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TITLE 4 CABLE TV FRANCHISES & LICENSES

CHAPTER 4.01 REPEAL

Existing Nevada County Ordinance No. 1200 is hereby repealed in its entirety.

CHAPTER 4.02 ENACTMENT

Town of Truckee Ordinance No. 99-01 is hereby enacted to supersede Ordinance No. 1200.

CHAPTER 4.03 INTENT

4.03.010 .....Authority

The Town of Truckee, pursuant to applicable Federal and State law, is authorized to grant one or more non-exclusive franchises to construct, operate, maintain and reconstruct Cable Systems within the Town limits.

4.03.020 Findings

The Town Council finds that the development of Cable Systems has the potential of having great benefit and impact upon the residents of the Town. Because of the complex and rapidly changing technology associated with Cable Systems, the Town Council further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the Town or such Persons as the Town may designate. It is the intent of this Ordinance and subsequent amendments to provide for and specify the means to attain the best possible Cable Service to the public and any Franchises issued pursuant to this Ordinance shall be deemed to include this as an integral finding thereof. It is the further intent of this Ordinance to establish regulatory provisions that permit the Town to regulate Cable System Franchises to the extent permitted by Federal and State law, including but not limited to the Federal Cable Communications Policy Act of 1984, the Federal Cable Television Consumer Protection and Competition Act of 1992, the Federal Telecommunications Act of 1996, applicable Federal Communications Commission regulations and applicable California law.

CHAPTER 4.04 SHORT TITLE

This Ordinance shall constitute the "Cable System Regulatory Ordinance" of the Town of Truckee and may be referred to as such.

CHAPTER 4.05 DEFINITIONS

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

4.05.010 Basic Cable Service

Means any service tier which includes the retransmission of local television broadcast signals.

4.05.020 Cable Operator

Means any Person or group of Persons who is a Grantee and who:

(a) provides Cable Service over a Cable System and directly or through one (1) or more affiliates owns a significant interest in such Cable System; or

(b) otherwise controls or is responsible for, through any arrangement, the management and operation of such Cable System.

4.05.030 Cable Service

(a) The one-way transmission to Subscribers of

(1) video programming; or

(2) other programming service; and

(b) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

4.05.040 Cable System or System

Means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include:

(a) a facility that serves only to retransmit television signals of one (1) or more television broadcast stations;

(b) a facility that serves Subscribers without using any Public Rights-of-Way;

(c) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Telecommunications Act of 1996, except that such facility shall be considered a Cable System (other than for the purposes of Section 621(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers; unless the extent of such use is solely to provide interactive on-demand services;

(d) an open video system that complies with Section 653 of Title 6 of the Telecommunications Act of 1996; or

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

4.05.050 Channel or Cable Channel

Means a portion of the electromagnetic frequency spectrum which is used in a Cable System which is capable of delivering a television channel as defined by the Federal Communications Commission.

4.05.060 Council

Means the Town Council of the Town of Truckee.

4.05.070 Franchise

Means an initial authorization, or renewal thereof, issued by the 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. Any such authorization, in whatever form granted, shall not supersede the requirement to obtain any other license or permit required for the privilege of transacting business within the Town as required by the other ordinances and laws of the Town. A Franchise is contractual, and the specific provisions of the Franchise shall be set forth in a franchise enabling

ordinance, and a related Franchise Agreement.

4.05.080 Franchise Agreement

Means the Franchise or a component of the Franchise.

4.05.090 Franchise Fee

Means any fee or assessment of any kind imposed by the Town 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.

4.05.100 Grantee

Means any "person" receiving a Franchise pursuant to this Ordinance and under the granting Franchise ordinance or agreement, and its lawful successor, transferee or assignee.

4.05.110 Grantor or Town

Means the Town of Truckee as represented by the Council or any delegate, acting within the scope of its jurisdiction.

4.05.120 Gross Annual Cable Service Revenues

Means the annual gross revenues received by a Grantee from the operations of the Cable System within the Town to provide Cable Service utilizing the Public Rights-of-Way for which a Franchise is required, excluding refundable deposits, rebates or credits, and any sales, excise or other taxes or charges imposed externally to the Franchise, and collected for direct pass-through to local, State or Federal government.

4.05.130 Installation

Means the connection of the System to Subscribers' terminals, and the provision of service.

4.05.140 Normal Operating Conditions

Means those service conditions which are within the control of Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, restrictions or delays imposed by utility pole owner, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

4.05.150 Person

Means an individual, partnership, association, joint stock company, trust, corporation or governmental entity.

4.05.160 Public, Educational or Government Access Facilities or PEG Access Facilities

Means the total of the following:

(a) Channel capacity designated for noncommercial public, educational, or government use; and

(b) facilities and equipment for the use of such Channel capacity.

4.05.170 Section

Means any section, subsection or provision of this Ordinance.

4.05.180 Service Area or Franchise Area

Means the entire geographic area within the municipal boundaries of the Town as it is now constituted or may in the future be constituted, unless otherwise specified in the Franchise.

4.05.190 Service Tier

Means a category of Cable Service or other services provided by a Cable Operator and for which a separate rate is charged.

4.05.200 State

Means the State of California.

4.05.210 Street or Public Way or Public Rights-of-Way

Means each of the following which have been dedicated to the public or the utility use, or are hereafter dedicated to the public or utility use and maintained under public authority or by others and located within the Service Area: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public or utility access property.

4.05.220 Subscriber or Customer or Consumer

Means any Person who or which elects to subscribe to, for any purpose, Cable Service provided by the Grantee by means of or in connection with the Cable System, and who pays the charges therefore.

CHAPTER 4.06 FRANCHISE TERMS AND CONDITIONS

4.06.010 Franchise Purposes

A Franchise granted by the Town under the provisions of this Ordinance shall encompass the following purposes:

(a) to permit the Grantee to engage in the business of providing Cable Service, and such other services as may be permitted by law which Grantee provides to Subscribers within the designated Service Area.

(b) to permit the Grantee to erect, install, construct, repair, rebuild, reconstruct, replace, maintain, and retain, cable lines, related electronic equipment, supporting structures, appurtenances, and other property in connection with the operation of the Cable System in, on, over, under, upon, along and across streets or other public places, as well as other locations allowed by law such as utility easement and other apportionable, compatible easements within the designated Service Area.

(c) to permit the Grantee to maintain and operate said Franchise properties for the origination, reception, transmission, amplification, and distribution of television and radio signals and for the delivery of Cable Services, and such other services as may be permitted by law.

(d) To set forth the obligations of the Grantee and the Grantor under the Franchise.

4.06.020 Franchise Required

After the effective date of this Ordinance, it shall be unlawful for any Person to construct, install or operate a Cable System in the Town within any Public Way without a properly granted Franchise awarded pursuant to the provisions of this Ordinance. This Ordinance shall not apply retroactively to rights created by an existing Franchise.

4.06.030 Term of the Franchise

(a) A Franchise granted hereunder shall be for a term established in the Franchise Agreement, commencing on the Grantor's adoption of an ordinance or resolution authorizing the Franchise.

(b) A Franchise granted hereunder may be renewed upon application by the Grantee pursuant to the provisions of applicable State and Federal law.

4.06.040 Franchise Territory

Any Franchise shall be valid within all the municipal limits of the Town, and within any area added to the Town during the term of the Franchise, unless otherwise specified in the Franchise Agreement.

4.06.050 Federal or State Jurisdiction

This Ordinance shall be construed in a manner consistent with all applicable Federal and State laws, and shall apply to all Franchises granted or renewed after the effective date of this Ordinance to the extent permitted by applicable law.

4.06.060 Franchise Non-Transferable

(a) Grantee shall not sell, transfer, lease, assign 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, which consent shall not be unreasonably denied, withheld or delayed; provided, however, that the prior consent of the Council shall not be required for an intracorporate or intracompany transfer from one wholly-owned subsidiary to another wholly-owned subsidiary. Any attempt to sell, transfer, lease, assign or otherwise dispose of the Franchise or any contractural rights or obligations under any such 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 or by assignment of any right, title or interest in the Cable System, or use of the Cable System as collateral in order to secure indebtedness, shall not be considered a transfer for the purposes of this section.

(b) The requirements of Subsection (a) shall apply to any change in control of Grantee. The word "control" as used herein includes majority ownership, and actual working control in whatever manner exercised. In the event that Grantee is a corporation, prior consent of the Council shall be required where ownership or control of more than thirty-five percent (35%) of the voting stock of the 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 more than thirty-five percent (35%) of the Franchise property of the Grantee or upon the termination of any lease or interest covering all or a thirty-five percent (35%) of said Franchise property. Such notification shall be considered by Grantor as notice that a change in control or ownership of the Franchise has taken place and the provisions under this Section governing the consent of Grantor to such change in control or 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 legal technical and financial qualifications of the prospective transferee or controlling party to operate the cable systems, 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 Grantee and/or the proposed transferee complete an application in accordance with Federal Communications Commission Form 394 or equivalent. An application shall be submitted to Grantor not less than one hundred twenty (120) days prior to the proposed date of transfer. The transferee shall be required to establish that it possesses the legal, technical and financial qualifications to operate and maintain the System and comply with all Franchise requirements for the remainder of the term of the Franchise. If the Grantee is then in compliance with the material requirements of the Franchise, and the legal, financial and technical qualifications of the applicant are satisfactory, the Grantor shall consent to the transfer of the Franchise. If the Grantor has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, Grantor's consent to such transfer shall be deemed given. 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 System, in the event of a Grantee default of its financial obligations. Further, if said financial institution elects to take control of and operate the Cable System, and if it does so, said financial institution shall also agree in writing to continue Cable Service and comply with all Franchise requirements during the term the financial institution exercises control over the System.

(f) Upon transfer, Grantee shall reimburse Grantor for Grantor's reasonable processing and review expenses in connection with the transfer of the Franchise including without limitation, 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. A Franchise Agreement may establish a limit on the costs of such reimbursement.

4.06.070 Geographical Coverage

(a) Grantee shall design, construct and maintain the Cable System to have the capability to pass every residential dwelling unit in the Service Area, subject to any Service Area line extension requirements of the Franchise Agreement and the provisions of Section 6.1(b).

(b) After service has been established by activating trunk and/or distribution cables for any Service Area, Grantee shall provide service to any requesting Subscriber within that Service Area within thirty (30) days from the date of request, provided that the Grantee is able to secure all rights-of-way, permits and landlord agreements necessary to extend service to such Subscriber within such thirty (30) day period on reasonable terms and conditions.

4.06.080 Nonexclusive Franchise

Any Franchise granted pursuant to this Ordinance shall be nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional Franchises for a Cable System, as it deems appropriate, subject to applicable State and Federal law, provided that if the Grantor grants an additional Franchise, then the material provisions of any such additional Franchise shall be reasonably comparable to the terms and conditions contained in the initial Grantee's Franchise, so that all Grantees are accorded competitively neutral and nondiscriminatory treatment.

4.06.090 Multiple Franchises

(a) Grantor may grant any number of Franchises subject to applicable State or 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 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 Public Rights-of-Way.

(b) Where electric and telephone utilities are to be placed underground in any proposed new residential housing developments, the developer of such new residential housing shall give each Grantee servicing the Franchise Area within which the new residential housing development is located at least ten (10) days prior written notice of any intent to obtain subdivision approval, and cooperate with any interested Grantee in designing and providing for installation of Grantee's cable facilities, which installation shall be allowed as a condition of plan approval. The developer of any such new residential housing shall also give the interested Grantees ten (10) days prior written notice of the date on which open trenching will be available for the Grantee's installation of conduit, pedestals and vaults. On request of the Grantor or developer, the Grantee shall provide specifications needed for trenching and said trenching shall be done at developer's expense. Existing Grantees are permitted to install and own their own conduit, pedestals, vaults and associated equipment. Developers of new residential housing with underground utilities shall provide conduit to accommodate cables for at least two (2) new entrant Cable Systems and dedicate the use of such conduit to the Town.

(c) Grantor may require that any new entrant, non-incumbent Grantee be responsible for its own underground trenching and the costs associated therewith, if, in Grantor's opinion, the Public Rights-of-Way in any particular area cannot feasibly and reasonably accommodate additional cables.

(d) To the extent permitted by law, Grantor shall require developers to permit Grantee access to trenches on an equivalent basis with the public utilities serving that development.

4.06.100 Franchise Modification

The Grantee may be required to pay any costs incurred by the Grantor in processing a Grantee request for Franchise modification, lease, hypothecation or trust of Franchise. Such costs may include the costs incurred for hiring consultants to assist in evaluating the request. Such costs shall be paid by the Grantee prior to final consideration of the request by the Grantor.

CHAPTER 4.07 FRANCHISE APPLICATIONS AND RENEWAL

4.07.010 Filing of Applications

Any Person not holding an existing valid Franchise and desiring an initial Franchise for a Cable System shall file an application with the Town. A reasonable nonrefundable initial application fee established by the Town shall accompany the initial Franchise application to cover all validly documented reasonable 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 validly documented reasonable costs exceed the application fee, the selected applicant(s) shall pay the difference to the Town within thirty (30) days following receipt of an itemized statement of such costs.

4.07.020 Applications - Contents

An application for an initial Franchise for a Cable System shall contain, where applicable:

(a) A statement as to the proposed Franchise and Service Area;

(b) A resume of prior history of the applicant, including the expertise of applicant in the Cable System field;

(c) 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 having a five percent (5%) or greater interest, if a corporation;

(d) A list of officers, directors and managing employees of the applicant, together with a description of the background of each such Person;

(e) The names and addresses of any parent or subsidiary of the 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;

(f) 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 Town;

(g) A proposed construction and service schedule;

(h) Any reasonable relevant additional information that the Town deems applicable.

4.07.030 Consideration of Initial Applications

(a) Upon receipt of any application for an initial Franchise, the Town Manager or a delegate shall prepare a report and make recommendations respecting such application to the Council.

(b) A public hearing shall be set prior to any initial Franchise grant, at a time and date approved by the Council. Within sixty (60) 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 initial 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.

4.07.040 Franchise Renewal

Franchise renewals shall be in accordance with applicable law. Grantor and Grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the Franchise.

CHAPTER 4.08 MINIMUM CONSUMER PROTECTION & SERVICE STANDARDS

4.08.010 Operational Standards

a) Except as otherwise provided in the Franchise Agreement, Grantee shall maintain the necessary facilities, equipment and personnel to comply with the following Consumer protection and service standards under normal conditions of operation:

(1) Sufficient toll-free telephone line capacity during normal business hours to assure that telephone answer time by a customer service representative, including wait time, shall not exceed thirty (30) seconds; and callers needing to be transferred shall not be required to wait more than thirty (30) seconds before being connected to a service representative. Under normal operating conditions, a caller shall receive a busy signal less than three percent (3%) of the time.

(2) Emergency toll free telephone line capacity on a twenty-four (24) hour basis, including weekends and holidays. After normal business hours, the telephone calls may be answered by a service or an automated response system, including an answering machine. Calls received after normal business hours must be responded to by a trained company representative on the next business day. During periods when an answering service or machine is used, Grantee shall provide on-call personnel who shall contact the answering service or machine, at a minimum, every four hours to check on requests for service or complaints.

(3) A conveniently located local business and service and/or payment office open during normal business hours where Grantee provides adequate staffing to accept Subscriber payments and respond to service requests and complaints. Normal business hours shall include some evening hours, at least one (1) night per week, and/or some weekend hours. The Grantee may petition the Grantor to reduce its business hours if the extended hours are not justified by Subscriber demand, and Grantor may not unreasonably deny the petition.

(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 requiring a Standard Installation within seven (7) days after receipt of a request, in all areas where trunk and feeder cable have been activated. "Standard Installations" shall be those that are located up to one hundred twenty-five (125) feet from the existing distribution System, unless otherwise defined in any Franchise Agreement.

(6) Grantee shall schedule, within a specified four (4) hour time period during normal business hours, all appointments with Subscribers for installation of service, service calls and other activities at the Subscriber location. Grantee may schedule installation and service calls outside of normal business hours for the express convenience of the customer. Grantee shall not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If a Grantee representative is running late for an appointment with a customer and will not be able to keep the

appointment as scheduled, the customer shall be contacted and the appointment rescheduled, as necessary, at a time which is convenient for the customer.

(b) Under Normal Operating Conditions, the standards of paragraphs (a)(1)-(a)(2)above shall be met not less than ninety percent (90%) of the time measured on a quarterly basis. The standards of paragraphs (a)(4)-(6) above shall be met not less than ninety-five percent (95%) of the time measured on a quarterly basis.

(c) Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless there is demonstrable evidence of complaints indicates a clear failure to comply.

4.08.020 Service Standards

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

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

(1) 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 five (5) or more Subscribers. On weekends, an outage affecting fewer than five (5) Subscribers shall result in a service call no later than the next business day.

(3) For inferior signal quality: Within two (2) business days of receiving a request for service identifying a problem concerning picture or sound quality.

(c) 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.

(d) Grantee shall not charge for the repair or replacement of defective or malfunctioning equipment provided by Grantee to Subscribers, unless the defect was caused by the Subscriber, or the equipment owned by the Subscriber requires repair or replacement.

(e) Unless excused, Grantee shall determine the nature of the problem resulting in a request for service within two (2) business days of beginning work and resolve all Cable System related problems within five (5) business days unless technically infeasible.

4.08.030 Billing and Information Standards

(a) Subscriber bills shall be clear, concise and understandable. Bills shall be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills shall also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(b) In case of a billing dispute, the Grantee shall respond to a written complaint from a Subscriber within thirty (30) days.

(c) Grantee shall automatically provide credits or refunds to such Subscribers whose

service has been interrupted for twenty four (24) consecutive hours or more, and upon request to Subscribers whose service has been interrupted for two (2) or more hours.

Credits or refunds shall automatically be provided by Grantee on a pro rata basis to any Subscriber(s) affected by interruption(s) of service for more than two (2) hours due to actions or outages under the control of the Grantee, exclusive of scheduled repairs, maintenance or Franchise-required construction that Grantee has provided advance written notice of to Subscribers. In cases where advance written notice is provided to Subscribers, the time period detailed in said notice shall not exceed four (4) hours in any twenty-four (24) hour period. In cases where said notice has been given to Subscribers and the service interruption exceeds the period detailed in said notice, the provisions of this Section shall apply.

In the event Grantee has improperly or inadvertently disconnected Cable Services to a Subscriber, Grantee shall provide for restoration without charge to Subscriber as soon as possible, but no later than within two (2) days of discovery of disconnection. Grantee shall credit or provide refunds to any Subscriber improperly or inadvertently disconnected from receiving Cable Services for the period of time without Cable Service.

All credits or refunds for service shall be issued no later than the customer's next billing cycle following the determination that a credit is warranted. For Subscribers terminating service, refunds shall be issued promptly, but no later than thirty (30) days after the return of any Grantee-supplied equipment.

(d) Grantee shall provide written information on each of the following areas (i) at the time of the installation of service, (ii) at least annually to all Subscribers, and (iii) at any time upon request:
   (1) Products and services offered; and
   (2) Prices and options for programming services and conditions of subscription to programming and other services; and
   (3) Installation and service maintenance policies; and
   (4) Instructions on how to use the Cable Service; and
   (5) Channel positions of programming carried on the System; and
   (6) Billing and complaint procedures, including the address and telephone number of the Grantor office designated for dealing with cable-related issues.

(e) Subscribers shall be notified of any changes in rates, programming services or channel positions as soon as possible in writing and in accordance with State and Federal Law. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Grantee. In addition, Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the information required in paragraph 8.3(d) above.

4.08.040 Verification of Compliance with Standards

(a) Upon ten (10) days prior written notice, Grantee shall respond to a request for information made by Grantor regarding Grantee's compliance with any or all of the standards required in Sections 8.1, 8.2 and 8.3 above. Grantee shall provide sufficient documentation to permit Grantor to verify Grantee's compliance.

(b) A repeated and verifiable pattern of non-compliance with the consumer protection standards of Sections 8.1 through 8.3 above, after Grantee's receipt of due notice and a reasonable opportunity to cure, may be deemed a material breach of the Franchise

Agreement.

(c) In order to determine whether sufficient telephone lines are provided, the Grantor may require that a busy study, traffic study or other study be conducted, at Grantee's expense, if any, by the local telephone company. Should Grantee have its own telephone equipment which can report on telephone line(s) usage, the Grantee may submit such report from its own system. The Grantor, pursuant to Section 8.1(c) of this Ordinance, may require Grantee to acquire equipment to determine compliance with the telephone answering standards of this Section 8.

(d) Grantee shall take necessary steps to ensure that adequate telephone lines and/or staffing are available to permit Grantee to satisfy its obligations under this Ordinance and the Franchise. Consideration shall be given for periods of promotional activities or outages. The monthly billing period shall be considered as a normal, daily activity for purposes of determining the availability of adequate telephone lines and/or staffing.

4.08.050 Subscriber Complaints and Disputes

(a) Grantee shall establish written procedures 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. The written procedures shall include a requirement that Grantee respond to any written complaint from a Subscriber within thirty (30) days of receipt.

(b) Upon prior written request, Grantor shall have the right to review Grantee's response to any Subscriber complaints in order to determine Grantee's compliance with the Franchise requirements, subject to the Subscriber's right to privacy.

(c) Subject to applicable law, it shall be the right of all Subscribers to continue receiving Cable 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 Cable Service so long as the Franchise remains in force.

(e) 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.

(f) Grantee response to Subscriber complaints, as well as complaints made by Subscribers to Grantor and provided by Grantor to Grantee, shall be initiated within one (1) business day of receipt by Grantor. The resolution of Subscriber complaints shall be effected by Grantee not later than three (3) business days after receipt of the complaint. Should a Grantee supervisor not be available when requested by a Subscriber, a supervisor shall respond to the Subscriber's complaint at the earliest possible time, and in no event later than the end of the next business day. For complaints received by Grantor and provided by Grantor to Grantee, Grantee shall

notify Grantor of Grantee's progress in responding to, and resolving, said complaints.

(g) In the event a subscriber complaint is not successfully resolved under Section (e) above, and the dollar amount at issue in any such complaint is Five Thousand Dollars ($5,000) or less or seeks a non-monetary remedy, the Grantee shall provide for review of the subscriber complaint by a senior management official of the Grantee who shall act as an "ombudsman" for purposes of obtaining mutually acceptable resolution of the dispute. Any actions undertaken by the ombudsman shall be completed within five (5) business days.

If the subscriber complaint remains unresolved at that time, the subscriber may request the appointment of a hearing officer selected by the Town Manager or his/her designee. The hearing officer shall conduct an informal proceeding, with the subscriber and Grantee both having the opportunity to present written and oral statements. Upon conclusion of the proceeding, the hearing officer shall issue a written decision. That decision shall be final and binding on both the subscriber and Grantee. Grantee shall pay any sum awarded within five (5) working days after the written decision is issued. If Grantee does not timely pay any such award, that sum shall be deducted from the security fund created by this ordinance and paid to the subscriber. Grantee shall then be required to replenish the fund. The costs of hearing, if any shall be paid by Grantee.

4.08.060 Other Requirements

(a) In the event Grantee fails to operate the System for seven (7) consecutive days other than for reasons beyond the control of Grantee, without prior approval or subsequent excuse of the Grantor, the Grantor may, at its sole 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 should fulfill this obligation for the Grantee, then during such period as the Grantor fulfills such obligation, the Grantor shall be entitled to collect all revenues from the System, and the Grantee shall reimburse the Grantor for all reasonable costs or damages in excess of the revenues collected by Grantor that are the result of Grantee's failure to perform.

(b) All officers, agents or employees of Grantee or its contractors or subcontractors who, in the normal course of work come into contact with members of the public or who require entry onto Subscribers' premises shall carry a photo-identification card in a form approved by Grantor. Grantee shall account for all identification cards at all times. Every vehicle of the Grantee or its major subcontractors shall be clearly identified as working for Grantee.

(c) Additional service standards and standards governing Consumer protection and response by Grantee to Subscriber complaints not otherwise provided for in this Ordinance may be established in the Franchise Agreement or by separate ordinance. Where there is demonstrable evidence of repeated and substantial noncompliance may be deemed a material breach of the Franchise, provided that Grantee shall receive due process, including prior written notification and a reasonable opportunity to cure, prior to any sanction being imposed.

CHAPTER 4.09 FRANCHISE FEE & FINANCIAL REQUIREMENTS

4.09.010 Franchise Fee

(a) Following the issuance and acceptance of the Franchise, the Grantee shall pay to the Grantor a Franchise Fee on Gross Annual Revenues in the amount and at the times set forth in the Franchise Agreement, to the extent allowed by federal and State law.

(b) The Grantor, on an annual basis, shall be furnished a statement within one hundred twenty (120) days of the close of the calendar year, either audited and certified by an independent certified public accountant or certified by an officer of the Grantee, reflecting the total amounts of gross revenues and all payments, deductions and computations for the period covered by the payment. Upon thirty (30) days prior written notice, Grantor shall have the right to conduct an independent financial audit of Grantee's Gross Annual Revenue and Franchise Fee records, in accordance with Generally Accepted Accounting Procedures (GAAP), and if such audit indicates a Franchise Fee underpayment of two percent (2%) or more, the Grantee shall assume all reasonable documented costs of such audit.

(c) Except as otherwise provided by law, no acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for further or additional sums payable as a Franchise Fee under this Ordinance or for the performance of any other obligation of the Grantee.

(d) In the event that any Franchise Fee payment or payment of any adjustment to any Franchise Fee is not made on or before the dates specified in the Franchise Agreement, unless otherwise excused, Grantee shall pay:

(1) an interest charge, computed from such due date, at an annual rate equal to the highest of the most recently published prime lending rate of any of the five (5) largest member banks of the New York Clearing House Association, plus one percent (1%) during the period for which payment was due; and

(2) if the payment is late by thirty (30) days or more, a sum of money equal to five percent (5%) of the amount due in order to defray those additional expenses and costs incurred by the Grantor due to Grantee's delinquent payment.

(e) Franchise fee payments shall be made in accordance with the schedule indicated in the Franchise Agreement.

4.09.020 Security Fund

(a) Grantor may require Grantee to provide a security fund, in an amount and form established in the Franchise Agreement. The amount of the security fund shall be established based on the extent of the Grantee's obligations under the terms of the Franchise.

(b) The security fund shall be available to Grantor to satisfy all claims, liens and/or taxes due Grantor from Grantee which arise by reason of construction, operation, or maintenance of the System, and to satisfy any actual or liquidated damages arising out of a material breach of the Franchise Agreement, subject to the procedures and amounts designated in the Franchise Agreement.

(c) If the security fund is drawn upon by Grantor in accordance with the procedures established in this Ordinance and the Franchise Agreement, Grantee shall cause the

security fund to be replenished to the original amount no later than thirty (30) days after receiving written confirmation from the bank where such security fund is deposited that Grantor has made a draw against the security fund. Failure to replenish the security fund shall be deemed a material breach of the Franchise.

CHAPTER 4.10 CONSTRUCTION REQUIREMENTS

4.10.010 System Construction

(a) Grantee shall not construct any Cable System facilities until Grantee has secured the necessary permits from Grantor, or other responsible public agencies. The Grantee shall be subject to all existing permit and bonding requirements applicable to contractors working within the Public Rights-of-Way. No provision of this Ordinance or the Franchise Agreement shall be deemed a waiver of the obligation of a Grantee to pay Grantor for the issuance of a permit.

(b) (b) In those areas of the Town 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 underground.

(c) In those areas of the Town where the Grantee's cables are located on the above-ground transmission or distribution facilities of the public and/or municipal utility providing telephone or electric power service, and in the event that the facilities of both the telephone and electric power 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.

(d) Any changes in or extensions of any poles, anchors, wires, cables, conduits, vaults, laterals or other fixtures and equipment (herein referred to as "Structures"), or the construction of any additional Structures, in, upon, along, across, under or over the Streets, alleys and Public Ways shall require notification of the Town Public Works Director or a designee. Any change normally requiring a permit from the Grantor shall not be made until a permit has been issued. If any change conforms with California Public Utilities Commission General Order 95 (underground) and/or General Order 128 (underground) then additional permitting shall not be required. The height above public thoroughfares of all aerial wires shall conform to the requirements of the California regulatory body having jurisdiction thereof.

(1) All transmission and distribution structures, lines and equipment erected by the Grantee shall be located so as not to interfere with the proper use of the Public Rights-of-Way, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said Public Rights-of-Way, and not to materially interfere with existing public and municipal utility installations.

(2) In the event that any property or improvement of the Grantor in the Public Rights-of-Way is disturbed or damaged by the Grantee or any of its contractors, agents or employees in connection with undertaking any and all work pursuant to the rights granted to the Grantee pursuant to this Ordinance and the Franchise Agreement, the Grantee shall promptly, at the Grantee's sole cost and expense, restore to the Grantor's satisfaction said property or improvement which was so disturbed or damaged. If such property or improvement shall within two (2) years (or in the case of street improvement, until the street is resurfaced if resurfaced prior to the expiration of the two (2)

years) of the date the restoration was completed, become uneven, unsettled or otherwise require additional restorative work, repair or replacement because of the initial disturbance or damage to the property by the Grantee, then the Grantee, as soon as reasonably possible, shall, promptly upon receipt of written notice from the Grantor and at the Grantee's sole cost and expense, restore to the Grantor's satisfaction said property or improvement which was disturbed or damaged. Any such restoration by the Grantee shall be made in accordance with such materials and specifications as may, from time to time, be established by the Grantor.

(3) Prior to commencing any work on the System in the Public Rights-of-Way, the Grantee shall obtain any and all permits, licenses and authorizations lawfully required for such work. If emergency work on the System in the Public Right-of-Way is required, the Grantee shall with all due diligence, seek to obtain any and all such required permits, licenses and authorizations within three (3) working days after commencing such emergency work. Prior to performing any work in the Public Right-of-Way, Grantee shall give appropriate notice to the "Underground Service Alert" ("USA"), or any similar type service provider as designated by the Grantor.

(4) There shall be no unreasonable or unnecessary obstruction of the Public Rights-of-Way by the Grantee in connection with any of the work provided for herein. The Grantee shall maintain any barriers, signs and warning signals during any work performed on or about the Public Rights-of-Way or adjacent thereto as may be necessary to reasonably avoid injury or damage to life and property.

(5) If the Grantor lawfully elects to alter or change the grade or location of any Public Right-of-Way, the Grantee shall, upon reasonable notice by the Grantor, and in a timely manner, remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at it own expense.

(6) The Grantee shall not place poles, conduits or other fixtures above or below ground where the same will interfere with any gas, electric, telephone fixtures, water hydrants or other utility, and all such poles, conduits or other fixtures placed in any street shall be so placed as to comply with all ordinances of the Grantor.

(7) In accordance with applicable law, the Grantee or any utility user of the Public Rights-of-Way may be required by the Grantor to permit joint use of its poles and/or conduit located in the Public Rights-of-Way, insofar as such joint use may be reasonably practicable and upon payment of a reasonable rental fee for such usage. In the absence of agreement regarding such joint use, each party shall be entitled to exercise any rights and defenses provided by applicable law.

(7) The Grantee, on request of any Person holding a moving permit issued by the Grantor, shall temporarily raise or lower its wires or fixtures to permit the moving of buildings. The expense of such temporary raising or lowering of wires or fixtures shall be paid by the Person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than five (5) business days prior written notice to arrange for the temporary wire or equipment changes.

(9) The Grantee shall have the authority to trim any trees or other natural growth overhanging the Public Rights-of-Way so as to prevent the branches of such trees or other natural growth from coming in contact with the Grantee's wires, cables and other equipment. The Grantor may require all trimming of trees and natural growth to be done under its supervision and direction.

4.10.020 Multiple Franchises

(a) Subject to applicable law, in the event that more than one (1) Franchise is awarded, the Grantor reserves the right to limit the number of drop cables per residence, or to require that the drop cable(s) be utilized only by the Cable Operator selected by the resident to provide service.

(b) The Grantor reserves the right to grant an encroachment permit to a Cable Franchisee applicant to install conduit and/or cable in anticipation of the granting of a Franchise. Such installations shall be at the applicant's risk, with no recourse against the Grantor in the event the pending Franchise application is not granted. The Grantor may require an applicant to provide a separate trench for its conduit and/or cable, at the applicant's cost.

(c) If the Grantor authorizes or permits another Cable System to operate within the municipal limits of the Town, it shall do so on conditions that such new Cable System entrant indemnify and hold harmless and reimburse the Grantee from and against all costs and expenses incurred in strengthening poles, replacing poles, rearranging attachments, placing underground facilities and all other costs including those of Grantee, the Town and utilities, incident to inspections, make ready, and construction of an additional Cable System in the Franchise Area; and Grantee shall be designated a third party beneficiary of such conditions as are incorporated into the authorization(s) granted to such new entrant Cable System.

CHAPTER 4.11 TECHNICAL STANDARDS

4.11.010 Applicable Technical Standards

(a) The Grantee shall construct, install, operate and maintain its Cable 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 written 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.

(b) Should the FCC no longer require proof of performance tests, the Grantee shall make and submit such proof of performance tests and reports in response to a written request from the Grantor. Such report shall be submitted to the Grantor within thirty (30) days of issuance of the Grantor request. Requests shall be limited to no more often than twice per calendar year.

(c) Any time the signal provided on Grantee's Cable System does not meet FCC technical standards or the technical standards of Grantee's Franchise application and/or Grantee's Franchise Agreement, the Grantee shall make a pro rata rebate, in money or services, to each Subscriber based upon the percentage by which the signal falls below the most stringent technical standard and upon the length of time that such condition has existed. Such rebate shall be made to the satisfaction of each Subscriber, or of the Grantor, if agreement with the Subscriber cannot be reached.

4.11.020 Non-Compliance with Standards

Demonstrable evidence of failure to maintain specified technical standards shall constitute a material breach of the Franchise.

4.11.030 Costs of Technical Assistance

The Grantee shall pay the costs incurred by the Grantor for obtaining any technical assistance deemed necessary by the Grantor for obtaining independent verification of technical compliance with all Franchise-imposed standards. Any such payment by Grantee shall not be credited against any Franchise Fees due to the Grantor.

CHAPTER 4.12 INDEMNIFICATION AND INSURANCE REQUIREMENTS

4.12.010 Hold Harmless

Grantee shall indemnify, defend and hold Grantor, its officers, agents and employees harmless from any liability, claims, damages, costs or expenses, to the extent provided in the Franchise Agreement.

4.12.020 Insurance

(a) On or before commencement of Franchise operations, the Grantee shall furnish to Grantor Certificates of Insurance for liability, Workers' Compensation and property insurance from appropriately qualified insurance companies, which shall be "admitted" in the State of California. The Certificates of Insurance shall provide that the insurance is in force and will not be cancelled or modified without thirty (30) days prior written notice to Grantor. The Certificates of Insurance shall be in a form satisfactory to Grantor. The Grantee shall maintain at its cost throughout the term of the Franchise, the insurance required herein and in any Franchise Agreement.

(b) The policy of liability insurance shall:

(1) Be endorsed to name Grantor, its officers, agents and employees as additional insureds;

(2) Indemnify all liability for personal and bodily injury, death and damage to property arising from activities conducted and premises used pursuant to this Ordinance by providing coverage therefor, including but not limited to:

- Negligent acts or omissions of Grantee, and its agents, servants and employees, committed in the conduct of Franchise operations, and/or
- Use of motor vehicles,

(3) For any claims relating to this agreement the Grantee's insurance coverage shall be primary as respects the Grantor, its agents, officers and employees. Any insurance or self-insurance maintained by the Grantor shall be excess of the Grantee's insurance and shall not contribute to it.

(4) Provide a combined single limit for comprehensive general liability and comprehensive automobile liability insurance in the amount provided for in the Franchise Agreement.

(c) The policy of Workers' Compensation Insurance shall comply with the laws of the State of California.

(d) The policy of property insurance shall provide fire insurance with extended coverage 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.

The Certificates of Insurance and/or endorsements shall indicate the following information:

(1) The policy number;

(2) The date upon which the policy will become effective and the date upon which it will expire;

(3) The names of the primary insureds and any additional insured required by the Franchise Agreement;

(4) The subject of the insurance;

(5) The type of coverage provided by the insurance; and
(6) The amount or limit of coverage provided by the insurance.

If the Certificates of Insurance do not provide all of the above information, Grantor reserves the right to inspect the relevant insurance policies.

(e) The commencement of Franchise operations shall not begin until Grantee has complied with the aforementioned provisions of this Section.

(f) In the event Grantee fails to maintain any of the above-described policies in full force and effect, Grantor shall, upon forty-eight (48) hours notice to Grantee, have the right to procure the required insurance and recover the cost thereof from Grantee. Grantor shall also have the right to suspend the Franchise during any period that Grantee fails to maintain said policies in full force and effect. 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 Agreement. 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.

CHAPTER 4.13 RECORDS AND REPORTS

4.13.010 Records Required

(a) Grantee shall at all times maintain:

(1) A written or computer-stored 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.

(2) A full and complete set of plans and record drawings showing the locations of the Cable System components installed or in use in the Town, exclusive of Subscriber service drops and equipment provided in Subscriber's homes.

(3) If requested by Grantor, a summary of service calls, identifying the number, general nature and disposition of such calls, shall be submitted to Grantor. The summary shall be submitted to the Grantor on a one-time basis within thirty (30) days following any written request by Grantor, or may be required by Grantor to be submitted monthly, in a form reasonably acceptable to the Grantor.

(4) If requested by Grantor, a complaint record shall be submitted which shall contain a semi-annual (through June 30th and December 31st) breakdown indicating the total number of complaints received for the preceding reporting period, and shall indicate the classifications of complaints in the form normally maintained by the Grantee.

(5) A full and complete record of rates for programming services, equipment, installations and other Subscriber charges shall be submitted by Grantee to Grantor on a current ongoing basis. This information shall include, but not be limited to, rates for the Basic Service Tier, Tiers of service beyond the Basic Tier, premium service, pay-per-view services, late fees, additional outlets, converters, remote controls and any charges for installation or service at the Subscriber premises.

4.13.020 Additional Information

(a) The Grantor may impose requests for additional information, records and documents from Grantee, provided they reasonably relate to the scope of the Town's rights and regulatory responsibilities under this Ordinance or the Grantee's Franchise Agreement.

(b) 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 the Service Area.

4.13.030 Annual Reports

(a) If requested by the Grantor in writing, within ninety (90) days after the end of the calendar year, Grantee shall submit a written report to Grantor with respect to the preceding calendar year in a form approved by Grantor, including, but not limited to, the following information:

(1) A summary of the previous year's (or in the case of the initial reporting 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;

(2) A list of Grantee's officers and members of its board of directors;

(3) A list of stockholders or other equity investors holding five percent (5%) or more of the voting interest in Grantee;

(4) An indication of any residences in Grantee's Service Area where service is not available, and a schedule for providing service;

(5) Information as to

(i) the number of homes passed;

(ii) total Subscribers; and

(iii) the number of Basic and Pay Subscribers.

(6) A full and complete set of plans and record drawings showing the locations of the Cable System installed or in use in the Town, exclusive of Subscriber service drops and equipment provided in Subscriber's homes. It is the intent of this Section that the Grantor have a complete set of plans and records drawings. After the initial submission of a complete set of drawings, the Grantee may satisfy the provisions of this Section by providing updated portions of those sections of the drawings which have changed.

(7) Any other information relevant to Franchise regulation which the Grantor shall reasonably request, and which is relevant to its regulatory responsibilities.

(b) Upon request, Grantee shall submit to Grantor copies of all pleadings, applications and reports submitted by Grantee to any Federal, State or local court, regulatory agency, or other governmental body as well as copies of all decisions issued in response to such pleadings, applications and reports, which are non-routine in nature and which will materially affect its Cable System within the Franchise Area.

(c) Information otherwise 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. 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 and protected by the Grantor. To the extent possible, Grantee may 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.

(d) If Grantee is publicly held, a copy of each Grantee's annual and other periodic reports and those of its parent, shall be submitted to Grantor within forty-five (45) days of the publication of such reports.

(e) Upon Grantor's request, but no more than annually, Grantee shall submit to Grantor a privacy report indicating the degree of compliance with the provisions contained in Section 18.3(c), (d) and (f) herein and all steps taken to assure that the privacy rights of individuals have been protected.

(f) All reports required under this Ordinance, except those required by law to be kept confidential, shall be available for public inspection in the Grantor's offices during normal business hours.

(g) All reports and records required to be delivered to Grantor under this Ordinance shall

be furnished at the sole expense of Grantee, except as otherwise provided in the Franchise Agreement.

(h) The willful refusal, failure, or willful negligence of Grantee to file any of the reports required as and when due under this Ordinance, may be deemed a material breach of the Franchise Agreement if such reports are not provided to Grantor within thirty (30) days after written request therefor, and may subject the Grantee to all remedies, legal or equitable, which are available to Grantor under this Ordinance or the Franchise Agreement.

(i) Any materially false or misleading statement or representation made knowingly and willfully by the Grantee in any report required under this Ordinance or under the Franchise Agreement may be deemed a material breach of the Franchise and may subject Grantee to all remedies, legal or equitable, which are available to Grantor.

4.13.040 Opinion Survey

Upon written request of the Grantor, but not more than once every two (2) years, the Grantee shall conduct a Subscriber satisfaction survey pertaining to quality of service, which may be transmitted to Subscribers in Grantee's invoice for Cable Services. The results of such survey shall be provided to the Grantor on a timely basis. The cost of such survey shall be borne by the Grantee.

CHAPTER 4.14 REVIEW OF SYSTEM PERFORMANCE

4.14.010 Biannual Review

(a) Every two (2) years throughout the term of the Franchise, if reasonably requested by prior written notice from the Grantor, Grantor and Grantee shall meet publicly to review System performance and quality of service. The various reports required pursuant to this Ordinance, results of technical performance tests, the record of Subscriber complaints and Grantee's response to those complaints, and the information acquired in any Subscriber surveys, shall be utilized as the basis for review. In addition, any Subscriber may submit comments or complaints during the review meetings, either orally or in writing, and these shall be considered. Within thirty (30) days after the conclusion of such a review meeting, Grantor may issue findings with respect to the Cable System's Franchise compliance and quality of service.

(b) If Grantor determines that Grantee is not in compliance with the requirements of this Ordinance or the Grantee's Franchise Agreement, Grantor shall provide Grantee, in the form of written findings, the specific details of each alleged noncompliance. Grantor may then direct Grantee to correct the areas of noncompliance within a reasonable period of time. Failure of the Grantee, after due notice, to:

(1) correct the area(s) of noncompliance within the period specified therefor; or

(2) commence compliance within such period and diligently achieve compliance thereafter; or

(3) demonstrate that the allegations of noncompliance are incorrect; shall be considered a material breach of the Franchise, and Grantor may exercise any remedy within the scope of this Ordinance and the Franchise Agreement considered appropriate under the circumstances.

4.14.020 Special Review

When there have been extensive complaints made or where there exists other demonstrative evidence which, in the reasonable 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 Ordinance or its Franchise, the Grantor shall have the right to require the Grantee to test, analyze and report on the performance of the Cable 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 prior written notice of its intention to exercise its rights under this Section 14.2 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 in writing 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.

CHAPTER 4.15 FRANCHISE VIOLATIONS

4.15.010 Remedies for Violations

If Grantee fails to perform in a timely manner any material obligation required by this Ordinance or a Franchise granted hereunder, following reasonable written notice from the Grantor and a reasonable opportunity to cure such nonperformance in accordance with the provisions of Section 15 of this Ordinance and the Franchise, 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 in the Franchise Agreement 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;

(b) Assess against Grantee liquidated damages in an amount set forth in the Franchise Agreement for any such violations(s) if such violation is not cured, or if Grantee has not commenced a cure, on a schedule reasonably acceptable to Grantor, within thirty (30) days after written notice to the Grantee of Grantor's intention to assess liquidated damages. Such assessment may be withdrawn from the security fund, and shall not constitute a waiver by Grantor of any other right or remedy it may have under the Franchise or applicable law, including without limitation, its right to recover from Grantee such additional damages, losses, costs and expenses, including actual attorney's fees, as may have been suffered or incurred by Grantor by reason of or arising our of such material breach of the Franchise.

4.15.020 Procedure for Remedying Franchise Violations

Prior to imposing any remedy or other sanction against Grantee specified in this Ordinance, 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 alleged violation in writing by personal delivery or registered or certified mail, and demand correction, or evidence of non-violation, within a reasonable time, which shall not be less than fifteen (15) business days in the case of the failure of the Grantee to pay any sum or other amount due the Grantor under this Ordinance or the Grantee's Franchise and thirty (30) business days in all other cases. If Grantee fails to:

  (1) correct the alleged violation within the time prescribed; or

  (2) commence correction of the alleged violation within the time prescribed and diligently remedy such alleged violation thereafter; or

  (3) provide evidence that there is no violation.

The Grantor shall then give, by personal delivery or registered or certified mail written notice of not less than thirty (30) days of an administrative hearing to be held before a hearing officer designated by the Council. Said notice shall set forth in detail each of the violations alleged to have occurred.

The hearing officer shall have suitable qualifications and experience in cable television franchise issues. The hearing officer selected by the Council shall, if possible, be mutually acceptable to Grantor and Grantee. If agreement cannot be reached, the hearing officer shall be selected by majority vote of the Town Council. Any hearing held shall be open to the public.

Once appointed, the hearing officer shall issue a notice of setting forth in detail the violations alleged to have occurred and establish the procedures to be used in conducting the hearing, which shall be informal and shall not require the use of rules of evidence or sworn testimony.

The hearing officer shall consider all relevant evidence and thereafter render a written decision which shall be a public record. If the Grantee has corrected the alleged violation, has diligently commenced correction with a guaranteed date of correction, or the hearing officer finds that no violation has occurred, the proceedings shall terminate and no penalty shall be imposed.

If the hearing officer finds that a material violation exists and the violation remains uncorrected despite written notice and opportunity to do so, then the hearing officer may impose one (1) or more of the remedies provided in this ordinance and the franchise agreement.

Any decision of the hearing officer may be appealed to the Town Council. The Council shall determine, by majority vote, whether it wishes to hear the appeal or to uphold the decision of the hearing officer without further proceedings. If the Council elects to hear the appeal, the hearing shall be conducted in a manner consistent with this ordinance, the franchise agreement, and other applicable law.

4.15.030 Grantor's Power to Revoke

(a) Grantor may revoke any Franchise granted pursuant to this Ordinance 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:

(1) If Grantee fails to perform any of its material obligations under this Ordinance or the Franchise Agreement and continues such failure to perform after receipt of due notice and a reasonable opportunity to cure;

(2) If Grantee fails to provide or maintain in full force and effect the insurance coverage or security fund as required in the Franchise Agreement;

(3) If Grantee violates 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 in good faith in an appropriate proceeding;

(4) If Grantee knowingly practices any material fraud upon Grantor;

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

(b) After completing the procedures set forth in Section 15.2 above, the Town Council may make a formal request before the Council that the Grantee's Franchise be revoked. The Council shall cause to be served on the Grantee written notice of its intent to consider revoking Grantee's Franchise. Such notice shall be served on Grantee at least thirty (30) days prior to the date of the hearing on the issue. The notice shall contain the time and place of the hearing and shall be published at least once in a newspaper of general circulation within the Franchise area ten (10) days prior to the

hearing date.

(c) The Council shall hear any Person(s) interested in the revocation and within ninety (90) days after the date of the hearing shall make its determination, based on a preponderance of the evidence, whether the Grantee has committed a material breach of the Franchise.

(d) If the Grantor determines that the Grantee has committed a material breach, then the Grantor may:

(1) Declare the Franchise revoked and any security fund and bonds forfeited; or

(2) If the material breach is curable by the Grantee, direct the Grantee to take appropriate remedial action within the time and manner and under the terms and conditions reasonably specified by the Grantor.

The termination and forfeiture of the Grantee's Franchise shall in no way affect any right of Grantor to pursue any remedy under the Franchise or any provision of law.

4.15.040 Appeal of Finding of Revocation

The Grantee may appeal a finding of revocation made pursuant to Section 15.3. Such an appeal requiring superior court action shall be heard by, and within, the jurisdiction and venue of the superior Court of Nevada County, California, or any other name by which that court may be described in the event of court consolidation. If such an appeal is directed to a federal court, the venue shall be the nearest federal court jurisdiction. Any such appeal shall be "de novo." Any such appeal must be taken within sixty (60) days of the issuance of the Grantor's decision to revoke the Franchise.

CHAPTER 4.16 FORCE MAJEURE; GRANTEE'S INABILITY TO PERFORM

In the event Grantee's performance of any of the terms, conditions or obligations required by this Ordinance or a Franchise granted hereunder is prevented by a cause or event not within Grantee's control, such inability to perform shall be deemed 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 8.3.(c). 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, war, strikes, sabotage, riots or civil disturbances, labor disputes, undue restrictions or delays imposed by utility pole owners, restraints imposed by order of a governmental agency or 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 System where the Grantee has failed to exercise reasonable diligence to secure such supplies, services or equipment.

CHAPTER 4.17 ABANDONMENT OR REMOVAL OF FRANCHISE PROPERTY

4.17.010 Abandonment or Removal

(a) If the Grantee discontinues the use of a material portion of its property within the Public Rights-of-Way for a continuous period of twelve (12) months, such property shall be deemed to have been abandoned by Grantee. 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 reasonable terms as Grantor may lawfully 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 Ordinance, the Grantee shall remove all abandoned above-ground facilities and equipment upon receipt of written notice from Grantor and shall restore to Grantor's satisfaction any affected Public Right-of-Way. 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 Rights-of-Way 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 Rights-of-Way, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this Ordinance 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 17.1.

(c) Upon the approved abandonment of any Franchise property, 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 abandoned Franchise property.

(d) At the expiration, without renewal or extension, of the term for which the Franchise is granted, or upon its revocation, as provided herein, the Grantor shall have the right to require Grantee to remove, at its own expense, all above-ground portions of the Cable System from all streets and public ways within the Service Area 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 Ordinance, the Grantor may permit the Grantee to abandon any underground Franchise property in place so long as it does not materially interfere with the use of the Public Rights-of-Way in which such property is located or with the use thereof by any public utility or other Franchise holder.

4.17.020 Restoration by Grantor: Reimbursement of Costs

Upon reasonable written notice and upon the failure of the Grantee to commence, pursue or

complete any work to be done in any Public Right-of-Way required by law or by the provisions of this Ordinance or the Franchise Agreement, within the time prescribed and to the reasonable satisfaction of the Grantor, the Grantor may cause the work to be commenced and/or completed. The Grantor shall provide to the Grantee an itemized work order setting forth in detail the exact nature of the work completed and the supplies used in such work. The Grantee shall pay to the Grantor the reasonable costs for such work no later than thirty (30) days after receipt of the itemized work order.

4.17.030 Extended Operation and Continuity of Services.

Upon expiration or revocation of the Franchise, the Grantor shall have the discretion to permit Grantee to continue to operate the Cable System for an extended period of time. Grantee shall continue to operate the System under the terms and conditions of this Ordinance and the Franchise and to provide the regular Subscriber service and any and all of the services that may be provided at that time. It shall be the right of all Subscribers to continue to receive all available services provided that financial and other obligations to Grantee are honored. The Grantee shall use reasonable efforts to provide continuous, uninterrupted service to its Subscribers, including operation of the System during transition periods following Franchise expiration or termination.

4.17.040 Receivership and Foreclosure

(a) At the option of the Grantor and subject to applicable law, a Franchise granted hereunder may be revoked one hundred twenty (120) days after appointment of a receiver(s) or trustee(s) to take over and conduct the business of Grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:
   (1) the receivership or trusteeship shall have been vacated within said one hundred twenty (120) days; or
   (2) such receivers or trustees within said one hundred twenty (120) days shall have remedied all the defaults under the Franchise or provided a plan for the remedy of such defaults which is satisfactory to the Grantor; or
   (3) such receivers or trustees shall, within said one hundred twenty (120) days, have executed an agreement duly approved by the court having jurisdiction whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the Franchise.

(b) In the case of a foreclosure or other judicial sale of the Cable System, in whole or in part, the Grantor may serve notice of revocation upon Grantee and the successful bidder at such sale, and all rights and privileges of the Grantee hereunder shall be revoked thirty (30) days after service of such notice, unless:
   (1) Grantor shall have approved the transfer of the Franchise, in the manner provided by law; and
   (2) the successful bidder shall have covenanted and agreed with Grantor to assume and be bound by all terms and conditions of the Franchise.

CHAPTER 4.18 GRANTOR, GRANTEE & SUBSCRIBER RIGHTS

4.18.010 Reservation of Grantor and Grantee Rights

In addition to any rights specifically reserved by this Ordinance, the Grantor and the Grantee reserves every right and power which is required to be reserved by law or by a provision of any ordinance or under the Franchise.

4.18.020 Waiver

(a) The Grantor shall have the right to waive any provision of the Franchise, except those required by Federal or State regulation, if the Grantor determines (1) that it is in the public interest to do so, or (2) that the enforcement of such provision will impose an undue hardship on the Grantee or on the Subscribers. To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the Grantor. Waiver of any provision in one (1) instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of the Franchise unless the statement so recites.

(b) The Grantee shall not be excused from complying with any of the requirements of this Ordinance or the Franchise Agreement by any failure of the Grantor on any one or more occasions to require or seek compliance with any such terms or conditions.

4.18.030 Rights of Individuals

(a) Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, age or sex. Grantee shall comply at all times with all other applicable Federal, State and local laws and regulations relating to nondiscrimination.
However, nothing in this Ordinance or the Franchise shall limit the right of the Grantee to deny service to any household or individual which has a negative credit or service history with the Grantee, which may include non-payment of bills or theft or damage to Grantee's equipment, or who has threatened or assaulted employees of the Grantee in the course of their employment.

(b) Grantee shall adhere to the applicable equal employment opportunity requirements of Federal, State and local regulations, as now written or as amended from time to time.

(c) 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 participation, or audience viewing surveys to support advertising research regarding viewers where individual viewing behavior cannot be identified.

(d) In the conduct of providing its Cable 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. The Grantee shall not without lawful court order or other applicable valid legal authority utilize the System's interactive two-way equipment or capability, if such equipment or capability exists, for unauthorized personal surveillance of any Subscriber or general citizen.

(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 deemed granted.

(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 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.

CHAPTER 4.19 SEPARABILITY

If any provision of this Ordinance is held by any court or by any Federal or State agency of competent jurisdiction, to be invalid as conflicting with any Federal or State 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, such provision shall be considered a separate, distinct, and independent part of this Ordinance, 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 thereof which had previously been held invalid or modified is no longer in conflict with such law, rule or regulation, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantor and Grantee, provided that Grantor shall give Grantee thirty (30) days written notice of such change before requiring compliance with said provision or such longer period of time as may be reasonably required for Grantee to comply with such provision.