means an initial authorization, or renewal thereof, issued by the Common Council, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system.
- (20) "Franchise Agreement" means a contractual agreement, provided for under this chapter, containing the specific provisions of the franchise granted, including referenced specifications, franchise applications, franchise requirements, and other related materials.
- (21) "Franchise Fee" means any fee or assessment of any kind imposed by a franchising authority on a Grantee as compensation for the Grantee's use of the public rights-of-way. The term "franchise fee" does not include:
- (A) Any tax, fee or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee or assessment which is unduly discriminatory against cable operators or cable subscribers);
  - (B) Capital costs which are required by the franchise to be incurred by Grantee for public, educational, or governmental access facilities;
  - (C) Requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or
  - (D) Any fee imposed under Title 17, United States Code.
- (22) "Government Access Channel" means a channel on which the Grantor is the primary programmer.
- (23) "Grantee" means any "person" receiving a franchise pursuant to this chapter and under the granting franchise ordinance, and its lawful successor, transferee or assignee.
- (24) "Grantor" or "City" means the City of Salem as represented by the Common Council or any delegate acting within the scope of authority delegated by the Common Council.
- (25) "Gross Annual Receipts" means the annual gross revenues received by the Grantee or any affiliate of the Grantee in whatever form accrued from the provision of all services over the Cable Television System within the City utilizing the public streets and rights-of-way for which a franchise is required in order to deliver such service, excluding refundable deposits, rebates or credits, except that any sales, excise or other taxes or charges collected for direct pass-through to local, State or Federal government, other than the franchise fee, shall not be included in the calculations of

gross receipts.

**(26)** "Initial Service Area" means the area of the City which will receive service initially, as set forth in any franchise agreement.

**(27)** "Installation" means the connection of the system to subscribers' terminals, and the provision of service.

**(28)** "Local Origination Channel" means any channel where the Grantee or its designated agent is the primary designated programmer, and provides video programs to subscribers.

**(29)** "Nonbroadcast Signal" means a signal that is provided by a cable communications system and that is not involved in an over-the-air broadcast transmission path or is received by a cable system by means of a microwave or satellite delivery system.

**(30)** "Pay-Cable" or "Pay-Television" means the delivery to subscribers, over the cable communications system, of television signals for a fee or charge to subscribers over and above the charge for basic cable service, on a per program, per channel, or other subscription basis.

**(31)** "Person" means an individual, partnership, association, joint stock company, trust, corporation, limited liability company or governmental entity.

**(32)** "Private Channel" or "Closed-Circuit Channel" means any channel which is available only to subscribers who are provided with special converter or terminal equipment to receive signals on that channel.

**(33)** "Programmer" means a person or entity who or which produces or otherwise provides program material or information for transmission by video, audio, digital, or other signals, either live or from recorded tapes or other storage media, to subscribers, by means of the cable communications system.

**(34)** "Public Access Channel" means a channel on which the primary programmers are noncommercial community organizations or individuals of the public operating under rules established by the Grantor.

**(35)** "Public, Educational or Government Access Facilities" or PEG Access Facilities" means the total of the following:

(A) Channel capacity designated for public, educational, or governmental use; and

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

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

**(37)** "Residential Subscriber" means a subscriber who receives with Grantee's authorization, a service in an individual dwelling unit, where the service is not to be utilized in connection with a business, trade, or profession.

**(38)** "School" means any accredited, nonprofit, academic educational institution including primary and secondary schools, colleges and universities, both public and private.

**(39)** "Section" means any section, subsection, or provision of this chapter.

**(40)** "Service Area" or "Franchise Area" means the entire geographic area within the City as it is now constituted or may in the future be constituted, unless otherwise specified in the franchise.

**(41)** "Service Tier" means a category of cable service or other services provided by Grantee and for which a separate rate is charged by the Grantee.

**(42)** "State" means the State of Oregon.

**(43)** "Street" or "Public Ways" or "Public Rights-of-Way" mean each of the following

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

(44) "Subscriber" means any person, who or which elects to subscribe to, for any purpose, a service provided and authorized by the Grantee by means of or in connection with the cable system, and who pays the charges therefor. (Ord No. 38-87; Ord No. 63-94)

## **GRANT OF FRANCHISE**

### **43.020. Grant.**

(a) In the event that the Grantor shall grant to a Grantee a nonexclusive, revocable franchise to construct, operate, maintain, and reconstruct, a cable communications system within the franchise area, or a renewal of an existing franchise, said franchise or renewal shall constitute both a right and an obligation to provide the services of a cable communications system as required by the provisions of this chapter and the franchise agreement. The franchise agreement shall include those provisions of the Grantee's application for franchise or application for renewal that are finally negotiated and accepted by the Grantor and Grantee.

(b) Any franchise granted under the terms and conditions contained herein shall be consistent with Federal and State laws and regulations. In the event of conflict between the terms and conditions of the franchise and the general law and/or statutory requirements, the latter shall, without exception, control.

Any franchise granted is hereby made subject to the general provisions of this chapter now in effect or hereafter made effective, except to the extent that those provisions thereafter made effective increase the material burdens or diminish the rights of the Grantee under the franchise. Nothing in the franchise shall be deemed to waive the requirements of the other codes and ordinances of the Grantor regarding permits, fees to be paid or manner of construction. (Ord No. 38-87; Ord No. 63-94)

**43.025. Franchise Required.** No cable communications system shall be allowed to occupy or use the streets in the franchise area or be allowed to operate without a franchise in accordance with the provisions of this chapter. (Ord No. 38-87)

**43.030. Establishment of Franchise Requirements.** The Grantor may establish appropriate requirements for franchises granted pursuant to this chapter and may modify these requirements from time to time. Such requirements shall not be retroactive to franchises then in effect, but shall become applicable when the franchise is renewed. (Ord No. 38-87)

**43.035. Franchise Area.** The Grantor may grant a franchise for all portions of the City. The service area shall be the entire territory defined in the franchise agreement. The initial service area shall be that portion of the franchise area scheduled to receive initial service, as stated in the franchise agreement. (Ord No. 38-87)

**43.040. Use of Public Streets and Ways.** For the purpose of operating and maintaining a cable communications system in the franchise area, and subject to the provisions of SRC 43.225, the Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the public streets and ways within the franchise area such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of the cable communications system.

Prior to construction, repair or alteration requiring permits or street cuts in the street surface, the Grantee shall notify the City for purposes of determining ownership of cuts at a later date if failure occurs. However, the Grantee shall, in each case, file plans with the appropriate Grantor agencies and local utility companies, and receive written approval before proceeding. Grantee shall in any event comply with all applicable Grantor construction codes and procedures. (Ord No. 38-87)

**43.045. Duration.** The term of any franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be as specified in the franchise agreement unless terminated sooner as hereinafter provided. The effective date of the franchise shall be the date of execution of the franchise agreement by the Grantor, subject to prior execution by the Grantee. (Ord No. 38-87)

**43.050. Franchise Nonexclusive; Limiting Number of Franchises.**

(a) Any franchise granted shall be nonexclusive. Grantor may grant any number of franchises subject to applicable State and Federal law. Grantor may limit the number of franchises granted, based upon, but not necessarily limited to, the requirements of applicable law and specific local considerations such as:

(1) The capacity of the public rights-of-way to accommodate multiple cables in addition to the cables, conduits and pipes of the utility systems, such as electrical power, telephone, gas and sewerage.

(2) The benefits that may accrue to cable subscribers as a result of cable system competition, such as lower rates and improved service.

(3) The disadvantages that may result from cable system competition, such as the requirement for multiple pedestals on residents' property, and the disruption arising from numerous excavations of the rights-of-way.

(b) Each Grantee awarded a franchise to serve the entire City shall offer universal service to all residences in the City, in accordance with construction and service schedules provided in the franchise agreement between Grantor and Grantee, and consistent with applicable law.

(c) Developers of new residential housing with underground utilities shall provide conduit to accommodate cables for at least two (2) cable systems.

(d) Grantor may require that any new Grantee be responsible for its own underground trenching and the costs associated therewith, if, in Grantor's opinion, the rights-of-way in any particular area cannot feasibly and reasonably accommodate additional cables. (Ord No. 38-87; Ord No. 63-94)

**43.055. Franchise Applications.**

(a) Any person desiring an initial franchise for a cable television system shall file an application with the City. A reasonable nonrefundable application fee established by the City shall accompany the application to cover all costs associated with processing and reviewing the application, including without limitation costs of administrative review, financial, legal and technical evaluation of the applicant, consultants (including technical and legal experts and all costs incurred by such experts), notice and publication requirements with respect to the consideration of the application and document preparation expenses. In the event such costs exceed the application fee, the selected applicant(s) shall pay the difference to the City within thirty (30) days following receipt of an itemized statement of such costs.

(b) An application for an initial franchise for a cable television system shall contain, where applicable:

(1) A statement as to the proposed franchise and service area;

(2) A resume of the prior history of the applicant, including the expertise of the applicant in the cable television field;

- (3) A list of the partners, general and limited, of the applicant, if a partnership, or the percentage of stock owned or controlled by each stockholder, if a corporation;
- (4) A list of officers, directors and managing employees of the applicant, together with a description of the background of each such person;
- (5) The names and addresses of any parent or subsidiary of applicant or any other business entity owning or controlling the applicant in whole or in part, or owned or controlled in whole or in part by the applicant;
- (6) A current financial statement of the applicant verified by a Certified Public Accountant audit or otherwise certified to be true, complete and correct to the reasonable satisfaction of the City;
- (7) A proposed construction and service schedule;
- (8) Any reasonable additional information that the City deems applicable. (Ord No. 38-87; Ord No. 63-94)

**43.060. Grant Procedure.**

- (a) Upon receipt of any application for an initial franchise, the City Manager shall prepare a report and make recommendations respecting such application to the Common Council.
- (b) A public hearing shall be set prior to any initial franchise grant, at a time and date approved by the Council. Within thirty (30) days after the close of the hearing, the Council shall make a decision based upon the evidence received at the hearing as to whether or not the franchise(s) should be granted, and, if granted, subject to what conditions. The Council may grant one (1) or more franchises, or may decline to grant any franchise.
- (c) Any grant of a franchise shall become effective through the execution by the Grantor and Grantee of a franchise agreement subject to the terms and conditions of this chapter. (Ord No. 38-87; Ord No. 63-94)

**43.065. Transfer of Ownership or Control.**

- (a) Grantee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation or otherwise, the franchise or any of the rights or privileges therein granted, without the prior consent of the Council and then only upon such terms and conditions as may be prescribed by the Council, which consent shall not be unreasonably denied or delayed. Any attempt to sell, transfer, lease, assign or otherwise dispose of the franchise without the consent of the Council shall be null and void. The granting of a security interest in any Grantee assets, or any mortgage or other hypothecation, shall not be considered a transfer for the purposes of this section. A transfer of the franchise from one or more wholly-owned subsidiaries of Grantee's parent company to another wholly-owned subsidiary of Grantee's parent shall not require prior Grantor consent.
- (b) The requirements of Subsection (a) shall apply to any change in control of Grantee. The word "control" as used herein is not limited to major stockholders or partnership interests, but includes actual working control in whatever manner exercised. In the event that Grantee is a corporation, prior authorization of the Council shall be required where ownership or control of more than ten percent (10%) of the voting stock of Grantee is acquired by a person or group of persons acting in concert, none of whom own or control the voting stock of the Grantee as of the effective date of the franchise, singularly or collectively.
- (c) Grantee shall notify Grantor in writing of any foreclosure or any other judicial sale of all or a substantial part of the franchise property of the Grantee within Grantor's jurisdiction or upon the termination of any lease or interest covering all or a substantial part of said franchise property. Such notification shall be considered by Grantor as notice that a change in control of ownership of the franchise has taken place and the provisions under this Section governing the

consent of Grantor to such change in control of ownership shall apply.

(d) For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, Grantor may inquire into the qualifications of the prospective transferee or controlling party, and Grantee shall assist Grantor in such inquiry. In seeking Grantor's consent to any change of ownership or control, Grantee shall have the responsibility of insuring that the transferee completes an application in form and substance reasonably satisfactory to Grantor, which application shall include the information required under SRC

43.055. An application shall be submitted to Grantor not less than sixty (60) days prior to the date of transfer. The transferee shall be required to establish that it possesses the qualifications and financial and technical capability to operate and maintain the system and comply with all franchise requirements for the remainder of the term of the franchise. If the legal, financial, character, and technical qualifications of the applicant are satisfactory, the Grantor shall consent to or deny the transfer of the franchise within one hundred twenty (120) days after receipt of the transfer request. The consent of the Grantor to such transfer shall not be unreasonably denied or delayed.

(e) Any financial institution having a pledge of the Grantee or its assets for the advancement of money for the construction and/or operation of the franchise shall have the right to notify the Grantor that it or its designee satisfactory to the Grantor shall take control of and operate the cable television system, in the event of a Grantee default of its financial obligations. Further, said financial institution shall also submit a plan for such operation within thirty (30) days of assuming such control that will insure continued service and compliance with all franchise requirements during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the system for a period exceeding one (1) year unless extended by the Grantor in its discretion and during said period of time it shall have the right to petition the Grantor to transfer the franchise to another Grantee.

(f) Upon transfer, Grantee shall reimburse Grantor for Grantor's reasonable processing and review expenses in connection with a transfer of the franchise or of control of the franchise, including without limitations costs of administrative review, financial, legal and technical evaluation of the proposed transferee, consultants (including technical and legal experts and all costs incurred by such experts), notice and publication costs and document preparation expenses. Any such reimbursement shall not be charged against any franchise fee due to Grantor during the term of the franchise. (Ord No. 38-87; Ord No. 63-94)

**43.070. Franchise Renewal.** Franchise renewal shall be as prescribed by applicable law. Grantor and Grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the franchise. Upon mutual execution of a franchise renewal agreement, Grantee shall reimburse Grantor for special nonrecurring out-of-pocket costs incidental to the franchise renewal award including but not limited to attorney and consultant costs and publishing costs, not to exceed any maximum specified in the agreement. Any such reimbursement shall not be charged against any franchise fee due to the Grantor during the term of the franchise. (Ord No. 38-87; Ord No. 63-94)

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

Any conflict between the provisions of this chapter and any other present or future lawful exercise of the Grantor's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the jurisdiction or applies exclusively to any cable communications

system franchise which contains provisions inconsistent with this chapter shall prevail only if upon such exercise the Grantor finds any emergency exists constituting a danger to health, safety, property or general welfare or such exercise is mandated by law. (Ord No. 38-87)

#### **43.080. Franchise Fee.**

(a) Annual Franchise Payment. A Grantee of a franchise hereunder shall pay to the Grantor an annual fee in an amount as designated in the franchise agreement. Such payment shall be in addition to any other prescribed fees, including, but not limited to, business license and

permit fees, and commence as of the effective date of the franchise. The Grantor, upon request, shall be furnished a statement, either audited and certified by an independent Certified Public Accountant or certified by a financial officer of the Grantee, reflecting the total amounts of gross receipts and all payments, deductions and computations for the period covered by the payment. Grantor shall have the right to conduct an independent audit of Grantee's records, and if such audit indicates a franchise fee underpayment of two percent (2%) or more, the Grantee shall assume all reasonable costs of such an audit.

(b) Acceptance by Grantor. No acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for further or additional sums payable as a franchise fee under this ordinance or for performance of any other obligation of the Grantee. All amounts paid shall be subject to audit and recomputation by the Grantor for a maximum period of three (3) years.

(c) Failure to Make Required Payment. In the event that any franchise payment or recomputed amount is not made on or before the dates specified in the franchise agreement. Grantee shall pay as additional compensation:

(1) An interest charge, computed from such due date, at an annual rate equal to the statutory interest rate in effect upon the due date.

(2) A sum of money, as liquidated damage, equal to five percent (5%) of the amount due in order to defray those additional expenses and costs incurred by the Grantor by reason of delinquent payment.

(d) Franchise fee payments shall be made in accordance with the schedule indicated in the franchise agreement.

(e) Any Grantee franchise fee costs may be passed through to subscribers and designated as a separate line item on subscribers' bills, in accordance with Federal law. (Ord No. 38-87)

#### **43.085. Forfeiture or Revocation.**

(a) Grounds for Revocation. The Grantor reserves the right to terminate or revoke any franchise granted hereunder and rescind all rights and privileges associated with it in the following circumstances, each of which shall represent a default by Grantee and a material breach under the franchise grant:

(1) If the Grantee should default in the performance of any of its material obligations under this chapter or under the franchise agreement and such default continues for thirty (30) days after receipt of due notice and reasonable opportunity to cure the default;

(2) If the Grantee should fail to provide or maintain in full force and effect the insurance coverage and security fund as required in the franchise agreement.

(3) If the Grantee shall willfully violate any order or ruling of any regulatory body having jurisdiction over the Grantee relative to the Grantee's franchise, unless such order or ruling is being contested by Grantee by appropriate proceedings conducted in good faith;

(4) If the Grantee practices any fraud or deceit upon the Grantor.

(5) If the Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt.

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

(1) The Grantor may make written demand that the Grantee do so comply with any such material requirement, limitation, term, condition, rule or regulation or correct any action deemed cause for revocation. If the failure, refusal or neglect of the Grantee continues for a period of thirty (30) days following such written demand, the Grantor may place the issue of termination of the franchise upon a regular Council meeting agenda. The Grantor shall cause notice to be served upon such Grantee specifying the

grounds therefor, at least ten (10) days prior to the date of such meeting, a written notice of this intent to request such termination, and the time and place of the meeting, notice of which shall be published at least once, ten (10) days before such meeting in a newspaper of general circulation within the franchise area.

(2) The Grantor shall hear any person interested therein on the grounds set forth in the notice described in subsection (a) and the Grantee shall be afforded fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence, to be represented by counsel and to question witnesses. Then, the Grantor shall determine, based upon the preponderance of the evidence, whether the Grantee has committed a material breach of this chapter or the franchise agreement, and, if so, whether such breach was willful.

(3) If the Grantor determines that the Grantee has willfully committed a material breach or otherwise fails to remedy a material breach, then the Grantor may, by resolution, declare that the franchise of such Grantee shall be terminated and security fund and bonds forfeited, or the Grantor may, at its option and if the material breach is capable of being cured by the Grantee, direct the Grantee to take appropriate remedial action within such time and manner and upon such terms and conditions as the Grantor shall determine are reasonable under the circumstances.

(4) Any decision to revoke shall be made by a vote of a majority of the full Council, shall be in writing and shall be based upon findings of fact. Grantee shall have the right to have such determination of revocation reviewed in a court of appropriate jurisdiction. (Ord No. 38-87; Ord No. 63-94)

**43.090. Procedures in the Event of Termination or Expiration.**

**(a) Disposition of Facilities.** In the event a franchise expires, is revoked, or otherwise terminated, the Grantor may require the Grantee to remove, at its own expense, all above ground system facilities and other portions of the cable system as determined to be in the best interest of public safety within a reasonable time.

**(b) Restoration of Property.** In removing its plant, structures and equipment, the Grantee shall restore, at its own expense, any excavation or facility that has been affected during the removal process and shall leave all public ways facilities in as good condition as that prevailing prior to the Grantee's removal of its equipment and appliances without affecting the electrical or telephone cable wires, or attachments. The liability, indemnity and insurance, and the security fund and bonds provided shall continue in full force and effect during the period of removal and until full compliance by the Grantee with the terms and conditions of this Section.

**(c) Restoration by Grantor, Reimbursement of Costs.** In the event of a failure by the Grantee to complete any work required by subsection (a) above and/or subsection (b) above, or any other work required by Grantor by law or ordinance within the time as may be established and to the satisfaction of the Grantor, the Grantor may cause such work to be done and the Grantee

shall reimburse the Grantor the cost thereof within thirty (30) days after receipt of an itemized list of such costs or the Grantor may recover such costs through the security fund or bonds provided by Grantee. The Grantor shall be permitted to seek legal and equitable relief to enforce the provisions of this section. Any property remaining in place one (1) year after the termination of the franchise shall be considered abandoned in place. In such cases, the property in the public right-of-way shall become that of the City and Grantee shall submit to the Director of Public Works, an instrument in writing, transferring ownership of such property to the City.

(d) Grantor's Rights Not Affected. The termination and forfeiture of any franchise shall in no way affect any of the rights of the Grantor to pursue any remedy under the franchise or any provision of law. (Ord No. 38-87; Ord No. 63-94)

**43.095. Receivership and Foreclosure.**

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

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

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

(b) In the case of a foreclosure or other involuntary sale of the plant, property and equipment of the Grantee, or any part thereof, the Grantor may serve notice of termination upon the Grantee and to the purchaser at such sale, in which event the franchise and all rights privileges of the Grantee hereunder shall cease and terminate thirty (30) days after service of such notice, unless:

(1) The Grantor shall have approved the transfer of the franchise, as and in the manner in this chapter provided; and,

(2) Such successful purchaser shall have covenanted and agreed with the Grantor to assume and be bound by all the terms and conditions of the franchise agreement. (Ord No. 38-87)

**43.097. Abandonment or Removal of Franchise Property.**

(a) In the event that the use of any property of Grantee within the public rights of way is discontinued for a continuous period of twelve (12) months, Grantee shall be deemed to have abandoned that franchise property. Any part of the cable system that is parallel or redundant to other parts of the system and is intended for use only when needed as a backup for the system or a part thereof, shall not be deemed to have been abandoned because of its lack of use.

(b) Grantor, upon such terms as Grantor may impose, may give Grantee permission to abandon, without removing, any system facility or equipment laid, directly constructed, operated or maintained under the franchise. Unless such permission is granted or unless otherwise provided in this chapter, the Grantee shall remove all abandoned above-ground facilities and equipment upon receipt of written notice from Grantor and shall restore any affected street to its former state at the time such facilities and equipment were installed,

reasonable wear and tear excepted, so as not to impair its usefulness. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles, or attachments. Grantor shall have the right to inspect and approve the condition of the public ways, public places, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this chapter and the security fund as provided herein shall continue in full force and effect during the period of removal and until full compliance by Grantee with the terms and conditions of this Section.

(c) Upon abandonment of any franchise property in place, the Grantee, if required by the Grantor, shall submit to the Grantor an instrument, satisfactory in form to the Grantor,

transferring to the Grantor the ownership of the franchise property abandoned.

(d) At the expiration of the term for which the franchise is granted, or upon its termination or earlier expiration, as provided herein, in any such case without renewal, extension or transfer, the Grantor shall have the right to require Grantee to remove, at its own expense, all above-ground portions of the cable television system from all streets and public ways within the City within a reasonable period of time, which shall not be less than one hundred eighty (180) days.

(e) Notwithstanding anything to the contrary set forth in this chapter, the Grantee may abandon any underground franchise property in place so long as it does not materially interfere with the use of the street or public rights-of-way in which such property is located or with the use thereof by any public utility or other cable Grantee. (Ord No. 63-94)

**43.100. Franchise Processing Costs.** For either a new franchise award or a franchise renewal, costs to be borne by Grantee shall include, but shall not be limited to, all costs of publications of notices prior to any public meeting provided for pursuant to a franchise, development and publication of relevant ordinances and franchise agreement, fees, and any reasonable cost not covered by the application fees, incurred by the Grantor in its study, preparation of proposal solicitation documents and evaluation of applications, including, but not limited to consultant and attorney fees and Grantor staff time.

These franchise processing costs shall be independent of the construction inspection and permit fees specified in SRC 43.230(a)(1) and the franchise fee specified in SRC 43.080 herein. (Ord No. 38-87)

## **REGULATION OF FRANCHISE**

**43.105. Regulatory Authority.** The Grantor shall exercise appropriate regulatory authority under the provisions of this chapter and applicable law. If the franchise area served by the cable communications system also serves other contiguous or neighboring communities, Grantor may, at its sole option, participate in a joint regulatory agency, with delegated responsibility in the area of cable and related communications. (Ord No. 38-87)

### **43.110. Regulatory Responsibility.**

(a) The Grantor, acting alone or acting jointly with other Grantors, may exercise or delegate regulatory responsibility, including, but not limited to, the following areas:

(1) Administering and enforcing the provisions of the cable communications system franchise(s).

(2) Coordination of the operation of public, educational and government access channels and facilities.

(3) Providing technical, programming and operational support to public agency users, such as government departments, schools and health care institutions.

- (4) Establishing procedures and standards for use of channels dedicated to PEG access use, if provided for in any franchise agreement.
- (5) Planning expansion and growth of public benefit cable services.
- (6) Analyzing the possibility of integrating cable communications with other local, State or national telecommunications networks.
- (7) Formulating and recommending long-range telecommunications policy. (Ord No. 38-87)

**43.115. Public Usage of the System.**

(a) If so specified in the franchise agreement, the Grantor may utilize a portion of the cable communications system capacity, set aside by the Grantee and associated facilities and resources, to develop and provide cable services that will be in the public interest. In

furtherance of this purpose, the Grantor may establish a commission, public corporation, or other entity to receive and allocate facilities, support funds and other considerations provided by the Grantee, and/or others. Such an entity, if established, may be delegated the following responsibilities:

- (1) Receive utilize or reallocate for utilization, channel capacity, facilities, funding and other support provided specifically for public usage of the cable communications system.
- (2) Review the status and progress of each service developed for public benefit.
- (3) Reallocate resources on a periodic basis to conform with changing priorities and public needs.
- (4) Report to the Grantor annually on the utilization of resources, the new public services developed and the benefits achieved for the Grantor and its residents. (Ord No. 38-87)

**43.120. PEG Access Facility Management.**

(a) Intent. It is the intent of the Grantor to insure that PEG access facilities provided for in any franchise agreement, shall be managed in the best public interest so that programming using such facilities will be open to all residents, and available for all forms of public expression, community information and debate of public issues. Pursuant to these objectives, the Grantor may delegate the responsibility for PEG access facility management to a nonprofit entity which may include, but not be limited to, any of the following:

- (1) A nonprofit public corporation.
- (2) A PEG access facility management commission or committee, appointed by Grantor, and representing a broad spectrum of the community.
- (3) An established nonprofit entity with special cablecasting capability, such as local or regional community college.
- (4) An intergovernmental entity created pursuant to ORS Chapter 190.

(b) Functions. The entity designated to manage the PEG access facilities shall have the following functions:

- (1) To assume responsibility for and management of the public access facilities as may in the franchise agreement be designated for community-based programming. Community channels may include public, educational and government access channels, as designated in the franchise agreement.
- (2) To assure that the PEG access facilities are made available to all residents of the franchise area on a nondiscriminatory, first-come, first-served basis.
- (3) To assure that no censorship or control over program content of the PEG access

facilities exists except as necessary to comply with Federal prohibition of material that is obscene.

(4) To devise, establish, and administer all rules, regulations, and procedures pertaining to the use and scheduling of the PEG access facilities.

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

(6) To hire and supervise staff.

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

(8) To develop sources of funding, such as foundation or Federal or State grants, to further community programming.

(9) To perform such other functions relevant to the PEG access facilities as may be appropriate.

(10) To establish budgets on an annual basis, and utilize funds and resources received from the Grantor or the public usage entity designated in SRC 43.115, for the purpose of PEG access programming.

(c) Access Rules. The PEG access facility management entity shall complete a set of rules for the use of the PEG access facilities which shall be promptly forwarded to the Grantor. The rules shall be prepared in cooperation with the Grantee, and confirmed by agreement between the PEG access facility management entity and the Grantee. The rules shall, at a minimum, provide for:

(1) Access on a first-come, first-served, nondiscriminatory basis for all residents of the franchise area.

(2) Prohibition of commercial or political use.

(3) Prohibition of any presentation of obscene or indecent material.

(4) Public inspection of the log of producers, which shall be retained by the PEG Access Facility Management for a period of four (4) years.

(5) Procedures by which individuals or groups who violate any rule may be prevented from further access to the facilities.

(6) Use of such reasonable amounts of channel time, cablecasting facilities, and technical support as are provided for in the agreement between the PEG access facility management entity and the Grantee.

(d) PEG Access Facility Management Entity Reports to Grantor. The PEG access facility management entity shall provide a report to the Grantor, at least annually, indicating achievements in community-based programming and services. (Ord No. 38-87)

**43.125. Reservation by Grantor.** The Grantor reserves the right, at its discretion, from time to time, to determine if the entities described in SRC 43.115 and 43.120 above are performing their purposes in a manner satisfactory to the Grantor, and if they are not, the Grantor may receive and reallocate all or a portion of the channel capacity operations appropriation, and capital appropriation, including any facilities and equipment purchased previously with such appropriation, to another entity. A new entity shall be required to comply in all respects with the legal responsibilities described in SRC 43.115 and 43.120. (Ord No. 38-87)

**43.130. Rates.**

(a) The Grantee shall establish rates for its service categories that shall be applied fairly and uniformly to all subscribers in the franchise areas.

(b) Schedule of Rates. The Grantee shall maintain and file with the Grantor, a complete schedule of subscriber rates including all fees and charges for services. The Grantee shall notify the Grantor at least thirty (30) days prior to any change in rates.

(c) No Consideration Beyond Schedule. The Grantee shall receive no consideration whatsoever for, or in connection with, its provision of service to its subscribers other than as filed with the Grantor. (Ord No. 38-87)

**43.135. Rate Change Procedure.** The following procedure shall be utilized to the extent that Grantor regulation of rates is not preempted, and Grantor desires to exercise rate regulation:

- (a) Within thirty (30) days of the filing of a petition for rate change for any rates subject to Grantor regulation, the Grantor shall hold an appropriate public hearing to consider the proposed rate change, at which hearing all persons desiring to be heard, including Grantee, shall be heard on any related matter, including but not limited to, the performance of its franchise, the Grantee's services, and the proposed new rates.
- (b) Upon notice of any public hearing as provided above, the Grantor shall notify subscribers of the time, place and subject matter of the public hearing by announcement for at least two (2) consecutive days prior to the hearing.
- (c) Within thirty (30) days after said hearing, the Grantor shall render a written decision on the Grantee's petition, either accepting, rejecting, modifying or deferring the same and reciting the basis for its decision. The Grantor shall consider the following factors in approving or disapproving the petition:
  - (1) Grantee's substantial fulfillment of all material requirements for the franchise.
  - (2) Quality of service, as indicated by the number and type of service complaints, Grantee's response to complaints, and the result of periodic system performance tests and the annual reviews specified in SRC 43.140.
  - (3) Prevailing rates for comparable services in other cable systems of similar size and complexity.
  - (4) Rate of return on Grantee's equity, as compared to businesses of equivalent risk.

**43.140. Annual Review of Quality of Service.** At Grantor's sole option, within ninety (90) days of the first anniversary of the effective date of each franchise, and each year thereafter from time to time throughout the term of the franchise, the Grantor and Grantee shall meet publicly to review the performance and quality of service of the cable communications system. The reports required in SRC 43.270 to 43.295 regarding subscriber complaints, the records of performance tests and the opinion survey report shall be utilized as the basis for review. In addition, any subscriber may submit comments during the review meetings, either orally or in writing, and these shall be considered.

- (a) Within thirty (30) days after the conclusion of the quality of service review meetings, Grantor shall issue a report with respect to the adequacy of system performance and quality of service. If inadequacies are found, Grantor may direct Grantee to correct the inadequacies within a reasonable period of time.
- (b) Failure of Grantee, after due notice, to correct the inadequacies may be considered a material breach of the franchise, and Grantor may, at its sole discretion, exercise any remedy within the scope of this chapter considered appropriate. (Ord No. 38-87)

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

- (a) At Grantor's sole option, the Grantor and Grantee may hold a system and services review session on or about the third anniversary date of the franchise agreement. Subsequent system review sessions may be scheduled by the Grantor approximately each three (3) years thereafter.

(b) Topics for discussion and review at the system and services review sessions shall include, but shall not be limited to, services provided, application of new technologies, system performance, programming, subscriber complaints, user complaints, rights of privacy, amendments to the franchise, undergrounding processes, developments in the law, and regulatory constraints, and technical and economic feasibility of system expansion or upgrading.

(c) Either the Grantor or the Grantee may select additional topics for discussion at any review session.

(d) When there have been repeated, reasonably documented complaints made or where there exists other evidence which, in the judgment of the Grantor, casts reasonable doubt on the reliability or quality of cable service to the effect that the Grantee is not in compliance with the requirements of this chapter or its franchise, the Grantor shall have the right to require the Grantee to test, analyze and report on the performance of the system in order to protect the public against substandard cable service. Grantor may not compel Grantee to provide such tests or reports unless and until Grantor has provided Grantee with at least thirty (30) days

notice of its intention to exercise its rights under this Section and has provided Grantee with an opportunity to be heard prior to its exercise of such rights. Such test or tests shall be made and the report shall be delivered to the Grantor no later than thirty (30) days after the Grantor notifies the Grantee that it is exercising such right, and shall be made at Grantee's sole cost. Such report shall include the following information: The nature of the complaints which precipitated the special tests, what system component was tested, the equipment used and procedures employed in said testing, the results of such tests, and the method by which such complaints were resolved. Any other information pertinent to the special test shall be recorded. (Ord No. 38-87; Ord No. 63-94)

## **GENERAL FINANCIAL AND INSURANCE PROVISIONS**

### **43.150. Construction Bond.**

(a) Within thirty (30) days after the granting of a franchise and prior to the commencement of any construction work by the Grantee, the Grantee may file with the Grantor a construction bond in the amount specified in the franchise agreement in favor of the Grantor and any other person who may suffer damages as a result of the breach of any duty by the Grantee assured by such bond.

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

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

(d) Grantor, at its sole option, may waive this requirement, or permit consolidation of the construction bond with the performance bond and security fund specified, respectively in SRC 43.155 and 43.160. (Ord No. 38-87)

### **43.155. Performance Bond.**

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

(b) Such bond as contemplated herein shall be in the form approved by the Grantor.

(c) In no event shall the amount of said bond be construed to limit the liability of the Grantee for damages. (Ord No. 38-87)

**43.160. Security Fund.**

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

After completion of any system construction, rebuild or upgrade, the required amount of the security fund shall be reduced to a sum specified in the Franchise Agreement, all of which may be in the form of an irrevocable letter of credit.

The security fund may be assessed by the Grantor for purposes including, but not limited to, the following:

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

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

(c) Within thirty (30) days after notice to it that any amount has been withdrawn by the Grantor from the security fund pursuant to subsection (a) of this section, the Grantee shall deposit a sum of money sufficient to restore such security fund to the original amount.

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

(e) The security fund deposited pursuant to this section shall become the property of the Grantor in the event that the franchise is revoked for cause by reason of the default of the Grantee in accordance with the procedures of SRC 43.085 above. The Grantee, however, shall be entitled to the return of such security fund, or portion thereof, as remains on deposit no later than ninety (90) days after the expiration of the term of the franchise, provided that there is then no outstanding default on the part of the Grantee. The Grantee shall be entitled to any interest accrued on the cash portion of the security fund.

(f) The rights reserved to the Grantor with respect to the security fund are in addition to all other rights of the Grantor whether reserved by this chapter or authorized by law, and no action, proceeding or exercise of a right with respect to such security fund shall constitute an election of remedies or a waiver of any other right the Grantor may have. (Ord No. 38-87)

**43.165. Indemnification.**

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

- (1) The act of the Grantor in granting the franchise; and
- (2) The acts or omissions of Grantee, its servants, employees, or agents including, but not limited to, any failure or refusal by Grantee, its servants, employees or agents to comply with any obligation or duty imposed on Grantee by this chapter or the franchise agreement.
- (3) The exercise of any right or privilege granted or permitted by this chapter or the franchise agreement.

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

(b) In the event any such claims shall arise, the Grantor or any other indemnified party shall tender the defense thereof to the Grantee. Provided, however, that the Grantor in its sole discretion may participate in the defense of such claims at its expense, and in such event, Grantee shall not agree to any settlement of claims without Grantor approval. (Ord No. 38-87)

#### **43.170. Insurance.**

(a) The Grantee shall maintain throughout the term of the franchise, insurance in amounts at least as follows:

- (1) Worker's Compensation Insurance. In such coverage as may be required by the workers compensation insurance and safety laws of the State of Oregon and amendments thereto.
- (2) General Liability. "Comprehensive" or "Commercial" general liability insurance, including, but not limited to, coverage for bodily injury, personal injury and property damage shall be maintained at the sum(s) specified in the franchise agreement.
- (3) Comprehensive Automobile Liability. Comprehensive automobile liability including, but not limited to, non-ownership and hired car coverage as well as owned vehicles with coverage for bodily injury and property damage shall be maintained at the sum(s) specified in the franchise agreement.
- (4) Property loss. Fire insurance with coverage for extended perils on the franchise property used by Grantee in the conduct of franchise operations in an amount adequate to enable Grantee to resume franchise operations following the occurrence of any risk covered by this insurance.

(b) The Grantee shall furnish the Grantor with copies of such insurance policies and certificates of insurance.

(c) Such general liability and automobile liability insurance policies provided for herein shall name the Grantor, its officers, boards, commissions, agents, and employees as additional insured, and shall be primary to any insurance carried by Grantor. The insurance policies naming Grantor as additional insured shall be endorsed to require thirty (30) days written notice to the Grantor of intent by the company to cancel or not renew the insurance policy. Likewise, the Grantee shall give Grantor not less than thirty (30) days written notice of its intent not to renew any policy unless proof of replacement coverage has already been provided.

(d) The minimum amounts set forth in the franchise agreement for such insurance shall not be construed to limit the liability of the Grantee to the Grantor under the franchise issued hereunder to the amounts of such insurance.

(e) All insurance carriers providing coverage under subsection (a) of this section shall be duly licensed to transact insurance in the State of Oregon.

(f) All insurance required by this section shall be subject to review and approval by Grantor's City Attorney for sufficiency as to form and coverage, and shall be evidenced by a certificate of insurance issued by the insurance carrier or an authorized agent of the carrier in form acceptable to Grantor's City Attorney.

(g) Should the Grantee, for any reason, fail to maintain all required coverage continuously in effect during the term of the franchise, the franchise and all privileges associated therewith shall automatically be suspended without further notice and without recourse upon the first instance of such lapse of coverage, and shall remain suspended until all required coverage is in effect. Grantor may, in addition to relying on the automatic suspension provided herein, proceed with termination or revocation of the franchise as otherwise provided in this chapter.

(h) In order to account for increases in consumer prices, no more than once during any five (5) year period, Grantor shall have the right to order Grantee to increase the amounts of the insurance provided in the franchise. Such order may be made by Grantor after conducting a duly noticed public hearing. Increases in insurance coverage shall be based upon current prudent business practices of like enterprises involving the same or similar risks. (Ord No. 38-87; Ord No. 63-94)

## **DESIGN AND CONSTRUCTION PROVISIONS**

**43.175. System Design.** The cable communications system shall be constructed in accordance with the design, construction, or reconstruction requirements contained in the franchise agreement. (Ord No. 38-87)

**43.180. Geographical Coverage.** The Grantee shall design a new cable system in such a manner as to have the capability to pass by every single-family dwelling unit, multiple-family dwelling unit, school and public agency within the franchise area. Service shall be provided to subscribers in accordance with the schedules and line extension policies specified in the franchise agreement. Cable system construction and provision of service shall be non-discriminatory, and Grantee shall not delay or defer service to any section of the franchise area on the grounds of economic preference. (Ord No. 38-87)

**43.185. Cablecasting Facilities.** The Grantee shall provide cablecasting facilities in accordance with the requirements of the franchise agreement. (Ord No. 38-87)

### **43.190. System Construction Schedule.**

(a) The Grantee shall comply with the requirements of the system construction schedule contained in the franchise agreement.

(b) The Grantee shall provide a detailed construction plan indicating progress schedule, area construction maps, test plan, and projected dates for offering service. In addition upon request, the Grantee shall update this information showing specifically whether schedules are being met and the reasons for any delay of more than thirty (30) days. (Ord No. 38-87)

**43.195. Delay in Construction.** Grantee shall obtain all necessary permits and clearances. Within two (2) months after the effective date of a franchise, Grantee shall report to Grantor its estimate of the initial construction or reconstruction date. The initial date estimated after two (2) months may be used by Grantor as the presumptive construction or reconstruction starting date, with all construction requirements based on that date, provided, however, that Grantee may adjust its estimated initial date upon a showing of delays which are beyond its reasonable control or which are not reasonably foreseeable. (Ord No. 38-87)

**43.200. Remedies for Delay in Construction.** The Grantor may at its sole option, apply any or all of the remedies in connection with delays in system construction as specified in SRC 43.350 to 43.365 herein. (Ord No. 38-87)

**43.205. Provision of Service.** After service has been established by activating trunk cables for any area meeting the density requirements in the Franchise Agreement, the Grantee shall provide service to any requesting subscriber within the area within thirty (30) days from the date of request, provided such subscriber provides appropriate identification and pays any outstanding balance due on previous accounts and any advance charges required for new service. (Ord No. 38-87)

**43.210. Undergrounding of Cable.** The undergrounding of cable is encouraged. In any event, cables shall be installed underground at Grantee's cost where both telephone and electric utilities are already underground. Previously installed aerial cable shall be undergrounded and relocated in concert, and on a cost-sharing basis, with other utilities, when such other utilities may convert from aerial to underground construction. (Ord No. 38-87)

**43.215. Extensions; Undergrounding.** In cases of new development or property development where utilities are to be placed underground, the developer or property owner shall give Grantee reasonable notice of the particular date on which open trenching will be available for Grantee's installation of

conduit, pedestals and/or vaults, and laterals to be provided at Grantee's expense. Grantee shall also provide specifications as needed for trenching.

Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if Grantee fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five (5) day period, the cost of new trenching shall be borne by Grantee.

(a) New Development Undergrounding. In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give Grantee seven (7) days advanced notice of the particular date on which open trenching will be available for Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at Grantee's expense. Grantee shall also provide specifications as needed for trenching.

Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if Grantee fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five (5) day period, the cost of new trenching is to be borne by Grantee.

(b) The builder or developer shall provide the Grantee with sufficient conduit space, vaults and pedestals to enable the Grantee to furnish cable service in conformity with the requirements of this chapter and with such additional requirements relative to the operation of the Grantee's cable communications system as are reasonably foreseeable.

(c) Grantee shall not construct any cable system facilities until Grantee has secured the necessary permits from Grantor, or other cognizant public agencies.

(d) In those areas of the City where transmission lines or distribution facilities of the public utilities providing telephone and electric power service are underground, the Grantee likewise shall construct, operate and maintain its transmission and distribution facilities therein underground.

(e) In those areas of the City where the Grantee's cables are located on the above-ground transmission or distribution facilities of the public utility providing telephone or electric power

service, and in the event that the facilities of both such public utilities subsequently are placed underground, then the Grantee likewise shall reconstruct, operate and maintain its transmission and distribution facilities underground, at Grantee's cost. Certain of Grantee's equipment, such as pedestals, amplifiers and power supplies, which normally are placed above ground, may continue to remain in above-ground enclosures, unless otherwise provided in the franchise agreement. (Ord No. 38-87; Ord No. 63-94)

**43.220. Underground at Multiple-dwelling Units.** In cases of multiple dwelling units serviced by aerial utilities, Grantee shall make every effort to minimize the number of individual aerial drop cables giving preference to undergrounding of multiple drop cables between the pole and the dwelling unit. At the Grantor's request, the burden of proof shall be upon the Grantee to demonstrate why undergrounding of drop cable is technically or economically unfeasible. (Ord No. 38-87)

**43.225. Street Occupancy.**

(a) Grantee shall utilize existing telephone and power poles, conduits and other facilities with written permission by these franchisees, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property until written approval of the Grantor is obtained. Publicly owned poles such as traffic signals or street light poles may not be used. However, no location of any pole or wire holding structure of the Grantee shall be a vested interest and such poles or structure shall be removed or modified by the Grantee at its

own expense whenever the Grantor determines that the public convenience would be enhanced thereby.

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

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

(d) Grantee shall, at its own expense, and in a manner approved by the Grantor, restore to pre-existing conditions any damage or disturbance caused to the public way as a result of its operations or construction on its behalf.

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

(f) Grantee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities including its microwave path, subject to approval of the Grantor. Trimming of trees on private property shall require written consent of the property owner in non-emergencies.

(g) The Grantee at its expenses shall protect, support, temporarily disconnect, relocate, or remove any property of Grantee when, in the opinion of the Grantor the same is required by

reason of traffic conditions, public safety, street vacation, freeway or street grade, separation or realignment, installation of sewers, drains, water pipes, power line, signal line, transportation facilities, tracks or any other types of structure or improvements by governmental agencies whether acting in a governmental capacity, or any other structure or public improvement, including but not limited to movement of buildings, redevelopment, or any general program under which the Grantor shall undertake to cause any such properties to be located beneath the surface of the ground. Nothing hereunder shall be deemed a taking of the property of Grantee and Grantee shall be entitled to no surcharge by reason of anything hereunder.

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

(i) The Grantee shall make no paving cuts or curb cuts unless absolutely necessary, and only after written permission has been given by the Grantor and all necessary permits have been obtained.

(j) The Grantor reserves the right to require conduit under special conditions as required by the Director of Public Works. (Ord No. 38-87)

#### **43.230. Construction and Technical Standards.**

##### **(a) Construction Standards.**

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

(2) Compliance with Safety Codes. All construction practices shall be in accordance with all applicable sections of Federal and State Occupational Safety and Health Acts and any amendments thereto as well as all State and local codes where applicable.

(3) Compliance with Pole Attachment Standards. All aerial construction shall comply with the practices included in the Bell System Code of Pole Line Construction.

(4) Compliance with Electrical Codes. All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the provisions of the National Electrical Code (National Bureau of Fire Underwriters) and the National Electrical Safety Code (National Bureau of Standards), as amended, and all applicable State and local codes.

(5) Antennas and Towers. Antenna supporting structure (towers) shall be designed for the proper loading as specified in Electronics Industry Association's R.S.222-A specifications.

(6) Compliance with Aviation Requirements. Antennas support structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable State or local codes and regulations.

(7) Construction Standards and Requirements. All of the Grantee's plant and equipment, including but not limited to the antenna site, headend and distribution system towers, house connections, structures, poles, wire, cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed,

replaced, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not to endanger or interfere with improvements the Grantor may deem proper to make, or to interfere in any manner with the rights of any property owner, or to hinder or obstruct pedestrian or vehicular traffic.

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

**(b) Technical Standards.** The Grantee shall construct, install, operate and maintain its system in a manner consistent with all applicable laws, ordinances, construction standards, governmental requirements, FCC technical standards, and any detailed standards set forth in its franchise agreement. In addition, the Grantee shall provide to the Grantor, upon request, a written report of the results of the Grantee's periodic proof of performance tests conducted pursuant to FCC and franchise standards and guidelines.

**(c) Compliance Procedure.** Upon Grantor request, the Grantee shall submit, within sixty (60) days after the effective date of the franchise agreement, a detailed test plan describing the methods and schedules for testing the cable communications system on an ongoing basis to determine compliance with the provisions of the franchise agreement. The tests shall be in general conformance with the provisions of the Standards of Good Engineering Practices for Measurements on Cable Television Systems, issued by the National Cable Television Association, and performed at intervals no greater than twelve (12) months. The tests may be

witnessed by representatives of the Grantor, and written test reports shall be submitted to the Grantor if requested. If more than ten percent (10% of the locations tested fail to meet the performance standards, the Grantee shall be required to indicate what corrective measures have been taken, and the entire test shall be repeated. A second failure of more than ten percent (10%) may result, at the Grantor's option, in appropriate remedies. Repeated and verified failure to maintain specified technical standards or a failure to provide a written report of system results shall constitute a material breach of the franchise.

**(d) Special Tests.** At any time after commencement of service to subscribers the Grantor may require additional tests, full or partial repeat tests, different test procedures, or tests involving a specific subscriber's terminal. Requests for such additional tests will be made on the basis of complaints received or other evidence indicating an unresolved controversy or significant noncompliance, and such tests shall be limited to the particular matter in controversy. The Grantor shall endeavor to so arrange its requests for such special tests so as to minimize hardship or inconvenience to Grantee or to the subscriber. (Ord No. 38-87; Ord No. 63-94)

## **SERVICE PROVISIONS**

**43.235. Services to Be Provided.** The Grantee shall provide the initial services listed in the franchise agreement. (Ord No. 38-87)

**43.240. Basic Cable Service.** The "Basic Cable Service" shall include any service tier which includes the retransmission of local television signals. This service shall be provided to all subscribers at the established monthly subscription rates. (Ord No. 38-87)

**43.245. Basic Radio Service.** The "Basic Radio Service" shall include the availability of all audio services designated in the franchise agreement, including retransmission of local broadcast FM radio signals, and cablecast FM signals. This service shall be available to all subscribers at established monthly subscription rates. (Ord No. 38-87)

**43.250. Institutional Service.** If specified in the franchise agreement, the "Institutional Service" shall include the provision of transmission and/or reception services to institutional users, on a commercial use basis. Services may include the distribution of video or non-video signals. (Ord No. 38-87)

**43.255. Additional Subscriber Services.** "Additional Subscriber Services", not included in the services specified above, may be provided, either within the basic cable service rates, or on a premium basis, subject to applicable law. (Ord No. 38-87)

**43.260. Public, Educational and Government (Peg) Access Facilities.** The Grantee may be required to provide the PEG access facilities including channel capacity, necessary interface equipment and cabling to permit operation as specified in the franchise agreement. (Ord No. 38-87)

**43.265. Cable Channels for Commercial Use.** The Grantee shall designate channel capacity for commercial use as required by applicable law. (Ord No. 38-87)

#### **OPERATION AND MAINTENANCE**

**43.270. Open Books and Records.** The Grantor shall have the right to inspect at any time during normal business hours and with reasonable notice, all books, records, maps, plans, service complaint logs, performance test results and other like materials of the Grantee which relate to the operation of the franchise and are maintained at the office with the franchise area, provided that the Grantor shall maintain the confidentiality of any trade secrets or other proprietary information in the possession of the Grantee and provided further that records shall be exempt from inspection pursuant to this Section,

to the extent required by applicable laws regarding subscriber privacy and to the extent such records are protected by law against discovery in civil litigation.

If any such books or records are not kept in the local office, or upon reasonable request made available to the Grantor, and if the Grantor shall determine that an examination of such records is necessary or appropriate to the performance of any of Grantor's duties, then all travel and maintenance expense necessarily incurred in making such examination shall be paid by Grantee. (Ord No. 38-87)

#### **43.275. Records Required.**

(a) In any event the Grantee shall at all times maintain:

- (1) The complaint file required by SRC 43.390.
- (2) A full and complete set of plans, records and "as-built" maps showing the exact location of all cable communications system equipment installed or in use in the franchise territory, exclusive of subscriber service drops.
- (3) A record of all service calls and interruptions or degradation of service experienced for the preceding two (2) years, provided that such complaints result in or require a service call, subject to the subscriber's right of privacy.
- (4) A summary of service calls, identifying the number, general nature and disposition of such calls, on a monthly basis, in a form reasonably acceptable to the Grantor.

(b) The Grantor may impose reasonable requests for additional information, records and documents from time to time, provided they reasonably relate to the scope of the City's rights under this chapter or the Grantee's franchise. (Ord No. 38-87; Ord No. 63-94)

#### **43.280. Rights of Individuals.**

(a) Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of income level, race, color, religion, national

origin, age or sex. Grantee shall comply at all times with all other applicable Federal, State and local laws and regulations, and all executive and administrative orders relating to non-discrimination. Grantee may, from time to time, for research purposes, provide unique experimental program packaging or interactive services to customers served by specific system nodes. The nodes will be selected on a non-discriminatory basis representing broad community demographics.

(b) Grantee shall strictly adhere to the equal employment opportunity requirements of Federal, State and local law and regulations in effect on the dates of the franchise grant, and as amended from time to time.

(c) The Grantee's policy with regard to personally identifiable information shall be consistent with Federal law. Neither Grantee, nor any person, agency, or entity shall, without the subscriber's consent, tap, or arrange for the tapping, of any cable, line, signal input device, or subscriber outlet or receiver for any purpose except routine maintenance of the system, detection of unauthorized service, polling with audience participating, or audience viewing surveys to support advertising research regarding viewers where individual viewing behavior cannot be identified. In the conduct of providing its services or in pursuit of any collateral commercial enterprise resulting therefrom, Grantee shall take reasonable steps to prevent the invasion of a subscriber's or general citizen's right of privacy or other personal rights through the use of the system as such rights are delineated or defined by applicable law. Grantee shall not without lawful court order or other applicable valid legal authority utilize the system's interactive two-way equipment or capability for unauthorized personal surveillance of any subscriber or general citizen.

(d) Fairness of Accessibility. The entire system of the Grantee shall be operated in a manner consistent with the principle of fairness and equal accessibility of its facilities, equipment,

channels, studios and other services to all local citizens, businesses, public agencies and other entities having a legitimate use for the system, and no one shall be arbitrarily excluded from its use. Allocation of use of said facilities shall be made according to the rules or decisions of the Grantee, the Grantor in its lawful exercise of regulatory authority, and any State or Federal regulatory agencies affecting the same.

(e) No cable line, wire amplifier, converter, or other piece of equipment owned by Grantee shall be installed by Grantee in the subscriber's premises, other than in appropriate easements, without first securing any required consent. If a subscriber requests service, permission to install upon subscriber's property shall be presumed.

(f) The Grantee, or any of its agents or employees, shall not sell, or otherwise make available to any party without consent of the subscriber or pursuant to State and Federal privacy laws:

- (1) Any list of the names and addresses of subscribers containing the names and addresses of subscribers who request in writing to be removed from such list; and
- (2) Any list which identifies the viewing habits of individual subscribers, without the prior written consent of such subscribers. This does not prohibit the Grantee from providing composite ratings of subscriber viewing to any party. (Ord No. 38-87; Ord No. 63-94)

**43.283. Privacy Compliance Reports.** Upon Grantor's request, but no more than annually, Grantee shall submit to Grantor a report indicating the degree of compliance with the applicable privacy provisions contained in federal and state law and this chapter, and all steps taken to assure that the privacy rights of individuals have been protected. (Ord No. 63-94)

**43.285. Continuity of Service Mandatory.**

(a) It shall be the right of all subscribers to continue receiving service insofar as their financial

and other obligations to the Grantee are honored. In the event that the Grantee elects to over build, rebuild, modify, or sell the system, or the Grantor gives notice of intent to terminate or fails to renew this franchise, the Grantee shall act so as to ensure that all subscribers in good financial standings, receive continuous, uninterrupted service regardless of the circumstances. In the event of a change of franchisee, or in the event a new operator acquires the system, the Grantee shall cooperate with the Grantor, new franchisee or operator in maintaining continuity of service to all subscribers. During such period, Grantee shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs for its services when it no longer operates the system.

(b) In the event Grantee fails to operate the system for seven (7) consecutive days without prior approval of the Grantor or without just cause including war, riot, strike, acts of God and civil emergencies, the Grantor may, at its option, operate the system or designate an operator until such time as Grantee restores service under conditions acceptable to the Grantor or a permanent operator is selected. If the Grantor is required to fulfill this obligation for the Grantee, then during such period as the Grantor fulfills such obligation, the Grantor shall be entitled to collect all revenues from operation of the system during said period, and the Grantee shall reimburse the Grantor for all reasonable costs or damages in excess of the revenues collected by the Grantor that are the result of the Grantee's failure to perform. (Ord No. 38-87)

**43.290. Grantee Rules and Regulations.** The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under the franchise, and to assure an uninterrupted service to each and all of its customers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable

State and Federal laws, rules and regulations. Such rules, regulations, terms and conditions may be filed with the Grantor. (Ord No. 38-87)

**43.295. Uniform and Vehicle Identification.** Every field employee of the Grantee shall be clearly identified with the name of Grantee visible to the public as a representative of the Grantee. Every field vehicle, except for field sales representatives' vehicles of the Grantee, shall be clearly marked. Grantee field employees and agents shall also wear an identification badge with the agent's name and photograph. (Ord No. 38-87)

## **CONSUMER PROTECTION**

### **43.300. Requests for Cable Service and Repairs.**

(a) The Grantee shall maintain an office in the local area which shall be open during all usual business hours, have a publicly listed toll-free telephone, and be so operated to receive requests for repairs on a twenty-four (24) hour a day basis.

(b) The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during period of minimum use of the system. A written log or an equivalent stored in computer memory and capable of access and reproduction, shall be maintained for all service interruptions and requests for cable repair service as required by SRC 43.390(b).

(c) The Grantee shall maintain a repair force of technicians normally capable of responding to subscriber requests for repair service within twenty-four (24) hours or subject to subscriber availability for access to premises as follows:

(1) System outage: Within two (2) hours of receiving subscriber calls which by number

identify a system outage of sound or picture of one (1) or more channels, affecting all the subscribers of the system or a considerable number thereof.

(2) Isolated outage: Within twenty-four (24) hours of receiving a request for service identifying an isolated outage of sound or picture for one (1) or more channels.

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

Grantee shall be deemed to have responded to a request for service under the provisions of this section when a technician arrives at the service location, and in the case of Subsection (1), (2) and (3) of this Section, leaves written notification of such arrival.

No charge shall be made to the subscriber for this service unless the service request can be demonstrated to be of non-cable system origin. (Ord No. 38-87)

### **43.303. Minimum Consumer Protection and Service Standards.**

(a) Except as otherwise provided in the franchise agreement, Grantee shall maintain a local office or offices and provide the necessary facilities, equipment and personnel to comply with the following consumer protection and service standards under normal conditions of operations:

(1) Sufficient toll-free telephone line capacity during normal business hours to assure that a minimum of ninety-five percent (95%) of all calls will be answered before the fourth (4th) ring and ninety percent (90%) of all callers for service will not be required to wait more than thirty (30) seconds before being connected to a service representative.

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

(3) A local business and service office open during normal business hours at least eight (8) hours daily and at least four (4) hours weekly on evenings or weekends, and

adequately staffed to accept subscriber payments and respond to service requests and complaints.

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

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

(6) At the subscriber's request, Grantee shall schedule, within a specified four (4) hour time period, all appointments with subscribers for installation of service.

(b) Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions, insofar as possible and safe, shall be preceded by notice and shall occur during a period of minimum use of the cable system, preferably between midnight and six A.M. (6:00 A.M.).

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

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

(2) For an isolated outage: Within twenty-four (24) hours, including weekends, of receiving requests for service identifying an isolated outage of sound or picture for one (1) or more channels that affects three (3) or more subscribers. On weekends, an outage affecting fewer than three (3) subscribers shall result in a service call no later

than the following Monday morning.

**(3)** For inferior signal quality: Within forty-eight (48) hours, including weekends, of receiving a request for service identifying a problem concerning picture or sound quality.

Grantee shall be deemed to have responded to a request for service under the provisions of this Section when a technician arrives at the service location and begins work on the problem. In the case of a subscriber not being home when the technician arrives, the technician shall leave written notification of arrival. Three (3) successive subscriber failures to be present at an appointed time shall excuse Grantee of duty to respond.

Grantee shall not charge for the repair or replacement of defective equipment provided by Grantee to subscribers. In the event Grantee determines that the customer has damaged the equipment, Grantee shall be entitled to charge the hourly service rate permitted by the FCC.

**(d)** Unless excused, Grantee shall determine the nature of the problem within forty-eight (48) hours of beginning work and resolve all cable system related problems within five (5) business days unless technically infeasible.

**(e)** Upon request from affected subscribers, Grantee shall provide appropriate rebates to subscribers whose service has been interrupted for four (4) or more hours.

**(f)** Upon five (5) days notice, Grantee shall establish its compliance with any or all of the standards required above. Grantee shall provide sufficient documentation to permit Grantor to verify the compliance.

**(g)** A repeated and verifiable pattern of non-compliance with the consumer protection standards of (a) through (e) above, after Grantee's receipt of due notice and an opportunity to cure, is a material breach of the franchise.

**(h)** Grantee shall establish written procedures, reviewed by the Grantor, for receiving, acting upon and resolving subscriber complaints without intervention by the Grantor. The written

procedures shall prescribe the manner in which a subscriber may submit a complaint either orally or in writing specifying the subscriber's grounds for dissatisfaction. Grantee shall file a copy of these procedures with Grantor.

**(i)** Grantor shall have the right to review Grantee's response to subscriber complaints in order to determine Grantee's compliance with the franchise requirements, subject to the subscriber's right to privacy.

**(j)** It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to rebuild, modify, or sell the system, or the Grantor gives notice of intent to terminate or not to renew the franchise, the Grantee shall act so as to ensure that all subscribers receive service so long as the franchise remains in force.

In the event of a change of control of Grantee, or in the event a new operator acquires the system, the original Grantee shall cooperate with the Grantor, new Grantee or operator in maintaining continuity of service to all subscribers. During such period, Grantee shall be entitled to the revenues for any period during which it operates the system.

**(k)** Additional service standards and standards governing consumer protection and response by Grantee to subscriber complaints not otherwise provided for in this chapter may be established in the franchise agreement, and Grantee shall comply with such standards in the operations of the cable television system. A verified and continuing pattern of noncompliance is a material breach of the franchise, provided that Grantee shall receive due process, including written notification and an opportunity to cure, prior to any sanction being imposed. (Ord No. 63-94)

**43.305. Complaint Procedure.**

(a) Complaints to Grantee. Grantee shall establish written procedures for receiving, acting upon and resolving subscriber complaints without intervention by the Grantor. The Grantee shall also notify the subscriber of the subscriber's right to file a complaint with the Grantor in the event the subscriber is dissatisfied with the Grantee's decision. Grantee's procedures shall be filed with the Grantor.

(b) Complaints to Grantor. A subscriber who is dissatisfied with the Grantee's proposed decision or who was not sent a written decision within the thirty (30) day period shall be entitled to have the complaint reviewed by Grantor. The subscriber shall initiate the review by filing a written complaint together with the Grantee's written decision, if any, with the Grantor and by notifying the Grantee of the filing. The subscriber shall make such filing and notification within ten (10) days of receipt of Grantee's decision or within ten (10) days of the expiration of the thirty (30) day period, whichever is earlier. (Ord No. 38-87)

**43.310. Review by Grantor.** The Grantor shall determine, solely upon a review of a subscriber complaint and the Grantee's decision, if any, whether further action is warranted. In the event the Grantor does not initiate further proceedings within fifteen (15) days of the filing of the complaint, the Grantee's proposed action or resolution shall be final. If the Grantor decides to initiate further investigation, Grantor shall require the Grantee and the subscriber to submit, within ten (10) days of notice thereof, a written statement of the facts and arguments in support of their respective positions. The Grantee or the subscriber may request in such statement that a hearing be conducted by the Grantor. A hearing if requested shall be conducted by the Grantor following notice in writing specifying the time and place for such hearing. The hearing shall be conducted informally, and the parties may offer any evidence pertinent to the dispute. The parties shall produce any additional evidence, including testing reports from the Grantee, which the Grantor may deem necessary to an understanding and determination of the dispute. The Grantor shall issue a written decision within fifteen (15) days of receipt of the written statements or, if a hearing is requested, within fifteen (15)

days of the conclusion of the hearing, setting forth the basis of his decision. The Grantor's decision shall be final unless appealed by the Grantee to arbitration. (Ord No. 38-87)

**43.315. Complaint Notification.** Grantee shall provide written notice to each subscriber describing the procedure established by Grantee for resolving subscriber complaints and of the subscriber's right to have Grantee's response to a subscriber complaint reviewed by the Grantor in accordance with the provisions of this chapter. The notice shall include the name, business address, and business telephone numbers of Grantee's office and of the Grantor office designated to receive complaints. The form of the notice shall be subject to the approval of the Grantor. (Ord No. 38-87)

**43.320. Complaint Log.** Grantee shall maintain a file of all subscriber complaints requiring a service call as required by Section 43.390(a) herein. (Ord No. 38-87)

**43.325. Remedies for Violations.** The Grantor may, as apart of a subscriber complaint decision issued under the provisions of this chapter, impose damages on the Grantee as specified in the franchise agreement. Damages may be imposed only if the Grantor finds that the Grantee has arbitrarily refused or failed without justification to comply with the provisions of this chapter. (Ord No. 38-87)

**RIGHTS RESERVED TO THE GRANTOR**

**43.330. Right to Purchase the System.** The Grantor may in any lawful manner and upon the

payment of a fair valuation lawfully ascertain, purchase, condemn, acquire, take over and hold the property and plant of the Grantee in whole or in part. If such purchase or taking over be upon revocation of the franchise or at the expiration of the term of the franchise and determination of the City not to renew, such valuation shall be at the fair market value of the system as defined by applicable law. (Ord No. 38-87)

**43.335. Right of Inspection of Construction.** The Grantor shall have the right to inspect all construction or installation work performed subject to the provisions of the franchise and to make such tests as it shall find necessary to ensure compliance with the terms of this franchise and other pertinent provisions of law. (Ord No. 38-87)

**43.340. Right of Intervention.** The Grantor shall have the right of intervention in any suit or proceeding to which the Grantee is party, and the Grantee shall not oppose such intervention by the Grantor. (Ord No. 38-87)

**43.345. Right to Regulate Where Previously Prohibited.** In the event Federal laws or regulations cease to prohibit local regulation of matters not the subject of franchise agreements, Grantor reserves the right to regulate such matters to the extent and at the time so permitted. (Ord No. 38-87)

**43.347. General Reservation of Rights.** In addition to any rights specifically reserved to the Grantor by this chapter, the Grantor reserves to itself every right and power which is required to be reserved by a provision of any ordinance or under the franchise. (Ord No. 63-94)

## **FRANCHISE VIOLATIONS**

**43.350. Remedies for Franchise Violations.** If the Grantee fails to perform any obligation under either this chapter or the franchise, or fails to do so in a timely manner, the Grantor may at its option, and in its sole discretion;

(a) Cure the violation and recover the actual cost thereof from the security fund established herein if such violation is not cured within thirty (30) days after written notice to the Grantee

of Grantor's intention to cure and draw upon the security fund; and assess against the Grantee monetary damages up to the limits established in the franchise agreement for material franchise violations, said assessment to be levied against the security fund, hereinabove provided, and collected by Grantor immediately upon said assessment. The amount of such assessment shall be deemed, without proof, to represent liquidation of damages actually sustained by Grantor by reason of Grantee's failure to perform. Such assessment shall not constitute a waiver by the Grantor of any other right or remedy it may have under the franchise or under applicable law, including without limitation, its right to recover from Grantee such additional damages, losses, costs and expenses, including actual attorney fees, as may have been suffered or incurred by Grantor by reason of or arising out of such breach of the franchise. This provision for assessment of damages is intended by the parties to be separate and apart from Grantor's right to enforce the provisions of the construction and performance bonds provided for in SRC 43.150 to 43.170, and is intended to provide compensation to Grantor for actual damages.

(b) Terminate the franchise, for any of the causes stated in SRC 43.020 to 43.100, above.

(c) No remedy shall be imposed by Grantor against Grantee for any violation of the franchise without Grantee being afforded due process of law, as provided for in SRC 43.380.

Grantor may, in its sole judgment and discretion, impose any or all of the above enumerated measures against Grantee, which shall be in addition to any and all other legal or equitable remedies it has under the franchise or under any applicable law. (Ord No. 38-87; Ord No. 63-

**43.355. Remedies for Delay in Construction.** The Grantor may impose the following remedies with regard to delays within Grantee's control in initial construction of a new system; provided Grantee has not informed Grantor of its intent to seek arbitration according to the provisions of SRC 43.315.

- (a) Reduction in the duration of the franchise on a month-for-month basis for each month of delay exceeding six (6) months.
  - (b) Forfeiture of construction bonds and/or assessment of monetary damages up to the maximum per day and per incident limits specified in the franchise agreement, levied against the security fund, for delays exceeding one (1) year.
  - (c) Termination of the franchise within one (1) year after award of the franchise if the Grantee has failed to initiate scheduled system construction or reconstruction.
  - (d) Termination of the franchise for delays exceeding eighteen (18) months.
- Any remedies applied shall be in accordance with the procedures contained in SRC 43.360 herein. (Ord No. 38-87)

**43.360. Procedure for Remedying Franchise Violations.** Prior to imposing any remedy or other sanction against Grantee specified in this chapter, Grantor shall give Grantee notice and opportunity to be heard on the matter, in accordance with the following procedures:

- (a) Grantor shall first notify Grantee of the violation in writing by personal delivery or registered or certified mail, and demand correction within a reasonable time, which shall not be less than five (5) days in the case of the failure of the grantee to pay any sum or other amount due the Grantor under this chapter or the Grantee's franchise and thirty (30) days in all other cases. If Grantee fails to correct the violation within the time prescribed or if Grantee fails to commence correction of the violation within the time prescribed and diligently remedy such violation thereafter, the Grantor shall then give written notice of not less than twenty (20) days of an administrative hearing to be held before the City Manager or a designated hearing officer. Said notice shall specify the violations alleged to have occurred.
- (b) At the hearing, the hearing officer shall hear and consider all relevant evidence, and thereafter render findings and a decision.
- (c) In the event the hearing officer finds that the Grantee has corrected the violation or has diligently commenced correction of such violation after notice thereof from Grantor and is diligently proceeding to fully remedy such violation, or that no material violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed.
- (d) In the event the hearing officer finds that material violations exist and that Grantee has not corrected the same in a satisfactory manner or has not diligently commenced correction of such violation after notice thereof from Grantor and is not diligently proceeding to fully remedy such violation, the City Manager may impose one (1) or more of the remedies provided in this chapter and the franchise agreement as is deemed appropriate under the circumstances. (Ord No. 38-87; Ord No. 63-94)

**43.365. Force Majeure; Grantee's Inability to Perform.** In the event Grantee's performance of any of the terms, conditions, obligations, or requirements of this chapter or the franchise is prevented or impaired by a cause or event beyond Grantee's reasonable control, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof, provided, however, that such inability to perform shall not relieve a Grantee from the obligations imposed by Section 10(e). pertaining to refunds and credits for interruptions in service. For the purpose of this Section, causes or events not within the control of Grantee shall include without limitation acts of God, strikes, sabotage, riots or civil disturbances, restraints imposed by order of a governmental agency or

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court, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires, but shall not include financial inability of the Grantee to perform or failure of the Grantee to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of Grantee, or the failure of the Grantee to secure supplies, services or equipment necessary for the installation, operation, maintenance or repair of the cable communications system where the Grantee has failed to exercise reasonable diligence to secure such supplies, services or equipment.

## **REPORTS**

**43.370. Annual Reports.** At Grantor's sole option and request, within ninety (90) days after the close of Grantee's fiscal year, the Grantee shall submit a written annual report, to the City Manager in a form approved by the Grantor. Such report shall include, without limitation, the following information:

- (a) A summary of the previous year's (or, in the case of the initial report year, the initial year's) activities in development of the cable system, including, but not limited to, services begun or discontinued during the reporting year, and the number of subscribers for each class of service.
- (b) A list of Grantee's officers, members of its board of directors, and other principals of Grantee;
- (c) A list of stockholders or other equity investors holding five percent (5%) or more of the voting interest in the Grantee and its parent and subsidiaries, if any;
- (d) An indication of any residences in Grantee's service area where service is not available, and a schedule for providing service;
- (e) Information as to the number of homes passed, number of subscribers to each category of service, additional television outlets, and the number of converters and remote controls provided.
- (f) Any other information relevant to franchise regulation which the Grantor shall reasonably request, and which is relevant to its regulatory responsibilities. (Ord No. 38-87; Ord No. 63-94)

**43.375. Plant Survey Report.** At Grantor's sole option, and upon reasonable notice, Grantee shall submit to the Grantor or provide Grantor access to "as-built" maps of the portions of the franchise area

that have been cabled and have all services available or an appropriate engineering evaluation including suitable electronic measurements conducted in conformity with FCC guidelines and franchise technical standards. Grantee shall provide sufficient detail to enable the Grantor to ascertain that the service requirements and technical standards of the FCC and/or the franchise were achieved and maintained. If Grantor has reason to believe that portions or all of the system do not meet either the FCC technical guidelines, or those incorporated into the franchise agreement, at Grantor's request, but no more often than once per three (3) years, the Grantee and the Grantor shall agree upon the appointment of a qualified independent engineer to evaluate and verify the technical performance of the cable system. The cost of such evaluation shall be borne equally by the Grantee and the Grantor. (Ord No. 38-87)

## **43.380. Copies of Federal and State Reports.**

- (a) Upon request, Grantee shall submit to Grantor copies of all pleadings, applications, reports, communications and documents of any kind, submitted by the Grantee to, as well as copies of all decisions, correspondence and actions by, any Federal, State and local courts, regulatory agencies and other government bodies which are non-routine in nature and which will materially affect its cable television operations within the franchise area. Information otherwise privileged or confidential by law and so designated by Grantee, which is submitted

to Grantor, shall be retained in confidence by Grantor and its authorized agents and shall not be made available for public inspection to the extent it may be held exempt from public disclosure under the Oregon Public Records Law.

(b) Notwithstanding the foregoing, Grantee shall have no obligation to provide copies of documents to Grantor which contain trade secrets of Grantee or which are otherwise of a confidential or proprietary nature to Grantee unless it receives satisfactory assurances from Grantor that such information can and will be held in strictest confidence by the Grantor. To the extent possible, Grantee will provide Grantor with summaries of any required documents or copies thereof with trade secrets and proprietary matters deleted therefrom. The burden of proof shall be on Grantee to establish the confidential nature of any information submitted, to the reasonable satisfaction of the Grantor. (Ord No. 38-87; Ord No. 63-94)

**43.385. Public Reports.** A copy of each of Grantee's annual and other period public reports and those of its parent and local subsidiaries as the Grantor requests, shall be submitted to the Grantor within ten (10) days of their issuance. (Ord No. 38-87)

**43.390. Complaint File and Reports.** An accurate and comprehensive file shall be kept by the Grantee of any and all complaints requiring a service call. Complete records of Grantee's actions in response to all complaints shall be kept. These files and records shall include:

- (a) Upon request, a summary of complaints requiring a service call, identifying the number and nature of complaints and their disposition in a form approved by the Grantor. A copy of the summary shall be upon request and submitted to the Grantor by the tenth day of the succeeding month.
- (b) A written or computer-stored log and summary of all service interruptions.
- (c) A written or computer-stored log and summary of all requests for cable service and their disposition.
- (d) The Grantee shall assist the Grantor in an annual opinion survey report which identifies satisfaction or dissatisfaction among subscribers with cable communication services offered by the Grantee. The survey required to make said report shall be the responsibility of the Grantor and shall be in a form that can be transmitted to subscriber with the monthly bill for service. The utilization of the monthly bill for service for distribution of the survey will be provided

once per calendar year at no cost to the Grantor. The Grantor shall pay for all direct costs associated with the development and return of the survey. (Ord No. 38-87)

**43.395. Inspection of Facilities.** Upon reasonable notice, and during normal business hours, Grantee shall permit examination by any duly authorized representative of the Grantor, of all franchise property and facilities, together with any appurtenant property and facilities of Grantee situated within or without the City, and all records relating to the franchise, provided they are necessary to enable the Grantor to carry out its regulatory responsibilities under this chapter or the franchise agreement. Grantee shall have the right to be present at any such examination. (Ord No. 38-87; 63-94)

**43.400. Public Inspection.** All reports subject to public disclosure, shall be available for public inspection at a designated Grantor office during normal business hours. (Ord No. 38-87)

**43.405. Failure to Report.** The refusal, failure, or neglect of the Grantee to file any of the reports required as and when due under this chapter, or such other reports the Grantor reasonably may request, if such reports are not provided to Grantor within thirty (30) days after written request therefor, may be deemed a breach of the franchise, and may subject the Grantee to all remedies, legal or equitable,

which are available to the Grantor under the franchise or otherwise. (Ord No. 38-87;Ord No. 63-94)

**43.410. False Statements.** Any materially false or misleading statement or representation made knowingly by the Grantee in any report required under this chapter or the franchise shall be deemed a breach of the franchise and may subject the Grantee to all remedies, legal or equitable, which are available to the Grantor under the franchise or otherwise. (Ord No. 38-87; Ord No. 63-94)

**43.415. Cost of Reports.** All reports and records required under this or any other Section shall be furnished at the sole expense of the Grantee except as otherwise provided in this chapter or the franchise agreement. (Ord No. 38-87; Ord No. 63-94)

#### **MISCELLANEOUS PROVISIONS**

**43.420. Compliance with State and Federal Laws.** Notwithstanding any other provisions of the franchise to the contrary, the Grantee shall at all times comply with all laws and regulations of the State and Federal government or any administrative agencies thereof. Provided, however, if any such State or Federal law or regulation shall require the Grantee to perform any service, or shall permit the Grantee to perform any service, or shall prohibit the Grantee from performing any service, in conflict with the terms of the franchise or any law or regulation of the Grantor, then as soon as possible following knowledge thereof, the Grantee shall notify the Grantor of the point of conflict believed to exist between such regulation or law and the laws or regulations of the Grantor or the franchise. (Ord No. 38-87)

**43.425. Separability Non-material Provisions.** If any provision of this chapter or any related agreements is held by any court or by any Federal, State, or local agency of competent jurisdiction to be invalid as conflicting with Federal, State, or local law, rule or regulation now or hereafter in effect, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such law, rule or regulation and if said provision is considered non-material by the Grantor, said provision shall be considered a separate, distinct and independent part of this chapter, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed, so that the provision hereof or thereof which has been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, provided that the Grantor shall give the Grantee thirty (30) days written notice of such change before requiring compliance with said provision. (Ord No. 38-87)

**43.430. Separability-Material Provisions.** If any material section of this chapter, as determined by the Grantor, is held to be invalid or preempted by Federal, State or County regulations or laws, the Grantor shall negotiate with Grantee appropriate modifications to the franchise to provide reasonable relief to the Grantor from such invalidity of preemption, including the payment of damages. If the parties are unable to reach agreement on such modifications, then the dispute shall be submitted to a mutually agreeable arbitrator, in accordance with State law, who shall determine what modifications and/or liquidated damages are appropriate. The arbitrator's decision shall be binding on the parties, provided, that no decision of the arbitrator shall require the Grantor or Grantee to be in violation of any Federal or State law or regulation. Notwithstanding the provisions of SRC 43.425 and 43.430, if the Grantee should cause the invalidation of any provision of this chapter or franchise agreement by action in any court of competent jurisdiction, the Grantor may, at its own discretion, consider the entire franchise invalid and unenforceable. (Ord No. 38-87)

**43.435. Notices.** Grantee shall maintain within the franchise area throughout the term of the franchise, an address for service of notices by mail. (Ord No. 38-87)

**43.440. No Recourse Against the Grantor.** The Grantee shall have no recourse whatsoever against the Grantor or its officials, boards, commissions, agents, or employees for any loss, costs, expense, or damage arising out of any provision or requirement of the franchise or because of the enforcement of the franchise, except as otherwise guaranteed by Federal and State law. (Ord No. 38-87)

**43.445. Nonenforcement by the Grantor.** The Grantee shall not be relieved of its obligation to comply with any of the provisions of this chapter by reason of any failure of the Grantor to enforce prompt compliance. (Ord No. 38-87)

**43.450. Waivers.** Any provision of this chapter may be waived by the Grantor, at Grantor's sole discretion, by Common Council resolution. Grantee may submit a written request for waiver at any time, and the request placed on the agenda for a public hearing and decision. Grantor shall reach its decision no later than thirty (30) days following the receipt of any waiver request. (Ord No. 38-87)