

CITY OF MARATHON, FLORIDA

CABLE ORDINANCE NO. 00-09-09

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CITY OF MARATHON, FLORIDA

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, CREATING ORDINANCE NO. _____ PROVIDING THE TERMS AND CONDITIONS FOR THE OPERATION OF CABLE SYSTEMS AND THE APPLICATION, PROCEDURES AND REQUIREMENTS RELATING TO THE GRANT OF FRANCHISES FOR THE CONSTRUCTION, INSTALLATION, OPERATION AND MAINTENANCE OF CABLE SYSTEMS, EQUIPMENT AND FACILITIES IN, ON, ACROSS, ABOVE OR IN ANY MANNER WHATSOEVER THAT USE THE CITY'S PUBLIC RIGHTS-OF-WAY OR OPERATE IN THE CITY AND TO ENSURE THAT USE OF THE CITY'S PUBLIC RIGHTS-OF-WAY IS IN THE PUBLIC INTEREST AND IN CONFORMANCE WITH APPLICABLE LAW: PROVIDING FOR CONFLICTS; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Chapter 99-427, Laws of Florida, the City of Marathon was created on November 30, 1999 as a municipal corporation pursuant to the Constitution of the State of Florida; and

WHEREAS, the City Council ("Council") has determined it is in the public interest of the City of Marathon (hereinafter referred to as the "City of Marathon" or the "City") to permit the operation of one or more cable systems in the City; and

WHEREAS, pursuant to the Florida Constitution, its Home Rule powers, Florida Law and the City's Charter, it is the intent of the City to exercise its authority as a local franchising authority to the fullest extent allowed by law; and,

WHEREAS, the Council has determined that adoption of a comprehensive Ordinance is in the interests of the citizens of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

GENERAL PROVISIONS

Section 1. Creation of Ordinance No. _____

Ordinance No. _____ of the City of Marathon, Florida, is hereby created to read as follows:

Section ____-01. Short Title.

This Ordinance shall be known and may be cited as City of Marathon, Florida Cable Ordinance. (Ord. _____, passed _____)

Section ____-02. Definitions.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. 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. The words "shall" and "will" are mandatory, and "may" is permissive. Words not otherwise defined herein or in any Franchise Agreement that might be granted hereunder shall be given the meaning set forth in the Communications Act of 1934, 47 USC 521 et seq., and the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, and as amended by the Telecommunications Act of 1996, and as those Acts may hereinafter be amended (collectively the "Cable Act"), and, if not defined therein, their common and ordinary meaning:

A. **"Activated Channel"** means those channels engineered at the headend of a Cable System for the provision of services generally available to residential subscribers of the Cable System, regardless of whether such services actually are provided, including any channel(s) designated for public, educational, or governmental use. Channels on which signals

flow in the direction from the headend to the subscriber are referred to as "downstream channels". Where the signal flows to the headend for re-distribution, it shall be referred to as an "upstream channel".

B. **"Access Channel"** means any channel on a Cable System set aside without charge by the Franchisee for non-commercial, educational and/or local governmental use.

C. **"Affiliate"** means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with a Franchisee.

D. **"Applicant"** means any Person submitting an application within the meaning of this Ordinance.

E. **"Application"** means any proposal, submission or request to (1) construct and operate a Cable System within the City; (2) transfer a Franchise or control of the Franchisee; (3) renew a Franchise; (4) modify a Franchise; or (5) seek any other relief from the City pursuant to this Ordinance, a Franchise Agreement, the Cable Act, or other applicable law. An application includes an applicant's initial proposal, submission or request, any and all subsequent amendments or supplements to the proposal and relevant correspondence, and all written material made or provided by Franchisee whether in writing, in a public hearing, or in any other type of correspondence between the City and Franchise or the Franchise and any other person in connection with the Application.

F. **"Basic Cable Service"** or **"Basic Service"** means any service tier which includes the retransmission of local television broadcast signals, and public, educational, or governmental Access Channels.

G. **"Communications Act"** means the Communications Act of 1934, 47 U.S.C. § 151 et seq., as that Act has and may hereinafter be amended.

H. **"Cable Service"** means the one-way transmission to Subscribers of video or other programming services, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming services.

I. **"Cable System", or "System,"** means any facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the City. Such term does not include (a) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations; (b) a facility that serves Subscribers without using any public right of way; (c) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 201 et seq., except that such facility will be considered a Cable System to the extent it 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 the Telecommunications Act of 1996; or (e) any facilities of any electric utility used solely for operating its electric utility systems. The foregoing definition of "Cable System" shall not be deemed to circumscribe the valid authority of the City to regulate the activities of any other communications system or provider of communications services, including but not limited to telephony and open video systems.

J. **"City"** means City of Marathon, a municipal corporation of the State of Florida, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

K. **"Control of a Franchisee, Grantee or Applicant"** means possession of the ability to direct or cause the direction of the management or policies of a Franchisee or Applicant, or the operation of a Franchisee's System, whether through operational control in

whatever manner exercised or ownership of voting securities, by contract or understanding, or in any other manner.

L. **"Fair Market Value of a Cable System"** means the price that a willing buyer would pay to a willing seller for a Cable System valued as a going concern but with no value allocated to the Franchise itself.

M. **"FCC"** means the Federal Communications Commission, or any successor governmental entity thereto.

N. **"Franchise"** means the right granted by the City to a Franchisee in a Franchise Agreement to construct, maintain and operate a Cable System under, on, and over Streets, roads and any other public ways, rights-of-ways, or easements within the City. The term does not include any license or permit that may be required by this Ordinance or other laws, ordinances or regulations of the City for the privilege of transacting and carrying on a business within the City or for disturbing or carrying out any work on any Street.

O. **"Franchise Agreement"** means a contract entered into in accordance with the provisions of this Ordinance between the City and a Franchisee that sets forth the terms and conditions under which the Franchise will be exercised.

P. **"Franchisee"** means any Person granted a Franchise pursuant to this Ordinance who has entered into a Franchise Agreement with the City.

Q. **"Gross Revenues"** means all revenues recognized in accordance with Generally Accepted Accounting Procedures (GAAP) generated directly or indirectly by the Franchisee and, any affiliates, subsidiaries or parent of the Franchisee, provided that such entities are considered Cable Operators as such term is defined by the Cable Act, from any source whatsoever arising from, attributable to, or in any way derived from the operation of the Cable System to provide Cable Services within the City. Gross Revenues includes, but is not limited to, fees charged

Subscribers for Basic Service; fees charged Subscribers for any optional, premium, per-channel or per-program service; fees charged Subscribers for any tier of service other than Basic Service; installation, disconnection, reconnection and change-in-service fees; late fees in the amount such fees exceed the reasonable administrative cost of collection; leased access fees; fees, payments or other consideration from programmers for carriage of programming on the System including, but not limited to Infomercials (excluding marketing support provided for the launch of new services on the System to the extent such funds are not considered revenue under GAAP); revenue from converter, remote, modem or any other equipment rentals: revenues from cable guides; advertising revenues allocable to the City based on a percentage of the Subscriber base in the City divided by the Subscriber base of the Cable System. Such percentage will then be multiplied by the Cable Systems' total advertising revenue to determine the allocable gross revenue stemming from advertising; revenues from home shopping channels or other sources allocable to the City, provided that where certain home shopping channel or other such revenue is allocable to more than one franchise area due to common zip codes, the Franchisee will allocate the percentage of revenue to the City which is equivalent to the percentage of the City's population divided by the total population for the allocable franchise areas in question; Gross Revenues shall be the basis for computing the franchise fee imposed pursuant to Section - 1 6 hereof. Gross Revenues shall not include revenues received from programmers and used by Franchisee to market or promote a programming service; any revenue received by Franchisee for payment in connection with PEG Access or facilities as required by this Ordinance or a Franchise Agreement; any taxes on services furnished by the Franchisee which are imposed upon any Subscriber or user by the state, county, City or other governmental unit and collected by the Franchisee on behalf of said governmental unit and which the Franchisee passes on in full to the applicable tax authority or authorities. However, it is hereby expressly provided that unless

otherwise prohibited by applicable law, franchise fees shall be included in the calculation of Gross Revenues.

R. "Initial Franchise" means an initial authorization issued by a franchising authority which authorizes the construction and/or operation of a Cable System and which expressly states that such authorization is intended as a cable Franchise.

S. "Institutional Network" means a voice, data and/or video communications system constructed, operated and/or maintained by the Franchisee for the City, the transmissions on which are generally available only to, and intended to be sent and received by, Persons other than the cable Subscribers generally.

T. "Interconnection" means the electronic connection of two or more Cable Systems for the purpose of sharing educational and/or governmental access programming.

U. "Law" means all duly enacted and applicable Federal, State, county and City laws, ordinances, codes, rules, regulations and orders.

V. "Leased Access Channel" means a channel designated in accordance with Section 612 of the Cable Act, 47 U.S.C. § 532, for commercial use by Persons unaffiliated with the Franchisee.

W. "Overbuild" means a Cable System constructed to serve Subscribers already served by an existing Cable System.

X. "Person" means any individual, corporation, partnership, association, joint venture, organization or legal entity of any kind, and any lawful trustee, successor, assignee, transferee or personal representative thereof, but shall not mean the City. However, for purposes of Section 2 (DD) herein, Person shall not mean any homeowner association, condominium association, townhouse association, or any other association comprised of several persons, notwithstanding any provision of any bulk agreement or contract for services.

Y. **"Pro Forma Transfer"** means a transfer to a Person, or group of Persons or business entity wholly owned by the same legal entity with controlling interest of the Franchisee which will not result in a change in the control or ownership of the Franchisee.

Z. **"Renewal of a Franchise"** means renewal of an authorization issued by the City, which authorizes the upgrade, continued construction, operation and maintenance of a Cable System for an additional term.

AA. **"Service Interruption"** means any interference with service so as to interrupt the audio or video portion of the transmission of the cable signal. A service interruption is major if it affects fifty (50) or more Subscribers.

BB. **"Service Tier"** means a category of Cable Service provided by a Franchisee and for which a separate charge is made by the Franchisee.

CC. **"State of the Art"** means that level of production facilities, technical performance, capacity, equipment, components and service equivalent to that which has been developed and demonstrated to be at least as modern as generally accepted and used in the cable industry in the State of Florida. In no event shall a system having a band width of less than 750 MHZ be considered State of the Art unless the City, in the City's sole discretion, determines that a cable system operating at less than 750 MHZ is 1) State of the Art; and 2) offers a level of production facilities, technical performance, capacity, equipment, components and service equivalent to a system operating at a band width of no less than 750 MHZ.

DD. **"Street or Streets"** means the surface, the air space above the surface and the area below the surface of any public street, highway, road, boulevard, concourse, driveway, freeway, thoroughfare, parkway, sidewalk, bridge, tunnel, park, waterway, dock, bulkhead, wharf, pier, court, lane, path, alley, way, drive, circle, easement, or any other public right-of-way or public place, including public utility easements dedicated for compatible uses, or any other property in which the City holds any kind of property interest or over which the City exercises

any type of lawful control, and any temporary or permanent fixtures or improvements located thereon, as may be ordinarily necessary and pertinent to construct and operate a cable system.

EE. **"Subscriber"** means any Person, as defined in Section Y herein, who lawfully receives Cable Service delivered over the Cable System. However, notwithstanding anything to the contrary, Subscriber shall not mean any homeowner or condominium association or other bulk purchaser unless mandated by FCC rules.

FF. **"Subscriber Base"** means the total number of residential and commercial Subscribers within the City as reported to the FCC or other governmental entities by the Franchisee.

GG. **"System Malfunction"** means any Cable System equipment, facility or signal failure or malfunction that results in the loss of satisfactory service on one or more channels to one or more Subscribers. A malfunction is major if it affects fifty (50) or more Subscribers.

HH. **"Transfer of a Franchise"** means any transaction in which (1) an ownership or other interest in a Franchisee or its Franchise is transferred from one Person or group of Persons to another Person or group of Persons so that control of a Franchisee is transferred; or (2) the rights and/or obligations held by a Franchisee under a Franchise Agreement are transferred or assigned to another Person, group of Persons or business entity.

II. **"Two-way Capability"** means the incorporation into a Cable System of all appropriate design and engineering characteristics and features so that two-way transmission, including but not limited to addressability, over the System can be implemented and activated.

JJ. **"Video Channel or Channel"** means a portion of the electromagnetic frequency spectmm which is used in a Cable System and which is capable of delivering a television

channel, including the associated audio signal, as television channel is defined by the FCC by regulation or otherwise.

Section ____-03. Intent and Purpose.

(A) It is the intent of the City and the purpose of this chapter:

- (1) To promote the public health, safety, and general welfare by providing for the grant of one or more franchises for the construction and operation of a Cable System or Cable Systems within the City.
- (2) To provide for the regulation, to the extent provided for by law, of each Cable System within the City in the public interest.
- (3) To provide for the payment of fees and other valuable consideration by a Franchisee to the City for the use of streets by its Cable System.
- (4) To promote the widespread availability of quality Cable Service to City residents and businesses, the City, and other public institutions.
- (5) To encourage the development of cable and other communications technologies and Cable Systems as a means of communication between and among members of the public, City businesses, the City, and other public institutions.
- (6) To promote competitive cable rates and services.
- (7) To promote the safe and efficient use of City streets.
- (8) To encourage the provision of a diversity of information sources to City residents, businesses, the community, the City, and other public institutions by cable technology.

(B) Recognizing the continuing development of communications technology and uses, it is the policy of the City to encourage experimentation and innovation in the development of Cable System uses, services, programming, and techniques that will be of general benefit to the community to the extent all such experiments and innovations are consistent with applicable laws.

Section ____-04 Applicability of Provisions.

(A) This chapter shall be applicable to all cable Franchises granted or renewed after the effective date hereof, and shall apply to all cable franchises in existence prior to the effective date of this chapter, to the full extent permitted by state and federal law.

(B) Any cable Franchisee whose Franchise Agreement predates the effective date of this chapter shall notify the City in writing within 30 calendar days of the passage of this chapter, or any subsequent amendment thereof. of:

(1) Any provision which it believes should not be applicable to it by reason of the pre-existing Franchise Agreement or the continuing applicability of the prior ordinance; and,

(2) The reason for each such claim of non-applicability.

(C) Failure to notify the City as provided in (B) shall constitute a waiver of any right to object.

Section ____-05. Municipal Cable System Ownership Acquisition.

(A) To the full extent permitted by law, the City may acquire, construct, own, and/or operate a Cable System.

(B) Nothing in this chapter shall be construed to limit in any way the ability or authority of the City to acquire, construct, own, and/or operate a Cable System to the full extent permitted by law.

(C) If the Renewal of a Franchise held by a cable operator is denied and the franchising authority acquires ownership of the Cable System or effects a transfer of ownership of the System to another Person, any such acquisition or transfer shall be:

- (1) At fair market value, determined on the basis of the Cable System valued as a going concern but with no value allocated to the franchise; or
- (2) In the case of any Franchise existing on the effective date of this chapter at a price determined in accordance with the Franchise if such Franchise contains provisions applicable to such an acquisition or transfer.

(D) If a Franchise held by a cable operator is revoked for cause and the franchising authority acquires ownership of the Cable System or effects a transfer of ownership of the System to another Person, any such acquisition or transfer shall be:

- (1) At an equitable price; or
- (2) In the case of any Franchise existing on the effective date of this chapter, at a price determined in accordance with the franchise if such franchise contains provisions applicable to such an acquisition or transfer.

(E) Nothing in this section shall prevent the price of the cable system (whether fair market value or equitable price) from being affected by related matters subject to local control.

Section ____-06. Reservation of Rights.

(A) The City reserves the right to amend this chapter as it shall find necessary in the lawful exercise of its police powers.

(B) Any additional regulations adopted by the City shall be incorporated into this chapter and complied with by all Franchisees within 30 days of the date of adoption of such additional regulations unless imposition of such regulations would be otherwise prohibited by applicable law.

(C) The City reserves the right to exercise the power of eminent domain to acquire the property of a Franchisee's Cable System, consistent with applicable federal and state law. Notwithstanding anything to the contrary, this section shall not enlarge or restrict the City's exercise of eminent domain except to the extent provided by applicable law.

(D) The City shall at all times have the right, upon reasonable notice and during normal business hours, to examine records and to inspect a Franchisee's facilities to the extent needed to monitor the Franchisee's compliance with and performance under this chapter and the Franchisee's Franchise Agreement.

Section ____-07. Interpretation.

This chapter shall be construed in accordance with the law of the State of Florida and is subject to applicable local, state, and federal law or regulation.

Section ____-08. Franchise Required.

(A) The City may grant one or more Franchises in accordance with this chapter.

(B) No Person may construct or operate a Cable System over, on, or under public streets in the City without a Franchise or applicable authorization granted by the City, and no Person may be granted a cable Franchise without having entered into a Franchise Agreement with the City pursuant to this chapter. Any person operating a Cable System without a Franchise or other applicable authority may be subject to a fine by the City in an amount up to \$1,000 per day.

(C) Unless otherwise authorized by law, any Franchise granted pursuant to this chapter is solely for the provision of Cable Services and shall not be construed to authorize the provision of telephone, non-cable video, or other telecommunications service. Any person, including, but not limited to, franchisees shall, unless the City is otherwise prohibited by applicable law, obtain authorization from the City for the privilege of providing other telecommunications services including, but not limited to, telephone service and/or alternative video programming services.

Section ____-09. Characteristics.

(A) A Franchise authorizes use of City streets for installing cables, wires, lines, optical fiber, underground conduit, ducts, conductors, amplifiers, vaults, and other facilities as necessary and pertinent to operate a Cable System to serve Subscribers within the City, but does not expressly or implicitly authorize the Franchisee to provide service to, or install cables, wires, lines, underground conduit, or any other equipment or facilities upon private property without owner consent (except for use of compatible casements pursuant to Section 621 of the Communications Act, 47 USC 541 (a)(2)), or to use publicly or privately owned conduits without a separate agreement with the owners.

(B) A Franchise is nonexclusive, and will not expressly or implicitly preclude the issuance of other Franchises to operate Cable Systems within the City, or affect the City's right to authorize use of City streets to other Persons to operate Cable Systems or for other purposes as it determines appropriate.

(C) All privileges prescribed by a Franchise shall be subordinate to any prior lawful occupancy of the streets, and the City reserves the right to reasonably designate where a

Franchisee's facilities are to be placed within the streets. Such designation may include, but not be limited to, consideration of the availability of space in the rights-of-way.

(D) A Franchise shall be a privilege which is in the public trust. No Transfer of a Franchise shall occur without the prior consent of the City and unless application is made by the Franchisee, and City approval obtained, pursuant to 5 - 1 7 hereof and the Franchise Agreement.

(E) A Franchise granted to an applicant pursuant to this chapter to construct, operate, and maintain a Cable System within the City shall be deemed to constitute both a right and an obligation on the part of the Franchisee to provide the services and facilities of a Cable System as required by the provisions of this chapter and the Franchise Agreement. The Franchise Agreement shall incorporate by reference all of the provisions of the Franchisee's application for the Franchise that are finally negotiated and agreed upon by the City and Franchisee and all written representations and/or material made or provided by Franchisee in its application, public hearing, or in any correspondence between the City and the Franchisee or the Franchisee and any other person. All provisions of the Franchisee's application and all written representations and/or material made or provided by Franchisee in its application, public hearing, or in any correspondence by the City and Franchisee or the Franchisee and any other person shall be deemed to be material and made for the purpose of inducing the City to grant the Franchise in the form accepted.

(F) Subject to applicable laws, in the event that a Franchisee, its parent, affiliate, or subsidiary elects to offer to subscribers video programming services through any means or method not included within the definition of a cable system. including but not limited to an "open video system," the Franchisee shall remain subject to all terms and conditions of the cable television Franchise granted pursuant to this chapter.

Section ____-10. Franchisee Subject To Other Laws, Police Power

(A) A Franchisee shall at all times be subject to and shall comply with all applicable federal, state, and local laws. A Franchisee shall at all times be subject to all lawful exercise of the police power of the City.

(B) Subject to applicable law, except as may be specifically provided in this chapter or under the terms of a Franchise Agreement and subject to the Communications Act, the failure of the City, upon one or more occasions, to exercise a right or to require compliance or performance under this chapter or a Franchise Agreement shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance.

Section ____-11. Interpretation Of Franchise Terms; Conflict.

(A) The provisions of this chapter shall be applied to Franchisees in addition to the terms of any Franchise Agreement, shall apply to a Franchise Agreement as if fully set forth in the Franchise Agreement, and the express terms of this chapter will prevail over conflicting or inconsistent provisions in a Franchise Agreement unless such Franchise Agreement expresses an intent to amend or modify a requirement of this chapter.

(B) Except as to matters which are governed by federal law or regulation, a Franchise Agreement will be governed by and construed in accordance with the laws of the state.

Section __-12. Application For Grant, Renewal, Modification, Or Transfer.

(A) A written Application shall be filed with the City for:

- (1) Grant of an initial Franchise.
- (2) Renewal of a Franchise in accordance with Section 626 of the Cable Act, 47 USC 546, or other applicable law.
- (3) Modification of a Franchise Agreement.
- (4) A transfer of a Franchise.

(5) Any other relief from the City pursuant to this chapter or a Franchise Agreement.

(B) To be acceptable for filing, a signed original of the Application shall be submitted together with three (3) copies, be accompanied by the required non-refundable Application filing fee as set forth in subsection (J) hereof, conform to any applicable request for proposals, and contain all reasonably required information. All Applications shall include the names and addresses of Persons authorized to act on behalf of the Applicant with respect to the Application.

(C) All Applications accepted for filing shall be made available by the City for public inspection.

(D) An Application for the grant of an initial Franchise may be filed pursuant to a request for proposals issued by the City or on an unsolicited basis. The City, upon receipt of an unsolicited Application, may issue a request for proposals. If the City elects to issue a request for proposals upon receipt of an unsolicited Application, the Applicant may submit an amended Application in response to the request for proposals, or may inform the City that its unsolicited Application should be considered in response to the request for proposals, or may withdraw its unsolicited Application. An Application which does not conform to the reasonable requirements of a request for proposals may be considered non-responsive and denied on that basis.

(E) An Application for the grant of an initial Franchise shall contain, at minimum, the following information:

(1) The name and address of the Applicant and identification of the ownership and control of the Applicant, including: the names and addresses of all Persons with 50% or more ownership interest in the Applicant, including the names and addresses of parents or subsidiaries holding such ownership interests directly or indirectly; the Persons who control the applicant; all

officers and directors of the Applicant; and any other Cable System ownership or other communication ownership interest of each named Person.

- (2) An indication of whether the Applicant, or any Person controlling the Applicant, or any officer, or director or person with 50% or more ownership interest in the Applicant, has been adjudged bankrupt, had a cable franchise or license revoked, or been found by any court or administrative agency to have violated a security or antitrust law, or to have committed a felony, or any crime involving moral turpitude; and, if so, identification of any such Person and a full explanation of the circumstances.
- (3) A demonstration of the Applicants technical, legal, and financial ability to construct and operate the proposed Cable System, including identification of key personnel and their experience in cable systems.
- (4) A statement prepared by a certified public accountant or duly authorized financial officer of the Applicant regarding the Applicant's financial ability to complete the construction and to operate the proposed Cable System.
- (5) A description of the Applicant's prior experience in Cable System ownership, construction, and operation, and identification of all communities in which the Applicant or any Person controlling the Applicant, or currently having more than a 10% ownership interest in

Applicant has, or has had, a cable franchise or license or controlling interest therein.

- (6) A description of the physical facilities proposed, including channel capacity, performance characteristics, headend, and access facilities; upon request, the Applicant shall make information on technical design available for inspection.
- (7) Where applicable, a description of the construction of the proposed System, including an estimate of plant mileage and its location, the proposed construction schedule, a description, where appropriate, of how services will be converted from existing facilities to new facilities, and information on the availability of space in conduits including, where appropriate, an estimate of the cost of any necessary rearrangement of existing facilities.
- (8) For informational purposes, the proposed rates for individual Subscribers and the proposed discounts for bulk Subscribers, including projected charges for each service tier, installation, converters, and other equipment or services, and the Applicant's ownership interest in any proposed program services to be delivered over the Cable System.
- (9) A demonstration of how the Applicant's proposal will reasonably meet the future cable-related needs and interests of the community, including a description of how the proposal will meet the needs described in any recent community needs assessment conducted by or for the City.
- (10) Upon request, and for informational purposes only, a summary of any non-cable telecommunications services offered by the Applicant or its

parent, affiliate, or subsidiary and Applicant's plan with respect to the availability of such services to Subscribers in the City.

- (11) Pro forma financial projections for five years including a statement of projected income, and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules. Applicants that are publicly traded may submit an SEC Form 10(K) report.
- (12) If an Applicant proposes to provide Cable Service to an area already served by an existing cable Franchisee, the identification of the area where the overbuild would occur, the potential Subscriber density in the area which would encompass the overbuild, and the ability of the streets to accommodate an additional System.
- (13) Any other information as may be reasonably necessary to demonstrate compliance with the requirements of this chapter and information that the City may request of the Applicant that is relevant to the City's consideration of the Application.
- (14) An affidavit or declaration of the Applicant or authorized officer certifying the truth and accuracy of the information in the Application, acknowledging the enforceability of Application commitments, and certifying that the proposal meets all federal and state law requirements.

(F) The City may, in its sole discretion, waive any or all of the above Application requirements for cable operators providing service within the City prior to its incorporation provided that such operators agree to comply with all provisions of this chapter and enter into

good faith Franchise Agreement negotiations with the City not later than 60 days from the effective date of this chapter.

(G) An Application for modification of a Franchise Agreement shall include, at minimum, the following information:

- (1) The specific modification requested.
- (2) The justification for the requested modification, including the impact of the requested modification on Subscribers and others, and the financial impact on the Applicant if the modification is approved or disapproved.
- (3) A statement whether the modification is sought pursuant to Section 625 of the Cable Act, 47 USC 545, and, if so, a demonstration that the requested modification meets the standards set forth in 47 USC 545.
- (4) Any other reasonable information requested by the City to make an informed determination on the Application for modification.
- (5) An affidavit or declaration of the Applicant or authorized officer certifying the truth and accuracy of the information in the Application, and certifying that the Application is consistent with all federal and state law requirements.

(H) An application for Renewal of a Franchise shall comply with the requirements of §___-16.

(I) An application for approval of a Transfer of a Franchise or Pro Forma Transfer of a Franchise shall comply with the requirements of §___-17.

- (J) (1) To be acceptable for filing, an Application shall be accompanied by a non-refundable filing fee in the following amount, as appropriate:

APPLICATION	FEE
New or initial Franchise	\$7,500
Renewal of Franchise	\$5,000
Transfer of a Franchise (other than a pro forma transfer)	(50% of New Franchise Fee) \$5,000
Pro forma transfer of a franchise	\$ 1,000
Modification of a Franchise Agreement pursuant to 47 USC 545	\$ 5,000
Any other relief pursuant to this chapter	\$ 2,500

(2) The purpose of the filing fee is to defray a portion of the City's cost in processing an Application. Such fee shall be credited against amounts due under §___-13. The filing fee is therefore intended to be a charge incidental to the awarding or enforcing of a franchise within the meaning of §622(g)(2)(D) of the Communications Act, 47 USC §542(g)(2)(D) and may not be deducted from the franchise fee imposed in a Franchise Agreement.

Section ____-13. Grant Of Franchise.

(A) The City may grant a Franchise for a period not to exceed 10 years.

(B) The City may make the grant of a Franchise conditioned upon the completion of construction, upgrades, or rebuilds of the Cable System within a reasonably prescribed time or upon the performance of other specific obligations which are to be set forth in the Franchise Agreement, specifying that failure to comply with the condition may cause the Franchise to become null and void or may require the Franchisee to pay liquidated damages to the City as specified in the franchise Agreement.

(C) In evaluating an Application for a Franchise, the City may consider, among other things, the following factors: the Applicant's technical, financial, and legal qualifications to construct and operate the proposed System; the adequacy of the proposed construction arrangements, facilities, equipment, and services based on the public convenience, safety, and

welfare; the Applicant's experience in constructing and operating Cable Systems and providing Cable Service in other communities, if any; the ability of City streets to accommodate the proposed System; the potential disruption to users of City streets and any resultant inconvenience to the public; and whether the proposal will meet reasonably anticipated needs and serve the public interest. Evaluation by the City shall not be based on the content of the programming the applicant proposes to provide.

(D) The City shall hold a public hearing to consider any Application. The Applicant shall be notified of the hearing and shall be given an opportunity to be heard. Based upon the Application, the testimony presented at the public hearing, any recommendations of the City or staff, and any other information relevant to the Application, the City shall decide by resolution whether to grant or deny a Franchise Application and decide the terms and conditions of any Franchise granted. Upon the grant of a Franchise, the Franchisee's Application shall become an integral part of said Franchise, and the Franchisee shall be bound by the representations therein made.

(E) The Council shall approve or disapprove the proposed Franchise Agreement by resolution.

Section ____-14. Insurance; Indemnity.

(A) A Franchisee shall maintain, and by its acceptance of the Franchise Agreement specifically agrees that it will maintain, throughout the entire term of the Franchise including any renewals thereof, the following liability insurance coverage insuring the Franchisee and naming the City as an additional insured: worker's compensation and employer liability insurance to meet all requirements of state law and general comprehensive liability insurance with respect to the construction, operation, and maintenance of the Cable System, and the conduct of the Franchisee's business in the City, in the minimum amounts of:

- (1) \$1,000,000 for property damage in any one accident;

- (2) \$1,000,000 for personal bodily injury to any one person; and
- (3) \$1,000,000 for personal bodily injury in any one accident.

(B) All insurance policies shall be with sureties qualified to do business in the state; and shall be with sureties with a minimum rating of A-1 in Best's Key Rating Guide, Property/Casualty Edition. The City may request coverage and amounts in excess of the above minimums where demonstrated to reflect changing liability exposure and limits or where required by law.

(C) A Franchisee shall keep on file with the City certificates of insurance which certificates shall indicate evidence of payment of the required premiums and shall indicate that the City, its officers, boards, council, council members, agents, and employees are listed as additional insureds. In the event of a potential claim such that the City claims insurance coverage, the Franchisee shall immediately respond to all reasonable requests by the City for information with respect to the scope of the insurance coverage.

(D) All insurance policies shall name the City as additional insureds and shall further provide that any cancellation or reduction in coverage shall not be effective unless 30 days prior written notice thereof has been given to the City. A Franchisee shall not cancel any required insurance policy without submission of proof that the Franchisee has obtained alternative insurance satisfactory to the City which complies with this chapter.

(E) A Franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, its officials, boards, council, council members, agents, and employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses arising out of the construction, maintenance, and operation of its Cable System, and the conduct of Franchisee's business in the City, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this chapter or a Franchise

Agreement, provided, however, that the Franchisee's obligation hereunder shall not extend to any claims caused by the misconduct or sole negligence of the City, its officials, boards, council, council members, agents, or employees. This provision includes, but is not limited to, the City's reasonable attorneys' fees incurred in defending against any such claim, suit, or proceedings; and claims arising out of copyright infringements or a failure by the Franchisee to secure consents from the owners, authorized distributors, or providers of programs to be delivered by the Cable System, claims arising out of Section 638 of the Cable Act, 47 USC §558, and claims against the Franchisee for invasion of the right of privacy, defamation of any person, firm, or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm, or corporation. Notwithstanding the foregoing, the Franchisee may select counsel to represent the City. The City agrees to notify Franchisee, in writing, within ten (10) days of the City receiving notice of any issue it determines may require indemnification. Nothing in this section shall prohibit the City from participating in the defense of any litigation by its own counsel and at its own cost.

Section ____-15. Security Fund.

(A) A Franchise Agreement may provide that, prior to the Franchise becoming effective, the Franchisee shall post with the City a security fund. Such fund may be in the form of a cash deposit, letter of credit, or corporate guarantee as agreed to in the Franchise Agreement. The security fund will be used to ensure the Franchisee's faithful performance of and compliance with all provisions of this chapter, the Franchise Agreement, and other applicable law, and the payment by the Franchisee of any claims, liens, fees, or taxes due the City which arise by reason of the construction, operation, or maintenance of the System. The amount of the security fund shall be the amount that the City determines, under circumstances existing at the time, that is necessary to protect the public, to provide adequate incentive to the Franchisee to comply with this chapter and the Franchise Agreement, and to enable the City to enforce effectively

compliance therewith. The Franchise Agreement shall provide for the procedures to be followed with respect to the security fund. Neither the posting of the cash deposit or filing of an indemnity bond or any form of surety bond with the City, nor the receipt of any damages recovered by the City thereunder, shall be construed to excuse faithful performance by the Franchisee or limit the liability of the Franchisee under the terms of its Franchise for damages, either to the full amount of the bond or otherwise.

(B) The rights reserved to the City with respect to the security fund or an indemnity bond are in addition to all other rights of the City, whether reserved by this chapter or authorized by other law or the Franchise Agreement, and no action, proceeding, or exercise of a right with respect to such security fund or indemnity bond will affect any other right the City may have.

Section _____-16. Renewal of Franchise.

Renewal shall be conducted in a manner consistent with §626 of the Cable Act, 47 USC §546. To the extent such additional requirements are consistent with § 626 of the Cable Act, the following requirements shall apply:

(A) Upon completion of the review and evaluation process set forth in §626(a)(1)(2) of the Cable Act, 47 USC §546, should that process be invoked, the City shall notify the Franchisee, by certified or registered mail, that it may file a renewal Application including a renewal proposal. The notice shall specify the information to be included in the renewal Application and the deadline for filing the Application, which shall be no earlier than sixty (60) calendar days following the date of the notice.

(1) The Application shall comply with the requirements of 5 - 1 2 and provide the specific information requested in the notice. If the Franchisee does not submit a renewal Application by the date specified in the City's

notice to the Franchisee given pursuant to this subsection, the Franchisee will be deemed not to be seeking Renewal of its Franchise.

- (2) Upon receipt of the renewal Application, the City shall publish notice of its receipt and make copies available to the public. The City, following prior public notice, may hold one or more public hearings on the renewal Application.

(B) The Council shall consider the renewal Application at a public hearing at which the Council will either:

- (1) Pass a resolution agreeing to renew the Franchise, subject to the negotiation of a Franchise Agreement satisfactory to the City and the Franchisee; or
- (2) Pass a resolution that makes a preliminary assessment that the Franchise should not be renewed.

(C) If a preliminary assessment is made that a Franchise should not be renewed, at the request of the Franchisee or on its own initiative, the City will commence a proceeding in accordance with §626(c) of the Cable Act, 47 USC §546(c) to address the issues set forth in §626(c)(1)(A)-(D) of the Cable Act, 47 USC §546(c)(1)(A)-(D). Any denial of a proposal for renewal that has been submitted in compliance with subsection (b) of §546 shall be based on one or more adverse findings made with respect to the factors described in §546(c)(1)(A)-(D), pursuant to the record of proceedings under §546(c). The City shall not base a denial of renewal on a failure to substantially comply with the material terms of the Franchise under §546(c)(1)(A) or on events considered under §546(c)(1)(B) unless the City has provided the Franchisee with notice and opportunity to cure, or in any case in which it is documented that the City has waived its right to object, or the Franchisee gives written notice of a failure or inability to cure and the City fails to object within a reasonable time after receipt of such notice.

(D) Any request to initiate a renewal process or proposal for renewal not submitted within the time period set forth in §626(a) of the Cable Act, 47 USC §546(a), shall be deemed an informal proposal for renewal and shall be governed in accordance with §626(h) of the Cable Act, 47 USC §546(h). The City may hold one or more public hearings or implement other procedures under which comments from the public on an informal proposal for renewal may be received. Following such public hearings or other procedures, the Council shall determine whether the Franchise should be renewed and the terms and conditions of any renewal.

(E) If the Council grants a renewal Application, the City and the Franchisee shall agree on the terms of a Franchise Agreement, pursuant to the procedures specified in §____-13(E) and (F) of this chapter, before such renewal becomes effective.

(F) If Renewal of a Franchise is lawfully denied, the City may acquire ownership of the Cable System or effect a transfer of ownership of the System or effect a transfer to another Person upon approval of the Council. The City may not acquire ownership of the System or approve a transfer to another Person while an appeal of a denial for renewal is pending in any court pursuant to §47 USC §546(e).

(G) If Renewal of a Franchise is lawfully denied and no appeal to a court is pending, and the City does not purchase the Cable System or approve or effect a transfer of the Cable System to another Person, the City may require the former Franchisee to remove its facilities and equipment at the former Franchisee's expense. If the former Franchisee fails to do so within a reasonable period of time, the City may have the removal done at the former Franchisee's and/or surety's expense.

Section ____-17. Transfer Of Franchise.

(A) No Transfer of a Franchise shall occur without prior approval of the City which shall not be unreasonably withheld.

(B) All Applications for a Transfer of a Franchise shall meet the requirements of - 1 2 , and provide complete information on the proposed transaction, including details on the legal, financial, technical, and other qualifications of the transferee, and on the potential impact of the transfer on Subscriber rates and service. Except in the case of a Pro Forma Transfer, the Application shall provide, at a minimum, the information required in §___-12(E)(1)-(5), (13), (14) with respect to the proposed transferee. The information required in §___-12(E)(6)-(12) shall also be provided whenever the proposed transferee expects material changes to occur in those areas.

(C) An Application for approval of a Pro Forma Transfer of a Franchise shall be considered granted on the sixty-first (61st) calendar day following the filing of such Application with the City unless, prior to that date, the City notifies the Franchisee to the contrary. An Application for approval of a Pro Forma Transfer of a Franchise shall clearly identify the Application as such, describe the proposed transaction, and explain why the Applicant believes the transfer is pro forma. Unless otherwise requested by the City within ten (10) business days of the filing of an Application for a Pro Forma Transfer, the Applicant shall be required only to provide the information required in §___-12(E)(1), (3) with respect to the proposed transferee.

(D) In making a determination on whether to grant an application for a Transfer of a Franchise, the Council shall consider the legal, financial, and technical qualifications of the transferee to operate the System; whether the incumbent cable operator is in substantial compliance with the material terms of its Franchise Agreement and this chapter and, if not, the proposed transferee's commitment to cure such noncompliance; and whether operation by the transferee would adversely affect Cable Services to Subscribers, or otherwise be contrary to the public interest.

(E) No Application for a Transfer of a Franchise shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of this chapter and the Franchise

Agreement, and that it will assume the obligations of the previous Franchisee under this chapter and the Franchise Agreement.

(F) Approval by the City of a Transfer of a Franchise does not constitute a waiver or release of any of the rights of the City under this chapter or the Franchise Agreement, whether arising before or after the date of the transfer.

Section ____-18. Revocation or Termination of Franchise.

(A) A Franchise may be revoked by the Council for a Franchisee's failure to construct, operate, or maintain the Cable System as required by this chapter or the Franchise Agreement, or for any other material violation of this chapter or material breach of the Franchise Agreement. To invoke the provisions of this subsection (A), the City shall give the Franchisee written notice, by certified mail at the last known address, that Franchisee is in material violation of this chapter or in material breach of the Franchise Agreement and describing the nature of the alleged violation or breach with specificity. If within thirty (30) calendar days following receipt of such written notice from the City to the Franchisee the Franchisee has not cured such violation or breach, or has not commenced corrective action and such corrective action is not being actively and expeditiously pursued, the City may give written notice to the Franchisee of its intent to revoke the Franchise, stating its reasons.

(B) Prior to revoking a Franchise under subsection (A) hereof, the Council shall hold a public hearing, upon thirty (30) calendar days notice, at which time the Franchisee and the public shall be given an opportunity to be heard. Following the public hearing, the Council may determine whether to revoke the Franchise based on the evidence presented at the hearing, and other evidence of record. If the Council determines to revoke a Franchise, it shall issue a written decision setting forth the reasons for its decision. A copy of such decision shall be transmitted to the Franchisee.

(C) Notwithstanding subsections (A) and (B) hereof, any Franchise may, at the option of the City following a public hearing before the Council, be revoked one hundred twenty (120) calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the Franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding, unless within that one hundred twenty (120) day period:

- (1) Such assignment, receivership, or trusteeship has been vacated; or
- (2) Such assignee, receiver, or trustee has fully complied with the terms and conditions of this chapter and the Franchise Agreement and has executed an agreement, approved by a court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of this chapter and the Franchise Agreement.

(D) In the event of foreclosure or other judicial sale of any of the facilities, equipment, or property of a Franchisee, the City may revoke the Franchise, following a public hearing before the Council, by serving notice upon the Franchisee and the successful bidder at the sale, in which event the Franchise and all rights and privileges of the Franchise will be revoked and will terminate thirty (30) calendar days after serving such notice, unless:

- (1) The City has approved the transfer of the Franchise to the successful bidder; and
- (2) The successful bidder has covenanted and agreed with the City to assume and be bound by the terms and conditions of the Franchise Agreement and this chapter.

(E) If the City revokes a Franchise, or if for any other reason a Franchisee abandons, terminates, or fails to operate or maintain Cable Service to its Subscribers for a period of six (6) months, the following procedures and rights are effective:

- (1) The City may require the former Franchisee to remove its facilities and equipment at the former Franchisee's expense. If the former Franchisee fails to do so within a reasonable period of time, the City may have the removal done at the former Franchisee's and/or surety's expense.
- (2) The City, by resolution of the Council, may acquire ownership pursuant to 5 - 0 5 , or effect a transfer of the Cable System.
- (3) If a Cable System is abandoned by a Franchisee, the City may sell, assign, or transfer all or part of the assets of the System.

(F) Where the City has issued a Franchise specifically conditioned in the Franchise Agreement upon the completion of construction, System upgrade. or other specific obligation by a specified date, failure of the Franchisee to complete such construction or upgrade will result in revocation of the Franchise as set forth in this Section, unless the City, at its discretion and for good cause demonstrated by the Franchisee, grants an extension of time.

(G) No adverse action against a Franchisee may be taken by the City pursuant to this section except after a noticed public hearing at which the Franchisee is given an opportunity to participate.

Section ____-19. Effective Date of Franchise.

Unless a Franchise Agreement provides otherwise, the effective date of any Franchise Agreement is:

- (A) If an initial Franchise, the date of written acceptance of the Franchise Agreement.

(B) If a renewal, modification, or transfer of a Franchise, the date the initial Franchise ceases to be effective or the date the initial Franchise expires, whichever is earlier in time.

INSTALLATION, OPERATION, AND EQUIPMENT

Section _____-20. Construction Bond.

(A) A Franchise Agreement shall provide that, prior to any Cable System construction, upgrade, rebuild, or other significant work in the streets, a Franchisee shall establish in the City's favor a construction bond in an amount specified in the Franchise Agreement or other authorization as necessary to ensure the Franchisee's faithful performance of the construction, upgrade, rebuild, or other work.

(B) In the event a Franchisee subject to such a construction bond fails to complete the Cable System construction, upgrade, or other work in the streets in a safe, timely, and competent manner in accord with the provisions of the Franchise Agreement, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Franchisee, or the cost of completing or repairing the System construction, upgrade, or other work in the streets, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond. The City may also recover against the bond any amount recoverable against the security fund pursuant to - 1 5 where such amount exceeds that available under the security fund.

(C) The Franchise Agreement may specify that upon completion of the System construction, upgrade, rebuild, or other work in the streets and payment of all construction obligations of the Cable System to the satisfaction of the City, the City will eliminate the bond or reduce its amount. However, the City may subsequently require an increase in the bond amount for any subsequent construction, upgrade, rebuild, or other work in the streets.

(D) The construction bond shall be issued by a surety having a minimum rating of A-1 in Best's' Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of the City Attorney; and shall contain a provision indicating that the bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the City, by certified mail, return receipt requested. of a written notice from the issuer of the bond of intent to cancel or not to renew.

(E) The rights reserved by the City with respect to any construction bond established pursuant to this section are in addition to all other rights and remedies the City may have under this chapter, the Franchise Agreement, or at law or equity.

Section ____-21. Minimum Facilities and Services.

The following minimum requirements for facilities and services apply to all Franchises granted by the City. The City may require in a Franchise Agreement that a Franchisee exceed these minimum requirements, including, but not limited to, compliance with state-of-the-art obligations incorporated within a Franchise Agreement, where it determines, under circumstances existing at the time of the application, that the additional requirements are necessary to meet the City's future cable related needs and interests or to serve the public interest.

(A) Any Cable System lawfully providing service to Subscribers within the City as of the effective date hereof shall upgrade or rebuild its system to have a minimum capacity of 750 MHZ no later than 18 months after the effective date of this chapter unless otherwise agreed to in a Franchise Agreement.

(B) A Franchisee shall provide access channels, facilities, and other support for educational and/or governmental (PEG) use as required in a Franchise Agreement. A Franchisee shall provide access channels dedicated to the exclusive use of the City and such other support for educational, and/or governmental use as required in a Franchise Agreement. At any time the initial channel provided to the City by a Franchisee is programmed during at least eight hours per

day with locally produced non-duplicative programming (i.e., bulletin boards shall not be considered programming for purposes of this section) Monday through Friday for six consecutive weeks, the Franchisee shall, without charge, at the request of the City, provide the City with a second access channel. If at any time the first and second access channels provided to the City by a Franchisee are programmed with non-duplicative programming (i.e., bulletin boards shall not be considered programming for purposes of this section) during at least eight hours per day, Monday through Friday, for eight consecutive weeks, the Franchisee shall, without charge, at the written request of the City, provide the City with a third access channel at no charge. The City shall not allow the programming on the initially provided channels to fall below the specified level when additional channels have been activated. In the event the programming on the initially provided access channels falls below the amount specified above, then the City agrees that the Franchisee shall have the right to deactivate the subsequently provided channel.

(C) The City may require in a Franchise Agreement that Franchisee provide live cablecasting of Council meetings in their entirety to all of Franchisee's Subscribers located within the City. The cablecasting of such meetings shall be replayed at times as specified in the Franchise Agreement.

(D) A Cable System shall provide leased access channels as required by federal law.

(E) The Franchisee shall provide to every local government building, public school (K-12), private school (K-12), and public library, upon written request, at least one cable outlet, which includes Basic Cable service and Expanded Basic Cable service or its equivalent, within its Franchise area at no cost to the City or school involved. Cable service may be provided to certain local government buildings and schools via alternate means, as set forth in a Franchise Agreement.

(F) The Franchisee will provide a free modem and free unlimited cable internet access service to its cable internet access product to all connected schools and libraries within a year after Franchisee provides its cable internet access service to any residential customers within Monroe County. Additional internal wiring to service additional outlets in any school will be provided as set forth in the Franchise Agreement and the charge shall not exceed the Franchisee's cost for time and materials. Franchisee will make arrangements for each school to receive school materials for teachers and other administrators, to the extent they are available, that explain the educational applications of the broadband Cable Systems and services offered on the Cable System. The Franchisee will sponsor local workshops on use of the cable modem service in regions where it operates Cable Systems in order to educate teachers and other administrators about its cable internet access service.

(G) A Franchisee shall design its System to allow the City or other appropriate government body to interrupt Cable Service in an emergency to deliver necessary information to Subscribers consistent with FCC rules.

(H) A Franchisee shall make available to its Subscribers equipment capable of decoding closed circuit captioning information for the hearing impaired. A Franchisee may impose a reasonable charge for such equipment.

(I) Standard installation shall consist of a drop, not exceeding 125 feet from the cable plant to the nearest entry point of a Subscriber's residence. Residential drops and equipment necessary to provide Cable Service where the entry point of a Subscriber's residence is in excess of 125 feet may be charged according to the Franchisee's rate schedule.

(J) Any cable operator granted a Franchise pursuant to this chapter shall be obligated to interconnect with any other franchised cable operator operating in the City for the sole

purpose of sharing PEG Access programming. The costs of such interconnection, and any additional costs associated with the cablecasting of PEG Access programming, shall be shared equally among the interconnected Franchisees. For illustrative purposes only, if there are three (3) franchised cable operators in the City and the cost to interconnect and provide PEG Access programming equals \$1,200 per month, then each cable operator is responsible for \$400 per month. If the Franchisees, at the date upon which the City may require interconnection, are unable to agree on such interconnection arrangements, then the Franchisees shall submit to mediation. The City at its discretion shall have the right to appoint a mediator and retain such other consultants as may be reasonably required including, but not limited to, attorneys, accountants, and engineers. All costs incurred by the City in this regard shall be paid by the Franchisees equally.

(K) Unless authorized by the City, no Franchisee will construct or activate a system upgrade or rebuild in any community serviced by the same system unless activating the upgrade for all subscribers in the City within 180 days of the upgrade being activated in the initial location.

(L) Franchisee shall construct and operate its cable system so as to provide service to all areas of the City where economically feasible. This shall include areas of the City where there is an average density of not less than 25 households per line mile of cable.

Section ____-22. Technical Standards.

(A) Any Cable System within the City shall at minimum meet the technical standards of the FCC or other applicable federal or state technical standards, including any such applicable standards as hereinafter may be amended or adopted. All television signals transmitted on a Cable System shall include any closed circuit captioning information for the hearing impaired.

Antennas, supporting structures, and outside plant used in the System shall be designed to comply with all generally accepted industry practices and standards and with all federal, state, county, City, and/or utility laws, ordinances, rules, and regulations.

(B) All construction, installation, and maintenance shall comply with the National Electrical Safety Code, the National Electric Code, the South Florida Building Code, and all applicable laws and accepted industry practices, and as hereinafter may be amended or changed.

(C) At the times specified in the Franchise Agreement or as required by FCC rules, the Franchisee shall perform at its expense proof of performance tests designed to demonstrate compliance with the requirements of this chapter, the Franchise Agreement, and FCC requirements. The Franchisee shall provide, upon written request, the proof of performance test results to the City within 30 days after completion. Upon reasonable notice and during normal business hours, the City shall have the right to inspect the Cable System facilities during and after their construction to ensure compliance with the requirements of the Franchise Agreement, this chapter, and FCC standards.

(D) The City may require any other tests as specified in a Franchise Agreement or as required by applicable law or regulation, or where there have been complaints made, or where there exists other evidence which in the reasonable judgment of the City casts doubt upon the reliability or technical quality of the Cable System to be performed at the expense of the Franchisee. The Franchisee shall provide the test results to the City within 30 days of completion of the proof of performance or other tests.

(E) The Franchisee shall provide the City ten (10) days advance written notice when a proof of performance test required in subsections (C) and (D) above is scheduled so that the City may have an observer present.

(F) A Franchisee shall not knowingly design, install, or operate its facilities in a manner that will interfere with the signals of any broadcast station, the facilities of any public utility, the Cable System of another Franchisee, or individual or master antennas used for receiving television or other broadcast signals, and shall immediately correct such situation in the event it is discovered that a Facility has been constructed in violation of such provision.

Section ____-23. Access Channels or Facilities.

(A) Applications for an initial or renewed Franchise may, and at the City's request shall, include proposals for the initial provision of no less than one access channel and equipment and facilities sufficient to support no less than three channels sufficient to meet community needs. The number of channels may be expanded in accordance with 5 - 2 1 .

(B) A Franchisee shall provide, at the request of the City, use of the Franchisee's studio and production equipment and technical services for production of live and video-taped municipal programs, subject to the existence of such facilities, to reasonable availability, and to scheduling requirements of the franchisee.

(C) A Franchisee shall provide, at the request of the City, use of the franchisee's studio and production equipment and technical services for character generation and cablecasting of such character generation, subject to reasonable availability and scheduling requirements of the franchisee.

(D) (1)(a) Upon the request of the City, a Franchisee shall provide, at the Franchisee's cost, trained personnel and all necessary equipment and cabling to provide to the City:

1. Live cablecasting of events which take place at the location of Council meetings; and

2. The production of videotapes of municipal programs and events which take place at locations other than the location of Council meetings. Such videotapes shall be played and replayed at times specified in a franchise agreement.
- (b) Live cablecasting may be facilitated with an interconnection agreement among Franchisees pursuant to §___-21(J). At the time of the City's request for live cablecasting of Council meetings, the Franchisee serving the largest number of subscribers shall be responsible for live cablecasting production of professional quality, including all necessary equipment and trained personnel. All other Franchisees shall share in the cost of producing and delivering the live cablecasting to all subscribers on an equal basis. In the event that the City elects to change the location from which the live cablecastings provided prior to the fifth anniversary of the effective date hereof, the City hereby agrees to reimburse franchisees for the incremental cost of the construction of the plant required to provide the live cablecasting from the initial location, at 20% of the total cost of construction of the plant for each year of the 5-year period during which the location has changed from the initial location.
- (2) The Franchisee shall provide, at the franchisee's cost, trained personnel and all necessary equipment and cabling to provide to the City production of character generation and cablecasting thereof. If the City Manager deems it feasible and not administratively burdensome, the Franchisees may divide these costs and responsibilities on a pro rata basis to be

determined by dividing the costs of the services by the number of subscribers served by each Franchisee.

(E) Applications for an initial or renewed franchise may, and at the City's request shall, include a plan for the provision of an institutional network interconnecting City, educational institutions, and/or other public facilities.

(F) Applications for an initial or renewed Franchise shall include a plan for the interconnection of the Franchisee to any or all other cable systems operating within the City.

(G) At the City's discretion, a Franchise may provide for a financial grant in lieu of some or all of the facilities, equipment, and services referenced in divisions (A), (B), (C), and (D).

(H) All facilities, equipment, services, funds, and all other support to be provided by a Franchisee pursuant to this section constitute capital costs which are required by the Franchise to be incurred by the Franchisee for public, educational, or governmental access facilities within the meaning of §622(g)(2)(c) of the Communications Act, 47 USC §542(g)(2)(c); such grants do not constitute a franchise fee within the meaning of the Communications Act, state law, this chapter, or any Franchise Agreement; any Franchisee hereby waives and will not ascertain any proceeding or any claim to the contrary.

Section ____-24. Franchise Fee.

(A) A Franchisee, as compensation for the privilege granted under a franchise for the use of the City's streets to construct and operate a Cable System, shall pay to the City a franchise fee:

- (1) In an amount up to a maximum of either 5% of the Franchisee's Gross Revenues derived directly or indirectly from the operation of its Cable

System within the City to provide Cable Services during the term of its Franchise; or,

- (2) In the event the Cable Act or other applicable law is amended to permit the City to assess a franchise fee of a greater amount than that specified in (1) above, the Franchisee agrees to pay to the City the new amount after a public hearing in which the public and Franchisee are given an opportunity to comment on the impact of the higher fee.

(B) A Franchisee shall pay the franchise fee due to the City on a quarterly basis. Payment for each quarter shall be made to the City not later than thirty (30) calendar days after the end of each calendar quarter.

(C) A Franchisee shall file with the City, on a quarterly basis with the payment of the franchise fee, a financial statement setting forth the computation of Gross Revenues used to calculate the franchise fee for the preceding quarter and a detailed explanation of the method of computation.

The statement shall be certified by a certified public accountant or the Franchisee's chief financial or other duly authorized officer. The Franchisee will bear the cost of the preparation of such financial statements.

(D) Subject to applicable law, no acceptance by the City of any franchise fee payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for additional sums payable.

(E) The franchise fee payment is not a payment in lieu of any other tax, fee, or assessment.

(F) The City may, from time to time, but not more frequently than annually, upon reasonable notice, inspect and audit any and all books and records of the Franchisee relevant to

the determination of Gross Revenues and the computation of franchise fees due, and may recompute any amounts determined to be payable under the Franchise, subject to the applicable statute of limitations. The cost of the audit will be borne by the Franchisee if, as a result of the audit, the City determines that the Franchisee has underpaid the franchise fees owed in an amount equal to or exceeding 20% of the franchise fees actually paid. A Franchisee shall make all books and records necessary to satisfactorily perform the audit readily available to the auditors in Monroe County, for inspection and copying or in the alternative, the Franchisee shall pay all costs necessary for the City to perform the audit at a location outside of Monroe County.

(G) In the event that a franchise fee payment is not received by the City on or before the due date set forth in division (B) above, or is underpaid, the Franchisee will pay a late charge of 18% per annum of the amount of the unpaid or underpaid franchise fee payment, provided, however, that such rate does not exceed the maximum amount allowed under state law. Any interest and/or late charges paid by the Franchisee is intended to be a charge incidental to the enforcing of a Franchise within the meaning of §622 (g)(2)(D) of the Communications Act, 47 USC §542(g)(2)(D), and may not be deducted from the franchise fee imposed by this chapter or any franchise agreement.

(H) When a Franchise terminates for whatever reason, the Franchisee shall file with the City, within ninety (90) calendar days of the date on which its operations in the City cease, a financial statement, certified by a certified public accountant or the franchisee's chief financial officer, showing the Gross Revenues received by the Franchisee since the end of the previous fiscal year. Adjustments will be made at that time for franchise fees due to the date that the Franchisee's operations ceased.

Section ____-25. Records and Reports.

(A) No later than June 30 of each year, a Franchisee shall provide the City an annual report concerning the previous calendar year that includes, at a minimum, the following information:

- (1) A summary, including all reasonably available information, of the previous calendar (January 1 through December 31) year's activities in development of the state of the art of cable systems and the system serving the City, including, but not limited to, services and products initiated or discontinued, new technologies, number of Subscribers for each tier or type of service (including gains and losses), homes passed, and miles of cable distribution plant in service. The summary shall also include a comparison of any construction, including System upgrades, during the year with any projections previously provided to the City, as well as rate and charge increases and/or decreases for the previous fiscal year. It is the obligation of the Franchisee to include within this report any and all information necessary to evaluate franchisee's system as compared to the definition of "State of the Art" as defined in the Franchise Agreement.
- (2) A financial statement, including a statement of income, and a statement of sources of revenues as required by the definition of gross revenue herein. The statement shall be audited if the franchisee has audited statements performed in its normal course of business. If not, the statement shall be certified by the franchisee's chief financial officer or other duly authorized financial officer of the franchisee. The statement shall include notes that specify all significant accounting policies and practices upon which it is

based. A summary shall be provided comparing the current year which it is based. A summary shall be provided comparing the current year with previous years since the beginning of the franchise.

- (3) Upon written request, the City may review a copy of updated maps depicting the location of all cable plant, showing areas served and locations of all trunk lines and feeder lines in the City. At such time as such maps become available in digitized form, same will be provided to the City at the franchisee's expense.
- (4) Upon written request by the City, a summary of subscriber or resident complaints, identifying the number and nature of complaints and their disposition. Where complaints involve recurrent system problems, the nature of each problem and the corrective measures taken shall be identified. More detailed information concerning complaints shall be submitted upon written request of the City.
- (5) Upon written request by the City, a summary of customer satisfaction with respect to the products, services, and capacity provided by the Cable System, and customer service.
- (6) Upon written request by the City, the number of outages, number of planned outages, number of outages during prime viewing hours (8:00 p.m. - 11:00 p.m. daily), and number of outages by duration.
- (7) Upon written request by the City, if the Franchisee is a corporation, a list of officers and members of the board of directors; the officers and members of the board of directors of any parent corporation; and if the

Franchisee or its parent corporation's stock or ownership interests are publicly traded, a copy of its most recent annual report.

- (8) Upon written request by the City, if the Franchisee is a partnership, a list of the partners, including any limited partners, and their addresses; and if the general partner is a corporation, a list of officers and members of the board of directors or the corporate general partner and the officers and directors of any parent corporation; and where the general partner or its parent corporation's ownership interests are publicly traded, a copy of its most recent annual report.
- (9) Upon written request by the City, a list of all persons holding 5% or more ownership or otherwise cognizable interest in the franchisee pursuant to 47 CFR 76.501.
- (10) A copy of the Franchisee's rules and regulations applicable to Subscribers of the Cable System, upon written request.
- (11) Upon written request by the City, a report on the number of senior citizen, economically disadvantaged, or handicapped Subscribers receiving any rate discounts, the number of multiple dwelling buildings and property owners' associations and units therein receiving any discount pursuant to §___-29(A), and the amount of any such discounts for specific services if the Franchisee offers separate rates or discounts for those categories of Subscribers.
- (12) A full schedule and description of services, service hours, and location of the Franchisee's customer service office or offices available to

Subscribers, and a schedule of all rates, fees, and charges for all services provided over the Cable System.

- (13) Upon written request a report on the number of total subscribers served by the Franchisee in the City, with a breakdown by the types of services received by the subscribers.

(B) A Franchisee shall provide the following documents to the City as received or filed, without regard to whether the documents are filed by the Franchisee or an affiliate:

- (I) Annual report of the Franchisee or its parent or any affiliate of the Franchisee, which controls the Franchisee and issues an annual report;
- (2) Upon written request of the City, Copyright filings reflecting the operation of the System;
- (3) FCC Forms 325 and 395A for the System, or their successor forms;
- (4) Any and all pleadings, petitions, applications, communications, reports, and documents (collectively referred to as "filings") submitted by or on behalf of the Franchisee to the FCC, SEC, or any state or federal agency, court, or regulatory council which filings may adversely impact the Franchisee's operation of the Franchisee's Cable System in the City or that may impact the City's rights or obligations under this chapter of the Franchise Agreement issued pursuant to this chapter and any and all responses, if any, to the above mentioned filings.
- (5) Any and all notices of deficiency, forfeiture, or documents instituting any investigation or civil or criminal proceeding issued by any state or federal agency regarding the System, the Franchisee, or any affiliate of the

Franchisee, provided, however, that any such notice or documents relating to an affiliate of Franchisee need be provided only to the extent the same may directly or indirectly adversely affect or bear on the Franchisee's operations in the City. For example, a notice that an affiliate which has a management contract for the City's System was not in compliance with FCC EEO requirements would be deemed to adversely affect or bear on operations in the City.

- (6) Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy
- (7) Notwithstanding anything to the contrary, the Franchisee agrees to provide the City, within 30 days of filing or receipt of such, any document that may adversely impact the construction, operation, or maintenance of the Franchisee's cable system

(C) A Franchisee shall make a complete set of books and records available for inspection and audit by the City in Monroe County, for purposes of ascertaining compliance with requirements of this chapter and the Franchise Agreement. Such inspection and audit shall be upon reasonable notice and during normal business hours.

(D) Any materials requested by City which are deemed proprietary and confidential by the Franchisee shall be made available for review and inspection by the City (but not copying or removal, unless otherwise required by federal or state law, including, but not limited to, the public records law of the state), but shall not be required to be filed with the City.

Section ____-26. Use of Streets.

(A) Any pavements, sidewalks, curbing, or other paved area taken up or any excavations made by a Franchisee shall be done under the supervision and direction of the City

under permits issued for work by the proper officials of the City, and shall be done in such manner as to give the least inconvenience to the inhabitants of the City. All poles, wires, cables, underground conduits, manholes, and other fixtures erected by the company in, upon, along, across, above, over, and under the public roads, streets, and rights-of-way within the corporate limits of the City shall be so located as not to unreasonably interfere with the use of the streets, avenues, alleys, and public rights-of-way by the traveling public and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the roads, streets, and public rights-of-way. A Franchisee shall, at its own cost and expense, and in a manner approved by the City, replace and restore any such pavements, sidewalks, curbing, or other paved areas in as good a condition as before the work involving such disturbance was done, and shall also prepare, maintain, and provide to the City Engineer full and complete plats, maps, and records showing the exact locations of its facilities located within the public streets, ways, and easements of the City in CAD format or a format acceptable to the City and agreed upon in the Franchise Agreement.

(B) The work under this chapter shall be done subject to the supervision of the City. The Franchisee shall replace or properly relay and repair any sidewalk, street, lawn, landscaping, or swale that may be displaced by reason of such work. Except where law requires the cost to be borne by City, whenever the Franchisee shall cause any opening or alteration to be made in any of the streets or public places within the City for the purpose of installing, maintaining, operating, or repairing its equipment, such work shall be completed at the Franchisee's expense within a reasonable time and the Franchisee shall upon the completion of such work restore such portion of the streets or public places to substantially the same condition as it was before the opening or alteration was so made and will promptly remove any debris. Upon failure of the Franchisee to perform said repair or restoration, after twenty (20) days' notice provided in writing by the City to the Franchisee, the City may repair such portions of the sidewalk, Street,

lawn, landscaping, or swale that may have been disturbed by the Franchisee and collect the cost so incurred from the company. The City shall promptly provide to the Franchisee all permits, licenses, and other authorizations reasonably necessary for the purpose of installing, maintaining, operating, and repairing the System and facilities.

(C) A Franchisee shall, on the request of any Person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting same, and the Franchisee shall have the authority to require such payment in advance, except in the case where the requesting Person is the City, in which case no such payment shall be required. The Franchisee shall be given not less than five (5) calendar days advance notice to arrange for such temporary wire changes.

(D) A Franchisee shall upon notice to the City of not less than seven (7) days, emergency situations excepted, have the authority to trim the trees or other natural growth upon and overhanging the streets so as to prevent the branches of such trees from coming in contact with the wires, cables, and other equipment of the Franchisee, except that, at the option of the City, such trimming as may be done by it or under its supervision and direction at the expense of the Franchisee. All such work shall be done in accordance with such standards as have now or hereafter may be established by the City.

(E) A Franchisee shall use, with the owner's permission, existing underground conduits (if applicable) or overhead utility facilities whenever feasible. Upon written request by the City, copies of agreements between a Franchisee and third party for use of conduits or other facilities shall be filed with the City provided that the Franchisee shall have the right to redact proprietary and confidential information in such agreements as it pertains to financial arrangements between the parties.

(F) All wires, cable lines, and other transmission lines, equipment, and structures shall be installed and located to cause minimum interference with the rights and convenience of property owners. The City may issue such rules and regulations concerning the installation and maintenance of a Cable System installed in, on, or over the streets, as may be consistent with this chapter and the Franchise Agreement.

(G) All safety practices required by law shall be used during construction, maintenance, and repair of a Cable System. A Franchisee shall not place facilities, equipment, or fixtures where they will interfere with any gas, electric, telephone, water, sewer, or other utility facilities, or obstruct or hinder in any manner the various utilities serving the residents of the City of their use of any street or any other public right-of-way.

(H) A Franchisee shall, at all times:

- (1) Install and maintain its wires, cables, fixtures, and other equipment in accordance with the requirements of the City's building code and electrical safety ordinances and any other applicable building or electrical safety code, and in such manner that they will not interfere with any installations of the City.
- (2) Keep and maintain in a safe, suitable, and substantial condition, and in good order and repair, all structures, lines, equipment, and connections in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of the City, wherever situated or located.

(I) On streets where both electrical and telephone utility wiring is located underground, either at the time of initial construction of a Cable System or at any time thereafter, a Franchisee's cable shall also be located underground at the Franchisee's expense. If funds are available to any Person using the Public Right of Way for the purpose of defraying the cost of

any of the foregoing, the City shall reimburse Franchisee in the same manner in which other Persons affected by the requirement are reimbursed. Between a street and a Subscriber's residence, a Franchisee's drop must be located underground if both electrical and telephone utility wiring are located underground. The City shall encourage, to the extent feasible, that the public utility and the Franchisee cooperate in opening up trenches and making such trenches available to all parties with the understanding that the costs of opening and refilling of such trenches would be shared equally by all users of such trenches. Notwithstanding anything to the contrary, the Franchisee shall install underground extensions of lines in new residential subdivisions over five (5) units or new multiple occupancy buildings where all other utilities will also be installed underground. Such installation shall be provided in accordance with and subject to the requirements of applicable law, including, but not limited to, any requirements applicable to the applicant for such services, such as the provision of necessary rights-of-way or easements. Notwithstanding anything to the contrary, Franchisee shall not be required to construct, maintain or operate underground any ground-mounted appurtenances, except and unless such requirements are permitted by law. Franchisee shall grant to the City, free of charge, the joint use of any and all poles owned by Franchisee so long as such use by City does not interfere with the operation of the Cable System.

(J) In the event the use of any part of a Cable System is discontinued for any reason for a continuous period of twelve (12) months, or in the event such System or property has been installed in any street without complying with the requirements of this chapter or a Franchise Agreement, or the Franchise has been terminated, canceled, or expired, the Franchisee, within thirty (30) days after written notice by the City, shall commence removal from the streets of all such property as the City may require.

(K) The City may extend the time for the removal of Franchisee's equipment and facilities for a period not to exceed one hundred eighty (180) days, and thereafter such equipment and facilities may be deemed abandoned.

(L) In the event of such removal or abandonment, the Franchisee shall restore the area to as good a condition as prior to such removal or abandonment.

CUSTOMER SERVICE AND RATES

Section ____-27 Customer Service Requirements.

(A) **Maintenance generally.** A Franchisee shall maintain all parts of its System in good condition and in accordance with standards generally observed by the cable industry. Sufficient employees shall be retained to provide safe, adequate, and prompt service for all of its customers and facilities.

(B) **Business office.** A Franchisee shall maintain at least one conveniently located business office and service center within City limits to which subscribers may telephone without incurring added message units or toll charges. This business office shall be open at minimum from 8:30 a.m. to 6:00 p.m., Monday through Friday, and at least one weekend per month and at least two evenings (6:00 p.m. - 10:00 p.m.) per week. However, where a Franchisee makes available pick-up and delivery service of equipment to subscribers at no charge to the subscriber, and where the Franchisee provides for payment of subscriber bills via credit card, via telephone, or via a check depository within the City, such Franchisee's obligation pursuant to this division (B) shall be to maintain the business office within ten miles of the City limits.

(C) **Toll-free number.** The Franchisee (or an affiliate), shall maintain a listed local, toll-free telephone number under the business name familiar to Subscribers and employ a sufficient number of telephone lines, personnel, and answering equipment or service to allow

reasonable access by Subscribers and members of the public to contact the Franchisee on a full-time basis, 24 hours per day, seven (7) days per week, including holidays. Knowledgeable, qualified Franchisee representatives will be available to respond to customer telephone inquiries, 24 hours per day, seven days (7) per week, including holidays.

(D) **Telephone answering time standards.** The Franchisee shall answer all customer service and repair telephone calls made under normal operating conditions within thirty (30) seconds, including wait time and within an additional thirty (30) seconds to transfer the call. Customers shall receive a busy signal less than three per cent (3%) of the time. These standards shall be met no less than ninety percent (90%) of the time under normal operating conditions, measured on a quarterly basis.

(E) **Staffing.** A Franchisee shall employ and maintain sufficient qualified personnel and equipment to be available:

- (1) To accept payments; to exchange or accept converters or other equipment.
- (2) To receive Subscriber complaints or requests for service or repairs on a full-time basis, 24 hours per day, seven (7) days per week.
- (3) To initiate service installations, undertake normal repairs, initiate action with respect to any Subscriber service complaints within 24 hours.
- (4) To enable a service technician to respond to service calls 24 hours per day, seven (7) days a week including holidays when more than fifty (50) subscribers served from the same nearest active electronic device, such as an amplifier or node, call with the same complaint.

(F) **Service Standards.** The Franchisee must meet each of the following standards no less than ninety-five percent (95%) of the time under normal operating conditions as measured on a quarterly basis:

- (1) Standard installation work shall be performed within seven (7) calendar days after an order has been placed except in those instances where a Subscriber specifically requests an installation date beyond the seven (7) calendar day period. "Standard" installations are up to one hundred twenty-five (125) feet from the existing distribution System. If scheduled installation is neither started nor completed as scheduled, the Subscriber will be telephoned by an employee of the Franchisee the same day. Evening personnel shall also attempt to call Subscribers at their homes between the hours of 5:30 and 8:00 p.m. If the call to the Subscriber is not answered, an employee of the Franchisee shall telephone the Subscriber the next day.
- (2) The Franchisee will respond to service interruptions promptly and in no event later than 24 hours after the interruption becomes known. Other service problems will be responded to promptly and in no event later than 48 hours after the problem becomes known. All service interruptions, and service problems within the control of the Franchisee, will be corrected within 72 hours after receipt of a complaint.
- (3) The appointment window alternatives made available for installations, service calls, repairs, and other installation activities will be either a specific time, a four-hour time block during normal business hours, or at the election and discretion of the Subscriber, "all day."
- (4) The Franchisee may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment.

(G) **Delayed service.** If at any time an installer or technician is running late for a scheduled appointment, an attempt to contact the customer will be made and the appointment

rescheduled as necessary at a time which is convenient for the customer. If the Franchisee's installer or technician is late, the subscriber shall receive installation free of charge. If the installation was to have been provided free of charge or if the appointment was for service or repair, the Subscriber shall receive a credit on his bill of not less than \$20.

(H) Disconnection.

(1) Voluntary disconnection.

- (a) A Subscriber may terminate service at any time.
- (b) A Franchisee shall promptly disconnect any Subscriber who so requests from the Franchisee's Cable System. No period of notice prior to voluntary termination of service may be required of Subscribers by any Franchisee. So long as the Subscriber returns equipment within three (3) business days of the disconnection, no charge may be imposed by any Franchisee for such voluntary disconnection, or for any Cable Services delivered after the date of disconnect request.
- (c) A Subscriber may be asked, but not required, to disconnect the Franchisee's equipment and return it to the business office.
- (d) Any security deposit and/or other funds due the Subscriber shall be refunded on disconnected accounts after customer premise equipment including all converters but excluding wiring have been recovered by the Franchisee. The refund process shall take a maximum of thirty (30) days from the date disconnection was completed to the date the customer receives the refund.

- (2) **Involuntary disconnection.** If a Subscriber fails to pay a monthly Subscriber or other fee or charge, the Franchisee may disconnect the Subscriber's service outlet; however, such disconnection shall not be effected until thirty-five (35) days after the due date of the monthly Subscriber fee or other charge, and ten (10) days advance written notice of intent to disconnect to the Subscriber in question. If the Subscriber pays within thirty-five (35) days of the due date and after notice of disconnection has been given, the Franchisee shall not disconnect. After disconnection, upon payment by the Subscriber in full of all proper fees or charges, including the payment of the reconnection charge, if any, the Franchisee shall reinstate service.
- (3) **Other disconnection.** Nothing in this chapter shall be construed to prevent the Franchisee from removing its property from a Subscriber's premises upon the termination of service consistent with FCC rules and regulations and any other applicable law. At the Subscriber's request, a Franchisee shall remove its cable from the Subscriber's premises within thirty (30) calendar days of the Subscriber's request. Where removal is impractical, such as with buried cable or internal wiring, facilities and equipment may be disconnected and abandoned rather than removed, unless there is a written agreement stating otherwise, provided, however, that such agreement must be consistent with applicable law and FCC rules. Notwithstanding anything to the contrary, a Franchisee shall comply with all FCC rules as now or hereafter may be amended with respect to

Subscribers' rights and interests including, but not limited to, right to purchase and determination of ownership of cable wiring and equipment.

(I) **Intentional service interruptions.** The Franchisee shall intentionally interrupt service only for good cause and for the shortest time possible. The Franchisee shall use its best efforts to ensure that such interruptions shall occur during the least inconvenient times for Subscribers which shall be the period between 1:00 A.M. and 6:00 A.M., if practicable. The Franchisee shall maintain and make available to the City a written log for all intentional service interruptions.

(J) **Extensive or extended service interruptions.** The Franchisee shall notify the City immediately if a service interruption affects fifty (50) or more subscribers for a time period greater than four (4) hours.

(K) **Employee badges.** The Franchisee shall cause all its field employees to wear a picture identification badge indicating their employment by the Franchisee. This badge shall be clearly visible to the public.

(L) **Complaint procedures.** A Franchisee shall develop written procedures for the investigation and resolution of all Subscriber or City resident complaints, including, but not limited to, those regarding the quality of service and equipment malfunction, which procedures shall be subject to the review and approval by the City Manager. A Subscriber or City resident who has not been satisfied by following the Franchisee's procedures may file a written complaint with the City, who will investigate the matter and, in consultation with the Franchisee as appropriate, attempt to resolve the matter. A Franchisee's good faith or lack thereof in attempting to resolve Subscriber and resident complaints in a fair and equitable manner will be considered in connection with the Franchisee's renewal application. The Franchisee shall maintain a

complete list of all complaints not resolved within seven (7) days of receipt and the measures taken to resolve them. This list shall be compiled in a form to be approved by the City. It shall be compiled on a monthly basis. The list for each calendar month shall be supplied to the City upon the City's request no later than the 15th day of the next month. The Franchisee shall also maintain a list of all complaints received for a period of twenty-four (24) months, which list will be available to the City upon the City's request.

(M) **Inspection of equipment.** The Franchisee shall permit the City designee to inspect and test the System's technical equipment and facilities upon reasonable notice not to be less than forty-eight (48) hours.

(N) **Communications with customers, bills, and refunds.** The Franchisee shall abide by the following requirements governing communications with customers, bills, and refunds:

- (1) Each Franchisee shall provide to Subscribers written information in each of the following areas at the time of installation, at least once annually, and at any future time upon request by the Subscriber:
 - (a) How to use the Cable Service;
 - (b) Installation and service maintenance policies;
 - (c) The products and services offered;
 - (d) Prices and service options;
 - (e) Channel positions of programming carried on the System;
 - (f) The Franchisee's procedures for the receipt and resolution of customer complaints, the Franchisee's address and telephone

number to which complaints may be reported, and the hours of operation;

- (g) The telephone number and address of the City's office and, as required by City ordinance, the City's office designated to handle cable complaints and inquiries shall be printed on the back of the bill;
 - (h) The availability of a "lock-out" device;
 - (i) The Franchisee's information, collection, and disclosure policies for the protection of a Subscriber's privacy.
- (2) The Franchisee's bills will be clear, concise, and understandable. All charges shall be separately itemized on the bill.
 - (3) Refund checks will be issued promptly, but no later than the earlier of thirty (30) days or the customer's next billing cycle following the resolution of a refund request, or the return of the equipment supplied by the Franchisee if service is terminated.
 - (4) Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.
 - (5) If the change is within the control of the Franchisee, a Franchisee shall provide Subscribers and the Council with at least thirty (30) days advance written notice of any changes in rates, charges, channel lineup, or initiations or discontinuations or changes of service or services offered over the Cable System. A Franchisee shall provide notice of such changes

not within its control to subscribers and the City as soon thereafter as practical.

(O) **Service credits for outages.** Upon request, a Franchisee shall provide each individual Subscriber a pro-rated 24 hour credit to the Subscriber's account for any period of eight (8) hours or more within a 24-hour period during which a Subscriber experienced an outage of service or substantial impairment of service, whether due to a System malfunction or other cause within the control of the Franchisee.

(P) Billing.

- (1) The Franchisee's first billing statement after a new installation or service change shall be pro-rated as appropriate and shall reflect any security deposit.
- (2) The Franchisee's billing statement must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
- (3) The Franchisee's billing statement must show a specific due date not earlier than ten (10) days after the date of the beginning of the service period. Any balance not received within ten (10) days after the due date may be assessed an administrative charge as a late fee. Any administrative charge imposed as a "late fee" must be reasonable and must be limited to a fair approximation of the actual cost of handling and collecting the customer bill. Franchisees shall use late fees for cost recovery only and not as a tool of profit for the collection of additional

revenues, or as a penalty or deterrent. For any late fee charged to subscribers in excess of \$5 per billing period, the franchisee shall bear the burden of proving that such late fee is reasonable.

(a) Any administrative charge applied to unpaid bills shall be subject to regulation by the City consistent with applicable law.

(b) Subscribers shall not be charged an administrative fee or a late fee, or be otherwise penalized for any failure by the Franchisee, its employees, or contractors, to bill timely or correctly the Subscriber or to credit properly the subscriber for a payment timely made.

(4) The Franchisee must notify the subscriber that he or she can remit payment in person at the Franchisee's office and must inform the Subscriber of the address of that office.

(Q) **Alteration of service.** A Franchisee may not substantially alter the service being provided to a Subscriber (including by re-tiering, restructuring a tier, or otherwise) without the express permission of such Subscriber, unless it complies with this subsection.

(1) Any time a Franchisee intends to alter the service being provided to a Subscriber (including by re-tiering, restructuring a tier, or otherwise) in such a way that the Subscriber will no longer be able to obtain the same package of services in the same manner and at the same cost, the Franchisee must provide the subscriber with thirty (30) days written notice of such alteration. The notice shall explain the substance and the full effect of the alteration and provide the Subscriber the right, within the thirty (30) day period following notice, to opt to receive any combination of services offered by the Franchisee.

(2) Except as provided herein, or under applicable federal or state law, no charge may be made for any service or product which the Subscriber has not affirmatively indicated, in a manner separate and apart from payment of the regular monthly bill, that he or she wishes to receive.

(R) **Certification of compliance.** The Franchisee shall certify in writing to the City on January 1 and July 1 of each year based upon internal due diligence by the Franchisee that to the best of the Franchisee's knowledge that it is in substantial compliance with the standards of this section. If the City believes the Franchisee is not in compliance with any provision the City may require the Franchisee to submit such documentation as may be required to demonstrate the Franchisee's compliance with such provision. This documentation shall be submitted within 45 days of the Franchisee's receipt of the City request unless extended by the City.

(S) **Administration.** The City Manager or his or her designee, (when used herein City Manager shall mean the City Manager or his or her designee) shall have the responsibility for the administration of this chapter and any Franchise granted hereunder. Such responsibility shall include the resolution of all complaints against a Franchisee regarding the quality of service, equipment malfunctions, and related matters, including the authority to order credits, refunds or fines. The City Manager may settle or compromise any controversy arising from operations of the Franchisee, either on behalf of the City, the Franchisee, or any Subscriber, in accordance with the terms of this chapter and the Franchise Agreement.

(1) **Notice of Decision .** Any decision made by the City shall be provided to the Franchisee in writing and delivered pursuant to 5 - 3 4 . The Franchisee shall have thirty (30) days from receipt of such written decision to respond in writing to such decision.

- (2) Authority to Require Service. In cases where requests for service have been ignored or where the service provided is unsatisfactory for any reason, the City Manager shall have the power to require the Franchisee to provide service if in the opinion of the City Manager, such request for service is reasonable.
- (3) Appeal of City Manager's decision. Any person aggrieved by a decision of the City Manager, including the Franchisee, may appeal the matter to the Council for hearing and determination. The Council may accept, reject, or modify the decision of the City Manager. No adjustment, settlement, or compromise, whether instituted by the City Manager or by the Council, shall be contrary to the provisions of this chapter or any Franchise Agreement issued pursuant to this chapter, and neither the City Manager nor the Council, in the adjustment, settlement, or compromise of any controversy, shall have the right or authority to add to, modify, or delete any provision of this chapter or of the Franchise Agreement, or to interfere with any rights of Subscribers or any Franchisee under applicable federal or state law or private contract.

(T) **Enforcement.** Nothing herein shall prevent the City from taking action to protect the health, safety or welfare of the public or to prevent eminent danger of damage to property. Enforcement of the standards shall be governed by the following:

- (1) In addition to the powers delegated in (S) above, the City Manager shall have the authority to order credits from a Franchisee to individual cable Subscribers (or refunds to former Subscribers) who have submitted a

written complaint to the City, to deny a subscriber's Complaint, and/or to assess fines against a Franchisee for any violation of this chapter or any Franchise issued pursuant to this chapter, which fines will be paid to the City. Provided, however, that any person aggrieved by a decision of the City Manager, including the Franchisee or subscriber, may appeal to the Council for hearing and determination. No interest or late charge shall accrue during the pendency of such appeal. Any decision of the Council may be appealed to a court of competent jurisdiction.

- (2) In ordering credits to cable Subscribers, the City Manager shall be governed by the schedule set out below in which the credit indicated is expressed as a percentage of the Subscriber's monthly bill. The credits listed are to be made on a per violation basis. The credit ordered by the City Manager pursuant to this subsection shall not exceed 100% of a subscriber's monthly bill, unless a violation has continued at least 30 days from the date first reported to the franchisee.

SCHEDULE OF CREDITS TO SUBSCRIBERS	
Single violation of:	Maximum Refund (Percent of subscriber's monthly bills)
Failure to comply with §__-27(B)	10%
Failure to comply with the telephone availability requirements of §__-27(C) and (D)	10%
Failure to comply with the repair and installation requirements of §__-27(F)	50%

- (3) In assessing fines against a Franchisee, the City Manager shall be governed by the schedule set out below. The fines listed are to be assessed on a per violation basis.

SCHEDULE OF FINES	
Single Violation Of:	Maximum Fines:
__-27 (A)	\$100
__-27 (B)	\$300
__-27 (C)	\$300
__-27 (D)	\$300
__-27 (E) and (F)	\$300
__-27 (H)	\$300
__-27 (I)	\$500
__-27 (J)	\$200
__-27 (K)	\$100
__-27 (L)	\$500
__-27 (M)	\$500
__-27 (N)(1)(a)-(i)	\$100
__-27 (N)(2)	\$500
__-27 (N)(3)-(5)	\$500
__-27 (N)(6)	\$200
__-27 (P) and (Q)	\$200
__-27 (R)	\$500

- (4) Prior to ordering a credit and/or assessing a fine, the City Manager shall mail the Franchisee written notice by certified or registered mail of the violation and his intention to assess such damages which notice shall contain a specific description of the alleged violation. Following receipt of such notice, the Franchisee shall cure or commence to cure such violation. Final cure of a violation shall toll the accrual of assessed fines and credits. The Franchisee shall have thirty (30) days from the date of receipt of the written notice to file a written response to the City Manager's notice. The City and the Franchisee shall make good faith reasonable efforts to resolve the dispute in question. The Franchisee's written response shall be signed by management level personnel of the Franchisee.

- (5) Prior to ordering a credit and/or assessing a fine, the City Manager shall consider any justification or mitigating factor(s) advanced in the Franchisee's written response, including but not limited to rebates or credits to the Subscriber or a cure of the violation. The City Manager may, after consideration of the response of the Franchisee, waive or reduce any proposed credit or fine. In the case of a violation of this chapter or any Franchise issued pursuant to this chapter, the City Manager may not assess any fine if the Franchisee has reasonably resolved the complaint or cured the violation within a reasonable time frame not to exceed fifteen (15) days. Such time period may be extended for good cause shown.
- (6) Subsequent to the notice of proposed refund and/or fine to Franchise and consideration of the Franchisee's response, if any, the City Manager may issue an assessment of refund or fine. The refund and/or fine shall be paid within 30 days of written notice to the Franchisee. The City may enforce payment of the refund or fine in any court having jurisdiction. It is the intent of the City to determine refunds and/or fines as a reasonable estimate of the damages suffered by the City and/or its subscribers.
- (7) The Franchisee may appeal any decision of the City Manager directly to the Council within thirty (30) days of notice of the decision to the Franchisee. Any decision of the Council may be appealed to a court of competent jurisdiction.
- (8) Any person who intentionally files a false complaint against a Franchisee shall be punished as provided in 5 - 3 6 .

(9) Intentional misrepresentation by a Franchisee in any response to a notice of proposed credit and/or fine shall be grounds for revocation of its Franchise

(U) Effect of violations on Franchise Agreement. The City expressly reserves the right to consider violations of the customer service requirements in evaluating any renewal, modification, or transfers of any franchise agreement.

Section ____-28 Privacy Of Subscribers.

A Franchisee shall at all times protect the privacy of all subscribers to the full extent required by §631 of the Cable Act, 47 USC §551 and state law.

Section ____-29 Discrimination Prohibited.

(A) No Franchisee may discriminate in its rates or charges or in the availability of the services or facilities of its System, or in any other respect, or make or grant undue preferences or advantages to any Subscriber, potential Subscriber, or group of Subscribers or potential Subscribers, nor subject any such Persons or group of Persons to any undue prejudice or any disadvantage. A Franchisee shall not deny, delay, or otherwise burden service or discriminate against Subscribers or users on the basis of age, race, creed, religion, color, sex, handicap, national origin, marital status, or political affiliation, except for discounts for senior citizens, the economically disadvantaged, or handicapped that are applied in a uniform and consistent manner. A Franchisee may also offer bulk discounts to multiple dwelling buildings and property owners' associations to the extent such discounts are otherwise permissible by law.

(B) A Franchisee shall not deny Cable Service to any potential Subscriber because of the income of the residents of the area in which the Subscriber resides.

(C) The Franchisee shall comply with federal, state, and local laws and regulations governing equal employment opportunities, as the same may be from time to time amended.

Section _____-30 Continuation of Service Mandatory.

(A) It is the right of all Subscribers obtaining service legally to receive all available services requested from the Franchisee as long as their financial and other obligations to the Franchisee are satisfied.

(B) In the event of a termination or transfer of a Franchise for whatever reason, the Franchisee shall ensure that all Subscribers receive continuous, uninterrupted service regardless of the circumstances. The Franchisee shall cooperate with the City to operate the System for a temporary period following termination or transfer as necessary to maintain continuity of service to all Subscribers. The temporary period will not exceed six (6) months without the Franchisee's written consent. During such period, the Cable System shall be operated under such terms and conditions as the City and the Franchisee may agree, or such other terms and conditions that will continue, to the extent possible, the same level of service to Subscribers and that will provide reasonable compensation to the cable operator.

(C) In the event a Franchisee fails to operate the System for seven (7) consecutive days without prior approval of the City or without just cause, the City may, at its option, operate the System or designate an operator until such time as the Franchisee restores service under conditions acceptable to the City or until a permanent operator is selected. If the City is required to fulfill this obligation for the Franchisee, the Franchisee shall reimburse the City for all costs or damages resulting from the Franchisee's failure to perform. Additionally, the Franchisee will cooperate with the City to allow City employees and/or City agents free access to the Franchisees' facilities and premises for purposes of continuing System operation as described herein.

Section ____-31 Rates.

(A) Nothing in this chapter shall prohibit the City from regulating rates for Cable Services to the full extent permitted by law.

(B) Any rate or charge established for Cable Service, equipment, repair, and installation shall comply with applicable law. Upon the City being certified to regulate Basic Cable Service, the Franchisee shall provide to the City or its agent, all required data, records, and documentation to show that the Franchisee is in compliance with applicable law as it pertains to Basic Cable Service.

ADMINISTRATION AND ENFORCEMENT

Section ____-32 Performance Evaluations.

The City may conduct periodic performance evaluations of a Franchisee as the City determines is necessary. A Franchisee shall cooperate with these evaluations reasonably and in good faith. If the City implements a survey of cable Subscribers in connection with a performance evaluation, the City may require a Franchisee to distribute the City's questionnaire to its Subscribers at the City's expense. Upon request and upon reimbursement of the City's copying costs, the Franchisee may receive copies of all responses.

Section ____-33 Administration.

(A) The City Manager, either directly or through a duly appointed designee, shall have the responsibility for overseeing the day-to-day administration of this chapter and any Franchise Agreements. Subject to applicable law, the City Manager shall be empowered to take all administrative actions on behalf of the City, except for those actions specified in this chapter that are reserved to the Council. The City Manager may recommend that the Council take certain actions with respect to the Franchise. The City Manager shall keep the Council apprised of

developments in cable and provide the Council with assistance, advice, and recommendations as appropriate.

(B) Subject to federal and state law, the Council shall have the sole authority to grant Franchises, authorize the entering into of Franchise Agreements, modify Franchise Agreements, renew or deny renewal of Franchises, revoke Franchises, and authorize the Transfer of a Franchise.

Section ____-34 Notice.

All written correspondence between the City and Franchisee shall be delivered via hand delivery or certified mail. Notice to the cable operator shall be deemed effective upon receipt. Notice to the City shall be effective upon receipt by the City Manager and/or the Mayor.

Section ____-35 Violations.

In the event a Franchisee's performance of or compliance with any of the provisions of this chapter or the Franchisee's Franchise Agreement is prevented by a cause or event not within the Franchisee's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof, provided, however, that the Franchisee uses all practicable means to expeditiously cure or correct any such inability to perform or comply. For purposes of this chapter and any Franchise Agreement granted or renewed hereunder, causes or events not within a Franchisee's control shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court. Causes or events within the Franchisee's control, and thus not falling within this section, shall include, without limitation, the Franchisee's financial inability to

perform or comply, economic hardship, and misfeasance, malfeasance, or nonfeasance by any of the Franchisee's directors, officers, employees, contractors, or agents.

Section ____-36 Penalty.

(A) False complaints against Franchisees. Whoever violates §____-27(S)(8) shall be subject to a fine in the amount of \$50 for the first violation and \$100 for each subsequent violation.

(B) Enforcement against Franchisees.

- (1) In addition to any other remedies available at law or equity or provided in this chapter, or in any Franchise Agreement, the City may impose a fine in the amount of \$250 per violation per day or part thereof for any violation of this chapter.
- (2) Before imposing a fine pursuant to this subsection (B), the City shall give the Franchisee written notice of the violation and its intention to assess such damages, which notice shall contain a specific description of the alleged violation. Whenever practicable, the Franchisee shall have thirty (30) calendar days after notice to cure the violation and the City shall make good faith reasonable efforts to assist the Franchisee in resolving the violation. If the violation is not cured within that thirty (30) day period, the City may collect all fines owed, beginning with the first day of the violation, either by removing such amount from the security fund or through any other means allowed by law.
- (3) In addition to any other remedies available at law or equity or provided in this chapter or in any Franchise Agreement, the City may apply any one or

combination of the following remedies in the event a Franchisee violates this chapter, or its Franchise Agreement:

- (a) The Franchisee's failure to comply with §___-21(A), (B), and (C) herein shall result in imposition of fines to be paid by the Franchisee to the City in an amount of \$1,000.00 per day or part thereof that the violation continues.
 - (b) The City may revoke the Franchise pursuant to the procedures specified in §___-18.
 - (c) In addition to or instead of any other remedy, the City may seek legal or equitable relief from any court of competent jurisdiction.
- (4) In determining which remedy or remedies are appropriate, the City shall take into consideration the nature of the violation, the Person or Persons bearing the impact of the violation, the nature of the remedy required in order to prevent further violations, and such other matters as the City determines are appropriate.
- (5) Subject to applicable law, failure of the City to enforce any requirements of a Franchise Agreement or this chapter shall not constitute a waiver of the City's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.
- (6) In any proceeding wherein there exists an issue with respect to a Franchisee's performance of its obligations pursuant to this chapter, the Franchisee has, throughout any such proceedings and appeals thereof, the burden of proving that said Franchisee is in compliance with the terms of

the chapter. The Council may find a Franchisee that does not demonstrate compliance with the terms and conditions of this chapter in default and apply any one or combination of the remedies otherwise authorized by this chapter.

Severability. The provisions of this Ordinance are declared to be severable if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Inclusion in the Code. It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the code of The City of Marathon, Florida: that the sections of the Ordinance may be renumbered or relettered to accomplish to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Effective Date. This Ordinance shall be effective upon adoption on the second reading.

The foregoing Ordinance as offered by Councilmember _____, who moved for its adoption. This motion was seconded by Councilmember _____, and upon being put to a vote, the vote was as follows:

Mayor Robert Miller _____
Vice Mayor John Bartus _____
Councilman Frank Greenman _____
Councilman Jon Johnson _____
Councilman Randy Mearns _____

PASSED on first reading this 13th day of September, 2000.

The foregoing Ordinance as offered by Councilmember _____, who moved for its adoption. This motion was seconded by Councilmember _____, and upon being put to a vote, the vote was as follows:

Mayor Robert Miller _____
Vice Mayor John Bartus _____
Councilman Frank Greenman _____
Councilman Jon Johnson _____
Councilman Randy Mearns _____

PASSED AND ADOPTED on second reading this 26th day of September, 2000.



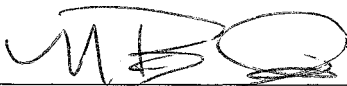
ROBERT MILLER, MAYOR

ATTEST:



CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:



CITY ATTORNEY