

CABLE COMMUNICATIONS ORDINANCE FOR THE COUNTY OF PITT, NORTH CAROLINA

Section 1. Purpose

Pitt County finds that the development of cable television and communications systems has the potential of having great benefit and impact upon the people of Pitt County. Because of the complex and rapidly changing technology associated with cable television, the County further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the County or such persons as the County shall designate. It is the intent of this Ordinance and subsequent amendments to provide for and specify the means to attain the best possible public interest and public purpose in these matters, and any franchise issued pursuant to this Ordinance shall be deemed to include this finding as an integral part thereof.

Further, it is recognized that cable communications systems have the capacity to provide not only entertainment and information services to the County's residents, but can provide a variety of broadband, interactive communications services to institutions and individuals. Many of these services involve County agencies and other public institutions, by providing governmental, educational or health care communications.

For these purposes, the following goals underlie the regulations contained herein:

- A. Communications services should be provided to the maximum number of County residents.
- B. The system should be capable of accommodating both the present and reasonably foreseeable future communications needs of the County.
- C. The system should be improved and upgraded during the franchise term so that the new facilities necessary for the operation of this system shall be integrated to the maximum extent possible with existing facilities.
- D. The communications system authorized by this Ordinance shall be responsive to the needs and interests of the local community, and shall provide the widest possible diversity of information sources and services to the public.
- E. Each of the goals enumerated in A - D above shall be sought taking into account the costs and benefits to the residents of Pitt County.

Section 2. Title of Ordinance

- A. This Ordinance shall be known and may be cited as "Pitt County's Cable Communication Ordinance," and it shall become a part of the Ordinances of the County.
- B. This Ordinance shall take effect and be in force from and after its passage.

- C. That all ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed, specifically Chapter 8, Article IV, Sections 8.80-8.88 of the Pitt County Code of Ordinances.
- D. This Ordinance shall be governed by and subject to the Communications Act of 1934, as amended, including any future amendments relating to cable television communications.

Section 3. Definitions

For the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein unless otherwise defined by Federal or State law. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

Additional Service: Any cable service other than Basic Service provided over the cable television system.

Access Channels: Any channels on the system provided herein by the operator for use by the County and its agencies.

Basic Service: A separately available basic service tier to which subscription is required for access to any other tier of service. Such basic service tier shall, at a minimum, consist of the following: all signals carried in fulfillment of the Cable Act, Sections 614 and 615; any public, educational, and governmental access programming required in this Ordinance or the Franchise; any signal of any television broadcast station that is provided by the cable operator to any subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station. Additional signals may be added to the basic tier by the Grantee.

Cable Act: See Communications Policy Act or Cable Act below.

Cable Communications System (also referred to as System): A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include any of the following: (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (b) a facility that serves only subscribers in one or more multiple dwelling units under common ownership, control, or management, unless such facility or facilities uses any Public Rights-of-Way; (c) a facility of a common carrier which is subject in whole or in part to the provision of Title II of the Cable Act, except that such facility shall be considered a cable system to the extent that such facility is used in the transmission of video programming directly to subscribers; or (d) any facilities of any electric utility used solely for operating its electric utility systems.

Cablecast Signal: A nonbroadcast signal that originates within the facilities of the cable communications system.

Channel: A six Megahertz (MHz) frequency band, which is capable of carrying either one standard video signal, a number of audio, digital or other nonvideo signals or sonic combination of such signals. One channel of High Definition Television may utilize more than 6 MHz.

Closed-Circuit or Institutional Service: Such video, audio, data and other services provided to institutional users on an individual application basis. These may include, but are not limited to, one-way video, two-way video, audio or digital signals among institutions or residential subscribers.

Commercial Subscriber: A subscriber who receives a service in a place of business where the service may be utilized in connection with a business, trade or profession.

Commission: The Pitt County Board of Commissioners.

Communications Policy Act or Cable Act: The Communications Policy Act of 1934 as amended and the Cable Television Consumer Protection and Competition Act of 1992 as they may be amended or succeeded.

Converter: An electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and any channel selector which permits a subscriber to view all signals delivered at designated converter dial locations at the set.

County: The County of Pitt, North Carolina, a contiguous, continuous, and homogenous community located in the State of North Carolina.

CPI: The national percentum increase for the most recently completed calendar year of the Average Consumer Price Index for all items as published by the Bureau of Labor Statistics of the United States Department of Labor, subject to maximum limits as are set forth within the franchise agreement.

Dedicated Institutional Access Channels: Broadband communications channels dedicated to serving city, county, state or federal governmental agencies, educational institutions, health care institutions or other nonprofit and profit making organizations that may be qualified by the Commission.

Discrete Channel: A channel which can only be received by the person and/or institution intended to receive signals on such channel.

Downstream Signal: A signal originating from or provided by a cable television system to a subscriber terminal or other terminal including video, audio, or digital signals or any other type of data or information for either programs or other uses such as security alert services, etc.

Drop: A coaxial, fiber, or other connection from feeder cable to the subscriber/user residence or place of business.

Educational Access Channel: Any channel designated for educational access use.

Fair Market Value: The price that a willing buyer would pay to a willing seller for a going concern based on the system valuation prevailing in the industry at the time.

FCC: The Federal Communications Commission and any legally appointed successor.

Franchise: The nonexclusive rights granted pursuant to this Ordinance to construct, operate and maintain a cable communications system along the public rights of way within all or a specified area in the County. Any such authorization, in whatever form granted, shall not mean or include any license or permit required for the privilege of transacting and carrying on a business within the County as required by other ordinances and laws of the County, State or Federal governments.

Franchise Area: The entire County, or portions thereof, for which a franchise is granted under the authority of this agreement. If not otherwise stated in the franchise, the Franchise Area shall be the corporate limits of the County, excluding all territory within the corporate limits of any municipality within the County or any territories thereafter annexed to municipalities.

Franchise Fee: The percentage, as specified by the County, of the franchisee's gross revenues from all sources payable (as permitted by the Cable Act) in exchange for the rights granted pursuant to this Ordinance and the franchise agreement.

Franchisee or Grantee: The natural person(s), partnership(s), domestic and foreign corporation(s), association(s), joint venture(s), or organization(s) of any kind which has been legally granted a franchise by the County and its lawful successor, transferee or assignee.

Grantee: See Franchisee or Grantee above.

Government Access Channel: Any channel specifically designated or dedicated for government access use.

Grantor: Pitt County as represented by the Commission acting within the scope of its jurisdiction.

Gross Annual Revenues: All revenue not of franchise fees received annually directly or indirectly from the Grantee, its subsidiaries, or affiliates which are in any way connected to the cable business from the operation of the cable system in the franchise area by the Grantee, its affiliates, subsidiaries, and as defined by the Cable Act.

Headend: The electronic control center of the cable television system including components that amplify, filter, and convert incoming broadcast and other television and electronic signals for distribution over the cable system.

Installation: The connection of the system from feeder cable to subscribers' terminals.

Leased Access Channel or Commercial Access Channel: Any channel or portion thereof designated or dedicated for use by persons unaffiliated with the Grantee.

Monitoring: Observing a communications signal, or the absence of a signal, where the observer is not a party to the communication, whether the signal is observed by visual or electronic means, for any purpose whatsoever.

Narrowcasting: The ability to distribute cable programming to a particular segment or segments of the cable subscribers.

Operator: The entity granted a Franchise.

Origination Site: A location capable of transmitting audio-video television signals to the Operator's headend or other location as provided.

Person: An individual, partnership, association, organization, corporation or any lawful successor or transferee of said individual, partnership, association, organization or corporation.

Plant Mile: A linear mile of cable as measured on the street or easement from pole to pole or pedestal to pedestal.

Public Access Channel: Any channel designated or dedicated for use by the general public or noncommercial organizations which is made available for use without charge, on a nondiscriminatory basis, in accordance with the rules and regulations specified in the franchise and over which Grantee has no editorial control.

Public Way or Public Rights of Way: The surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkways, waterways, utility easements or other public right-of-way now or hereafter held by the County or the State which shall entitle the County and the Company to the use thereof for the purpose of installing and maintaining the Company cable television system. No reference herein, or in any franchise, to the "public way" shall be deemed to be a representation or guarantee by the County that its title to any property is sufficient to permit its use for such purpose, and the Grantee shall, by its use of such terms, be deemed to gain only such rights to use property in the County as the County may have the undisputed right and power to give or as granted by Federal or State law.

Reasonable Notice: Written notice addressed to the Grantee at its principal office within the County or such other office as the Grantee has designated to the County as the address to which notice shall be transmitted to it, which notice shall be certified and postmarked not less than seven (7) business days

prior to that day in which the party giving such notice shall commence any action which requires the giving of notice. In computing said seven (7) days, holidays recognized by the County shall be excluded.

Resident: Any person residing in the County as otherwise defined by applicable law.

Residential Subscriber: A subscriber who receives a service in an individual dwelling unit where the service is not to be utilized in connection with a business, trade, or profession.

Sale: Any sale, exchange, barter or offer for sale.

School: Any public or nonprofit educational institution including primary and secondary schools, colleges and universities, both public and private.

Service Area: The entire geographic area within the franchise territory.

State: The state of North Carolina.

Subscriber Network: The system of cable and related devices necessary to deliver audio-video television signals to and from subscribers. The downstream portion of the subscriber network provided herein is that portion of the electromagnetic spectrum cable of transmitting audio-video television signals and other signals to subscribers from the Operator's headend. The upstream portion of the subscriber network provided herein is that portion of the electromagnetic spectrum which is capable of transmitting audio-video and other signals from a subscriber to the Operator's headend.

System Facilities or Facilities: The cable communications system constructed for use within the County, without limitation, the headend, antenna, cables, wires, lines, towers, amplifiers, converters, equipment or facilities located within the corporate limits of the County designed, constructed or wired for the purpose of producing, receiving, amplifying and distributing by coaxial cable, fiber optics, microwave or other means, audio and visual radio, television and electronic signals to and from Subscribers, in the County and any other equipment or facilities located within the corporate limits of the County intended for the use of the System; provided, however, such system facility excludes buildings, facilities, and equipment where primary use is for providing service to other system facilities located outside the County limits.

Transfer: The disposal by the Grantee, directly or indirectly, by gift, assignment, voluntary sale, assets acquisition, merger, consolidation, or otherwise, of fifteen percent (15%) or more at one time of the ownership or controlling interest in the system, or twenty percent (20%) cumulatively over the term of the franchise of such interest to a corporation, partnership, limited partnership, trust or association, or person or group of persons acting in concert.

Trunk Line: The major distribution cable used in cable communications, which divides into feeder lines which are tapped for service to subscribers.

Two-Way or Interactive: The capability of both sending and receiving audio-video or other electronic signals from the same location. It refers to the capability of using the upstream and downstream portions of the subscriber network.

Upstream Signal: A signal originating from a subscriber terminal to another point in the cable television system including video, audio, or digital signals or any other type of data or information for either programs or other uses such as security alert services, etc.

User: A person or organization utilizing channel or equipment and facilities for purpose of producing and/or transmission of material, as contrasted with receipt thereof in a subscriber capacity.

Section 4. Grant of Franchise

A. *Grant.*

1. *Grant.* In the event that County shall grant to the Grantee a nonexclusive, revocable franchise to construct, operate, and maintain a cable communications system within the County said franchise shall constitute both a right and an obligation to provide the services of a cable communications system as regulated by the provisions of this Ordinance and the franchise. The franchise shall include by reference those provisions of the grantee's "Application for Franchise" that are finally negotiated and accepted by the County and Grantee. By acceptance of the franchise, the Grantee agrees to abide by all regulations thereof, herein, and as may be amended from time to time.
2. *Event of Conflict.* The franchise shall be granted under the terms and conditions contained herein, consistent with and subject to all applicable statutory requirements. In the event of conflict between the terms and conditions of this Ordinance, the franchise, or the terms and conditions on which the County can grant a franchise, statutory requirements shall control.
3. *Generally Applicable Ordinances.* Any franchise granted by the County is hereby made subject to the general ordinance provisions now in effect and hereafter made effective. Nothing in the franchise shall be deemed to waive the requirements of the various codes and ordinances of the County regarding permits, fees to be paid, or manner of construction.

B. *Franchise Area.* The franchise area shall be the entire County for which a franchise is granted.

C. *Use of Public Rights of Way.* Insofar as permitted by law and for the purpose of operating and maintaining a cable communications system in the County, the Grantee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the public streets and ways within the County such wires, cables, conductors, duets, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary to the operation of the cable communications systems, provided, however, that Grantee complies with all design, construction, safety, and performance provisions contained in this Ordinance, the franchise agreement, and other laws and regulations of the State.

D. *Use of County Facilities.* At the County's option, the County may require a Grantee to utilize County-owned conduit or other facilities for any portion of its cable communications system. The consideration for the use of County conduit or other facilities shall be as stated in the franchise. A reasonable fee for the use of County owned, leased, or controlled facilities shall be established in the franchise and may be adjusted at the periodic performance evaluations.

E. *Use of Grantee Facilities.* No poles shall be erected by the Grantee without prior approval of the State Department of Transportation or other appropriate governmental unit, with regard to location, height, type and any other pertinent aspect. However, no location of any pole of the Grantee shall be a vested right and such poles shall be removed or modified by the Grantee at its own expense whenever the State reasonably determines that the public convenience would be enhanced thereby. Grantee shall utilize existing poles and conduits, where possible. The County shall have the right, during the life of the franchise, to install and maintain free of charge upon the poles owned by the Grantee, any wire and pole fixtures that do not unreasonably interfere with the Cable System operations of the Grantee.

F. *Franchise Required.* No cable communications system shall be allowed to occupy or use the streets of the County or be allowed to operate without a franchise.

G. *Term of Franchise.* The term of any franchise granted pursuant to this Ordinance shall be stated in the franchise.

- H. *Franchise Non Exclusive.* The franchise discussed herein is nonexclusive. The County specifically reserves the right to grant at any time such additional franchises for a cable communications system as it deems appropriate.
- I. *Time is of the Essence to this Agreement.* Whenever the agreement shall set forth any time for an act to be performed by or on behalf of the Grantee, such time shall be deemed of the essence and any failure of the Grantee to perform within the time allotted shall always be sufficient grounds for the County to invoke an appropriate penalty including possible revocation of the franchise.
- J. *Law Governs.* In any controversy or dispute under this Ordinance, the law of the State of North Carolina shall apply and venue shall be in Pitt County, North Carolina.
- K. *Severability.* If any section, subsection, sentence, clause, phrase or portion of this Ordinance or the franchise is for any reason held invalid or unconstitutional by any court of competent jurisdiction, or by any Federal, State, or Local statute or regulation, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.
- L. *Transfer of Ownership or Control.*
1. *Transfer of Franchise.* Any franchise granted hereunder cannot in any event be sold, transferred, leased, assigned or disposed of, including but not limited to, by force or voluntary sale, merger, consolidation, receivership or other means without the prior consent of the County, which shall not be unreasonably withheld, and then only under such conditions as the County may establish from time to time, which shall include, at a minimum, a public hearing and franchise application provided for in Section 10(C).
 2. *Transfer Threshold.* The Grantee shall promptly notify the County of any actual or proposed change in or transfer of, or acquisition by any other party of, control of the Grantee. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the disposal by the Grantee, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, of fifteen percent (15%) or more, at one time, of the ownership or controlling interest in the system, or twenty percent (20%) cumulatively over the term of the franchise of such interest to a corporation, partnership, limited partnership, trust or association, or person or group of persons acting in concert. The County shall exercise its power to approve a transfer of ownership or control in a manner consistent with Section 617 of the Communications Act (47 U.S.C. 537).
 3. *Process.* Every change, transfer, or acquisition of control of the Grantee shall make the franchise subject to cancellation unless and until the County shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the County may inquire into the legal, financial, character, technical and other public interest qualifications of the prospective controlling party, and the Grantee shall assist the County in any such inquiry. Failure to provide all information reasonably requested by the County as part of said inquiry shall be grounds for denial of the proposed change, transfer or acquisition of control.
 4. *Assumption of Control.* The County agrees that any financial institution having a pledge of the franchise or its assets for the advancement of money for the construction and/or operation of the franchise shall have the right to notify the County that it or its designee satisfactory to the County will take control and operate the cable television system. Further, said financial institution shall also submit a plan for such operation that will insure continued service and compliance with all franchise obligations during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the system for a period exceeding one year, unless extended by the County at its discretion and during said

- period of time it shall have the right to petition for transfer of the franchise to another Grantee. In the event that the FCC adopts a definition as to "control" which differs from the definition herein, the FCC definition shall govern. If the County finds that such transfer, after considering the legal, financial, character, technical, and other public interest qualifications of the applicant, is satisfactory, the County will transfer and assign the rights and obligations of such franchise as in the public interest. The consent of the County to such transfer shall not be unreasonably withheld.
5. *Regulation of Transfer.* The consent or approval of the County to any transfer of the Grantee shall not constitute a waiver or release of the rights of the County or the State in and to the streets, rights-of way, or pertinent thereto, and any transfer shall, by its terms, be expressly subject to the terms and conditions of this Ordinance and the franchise.
 6. *Construction Requirement.* In the absence of extraordinary circumstances, the County will not approve any transfer or assignment of the franchise prior to completion of construction of the proposed system.
 7. *Right to Review Purchase Price.* The County reserves the right to review the purchase price of any transfer or assignment of the cable system. Any assignee to this Ordinance or the franchise expressly agrees that any negotiated sale value which the County deems unreasonable may not be considered in the rate base by the County for any subsequent request for rate increases, if applicable under Federal or State law.
 8. *Signatory Requirement.* Any approval by the County of transfer of ownership or control shall be contingent upon the prospective controlling party becoming a signatory to the franchise.
 9. *County Right to Match Offer.* If Grantee proposes to sell, transfer, lease, assign or dispose of the system or any portion (but not all) of Grantee's cable television division which includes the System (herein referred to as the "Property"), the County shall have the right to acquire the System subject to the following conditions:
 - a. Unless the provisions of Paragraph (c). below are applicable, upon receipt of a bona fide written offer from a third party ("Third Party") to acquire the Property, Grantee shall notify the County of such offer and the County shall have forty-five (45) days within which to respond in writing to such offer. If the County agrees in writing to match the material terms of such offer insofar as it applies to the System (subject to Paragraph (b) below), including but not limited to the purchase price, Grantee shall accept the County's offer.
 - b. Notwithstanding any other provision of this agreement to the contrary, any offer by the County to acquire the System shall, at a minimum, include any North Carolina communities (in addition to the County) where Grantee operates a cable system or systems, and which are served by the headend from which Pitt County is served.
 - c. Should Grantee negotiate to sell the Property to another party which results in Grantee receiving Minority Tax Certificates or other favorable tax treatment that the County is legally unable to duplicate as a part of its offer, the value of the tax benefits will be determined by an independent CPA selected by both parties. If the County's bona fide cash offer exceeds the negotiated cash price from the other party by at least the value of the tax benefits determined by the independent CPA, (and assuming all other conditions are met) the Property will be sold to the County.
- M. *Franchise Renewal.* The Grantee shall own the cable communication system, but shall have no right to use of public rights of way upon the completion of the Franchise term. The County shall grant or deny renewal of the franchise of a Grantee in accordance with Section 626 of the Communications Act (47 U.S.C. 546) or other applicable law.

N. *Police Powers.*

1. *Acknowledgements.* In accepting the franchise, the Grantee acknowledges that its rights hereunder are subject to the police power of the County to adopt and enforce general ordinances necessary to the safety and welfare of the public, and it agrees to comply with all applicable general laws and ordinances enacted by the County pursuant to such power.
2. *Conflict.* Any conflict between the provisions of this Ordinance or the franchise and any other present or future lawful exercise of the County's general police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the jurisdiction or applies exclusively to Grantee or cable communications systems which contains provisions inconsistent with this ordinance shall prevail only if, upon such exercise, the County finds an emergency exists constituting a danger to health, safety, property or general welfare and such exercise is mandated by law.

O. *Franchise Fees.*

1. Because the County finds that the administration of this Ordinance or the franchise imposes upon the County additional regulatory responsibility and expense, a Grantee of any franchise hereunder shall pay to the County a franchise fee in an amount as designated in the franchise, but in no event less than five percent (5%) of the gross annual revenues, or upon notification by the County, the maximum amount permitted under applicable Federal, State, or Local law, if such maximum is greater than five percent (5%). This annual franchise payment shall be in addition to any other fee and commence as of the Effective date of the franchise. The County shall be furnished a statement of said payment by a Certified Public Accountant, reflecting the total amounts of annual gross revenues and computations for the period covered by the payment. The Grantee shall provide an audited statement to the County every three (3) years from the date of the grant of franchise.
2. *Franchise Fee in Addition to Other Tax.* This payment shall be in addition to any other tax or payment of general applicability owed by the Grantee to the Governments or other taxing jurisdiction. Payment of the franchise fee made by Grantee to the County shall be in addition to any and all taxes of general applicability which are now or may be required hereafter to be paid by any Federal, State, or Local law.
3. *Acceptance by the County.* No acceptance of any payment by the County shall be construed as a release or as an accord and satisfaction of any claim the County may have for further or additional sums payable as a franchise fee under this Ordinance or for the performance of any other obligation of the Grantee.
4. *Failure to Make Required Payment.* In the event that any franchise payment or recomputed amount is not made on or before the dates specified herein, Grantee shall pay as additional compensation an interest charge, computed from such due date, at the annual rate equal to the commercial prime interest rate of the County's primary depository bank during the period that such unpaid amount is owed.
5. *Quarterly Payments.* The franchise fee and any other costs, charges, or damages assessed shall be payable quarterly to the County. The Grantee shall file a complete and accurate verified statement of all gross revenue within the franchise area during the period for which said quarterly payment is made, and said payment shall be made to the County not later than forty-five (45) days after the expiration of each calendar quarter. Quarterly computation dates are the last day in the months of March, June, September and December.
6. *Audits.* The County shall have the right to inspect the Grantee's income records and the right to audit and to recompute any amounts determined to be payable under this Ordinance. Audits shall be at the expense of the Grantee if the additional amount due is greater than two percent (2%) of the amount paid. Any additional amount due to the County as a result of the

audit shall be paid within thirty (30) days following written notice to the Grantee by the County which notice shall include a copy of the audit report.

P. *Forfeiture or Revocation.*

1. *Grounds for Revocation.* The County reserves the right to revoke any franchise granted hereunder and rescind all rights and privileges associated with the franchise in accordance with the Communications Act and with the procedures set forth herein in the following circumstances, each of which shall represent a default and breach under the Ordinance and the franchise grant:
 - a. If the Grantee shall default in the performance of any of the material obligations under this Ordinance or under such documents, contracts and other terms and provisions entered into by and between the County and the Grantee.
 - b. If the Grantee shall fail to provide or maintain in full force and effect the liability and indemnification coverage or the performance bond as required herein.
 - c. If the Grantee shall violate any orders or rulings of any regulatory body having jurisdiction over the Grantee relative to this Ordinance or the franchise and after notice thereof, shall continue the violation and not remedy the same within sixty (60) days.
 - d. If the Grantee practices any fraud or engages in any unfair or deceptive act or practice with regard to the County or cable subscribers under the laws of this state.
 - e. The Grantee's construction schedule is delayed later than the schedule contained in the franchise or beyond any extended date set by the County.
 - f. The Grantee becomes insolvent, unable or unwilling to pay its debts or is adjudged bankrupt.
 - g. Failure to restore service after ninety-six (96) consecutive hours of interrupted service, except when written approval of such interruption is obtained from the County.
 - h. Material misrepresentation of fact in the application for or negotiation of the franchise or any extension or renewal thereof.
 - i. If the Grantee ceases to provide services for any reason that is within the control of the Grantee over the cable communications system.
 - j. Failure by Grantee to obtain, maintain at all times, and fully comply with a pole use agreement or other appropriate agreement with appropriate agencies and/or any other necessary parties for usage of poles or other appropriate facilities necessary to the satisfactory operation of the cable television system.
2. *Effect of Circumstances Beyond Control of Grantee.* The Grantee shall not be declared at fault or be subject to any sanction under any provision of this Ordinance in any case, in which performance of any such provision is prevented for reasons beyond the Grantee's control. A fault shall not be deemed to be beyond the Grantee's control if committed by a corporation or other business entity in which the Grantee holds a controlling interest, whether held directly or indirectly.
3. *Court Order.* Grantor and Grantee will abide by the terms of any stay order issued by a court of competent jurisdiction.

4. *Procedure Prior to Revocation.*
 - a. The County shall make written demand that the Grantee comply with any such material requirement, limitation, term condition, rule or regulation or correct any action deemed cause for revocation. If the failure, refusal or neglect of the Grantee continues for a period of thirty (30) days following such written demand, the County shall place its request for termination of the franchise upon a regular Commission meeting agenda. The County shall cause to be served upon such Grantee at least (10) days prior to the date of such Commission meeting, a written notice of this intent to request such termination and the reason therefore, and the time and place of the meeting, notice of which shall be published by the Clerk to the Board of Commissioners at least once, ten (10) days before such meeting in a newspaper of general circulation within the County.
 - b. The Commission shall hear any persons interested therein, and shall determine in its discretion whether or not any failure, refusal or neglect by the Grantee was with just cause.
 - c. If such failure, refusal or neglect by the Grantee was with just cause, as reasonably defined by the County, the Commission shall direct the Grantee to comply within such time and manner and upon such terms and conditions as are reasonable.
 - d. If the Commission shall determine such failure, refusal, or neglect by the Grantee was without just cause, then the Commission shall, by resolution, declare that the franchise of the Grantee shall be terminated and bond forfeited unless there be compliance by the Grantee within ninety (90) days.
 - e. Evidence admitted shall be in any reliable form so long as it is relevant, material, and not unduly repetitious.
5. *Disposition of Facilities.* In the event a franchise is revoked or otherwise terminated, the County may in its sole discretion, do any of the following:
 - a. Purchase the system under the procedures set forth in Subsection U of this Section.
 - b. Effect a transfer of ownership of the system to another party.
 - c. Order the removal of the system facilities required by public necessity from the County within a reasonable period of time as determined by the County or require the original Grantee to maintain and operate its system for a period of six (6) months or until such further time as is mutually agreed upon.
6. *Restoration of Property.* In removing its plant, structures and equipment, the Grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good a condition or better as that existing prior to the Grantee's removal of its equipment and appliances without affecting the electrical or telephone cable, wires, or attachments. The owners shall inspect and approve the condition of the public ways and public places and cables, wires, attachments, and poles after removal. The liability, indemnity, insurance and performance bond as provided herein shall continue in full force and effect during the period of removal and until the Grantee has fully complied with the terms and conditions of this Paragraph, this Ordinance and the franchise.
7. *Restoration by County; Reimbursement of Costs.* In the event of a failure by the Grantee to complete any work required by the County by resolution, law, or Ordinance within the time as may be established by the County and to the satisfaction of the County, the County may cause such work to be done and the Grantee shall reimburse the County the cost thereof within thirty (30) days after receipt of an itemized list of such costs or the County may at its

option recover such costs through the performance bond provided by Grantee. The County shall be permitted to seek legal and equitable relief to enforce the provisions of this Section.

8. *Extended Operation.* Upon either the expiration or revocation of a franchise, the County may require the Grantee to continue to operate the system for a period of six (6) months from the date of such expiration or revocation, or until such time beyond six (6) months as is mutually agreed upon. The Grantee shall, as trustee for its successor in interest, continue to operate the cable communications system under the terms and conditions of this Ordinance and the franchise and provide the regular subscriber service and any and all of the services that may be provided at the time. The County shall be permitted to seek legal and equitable relief to enforce the provisions of this Section.

Q. *Receivership and Foreclosure*

1. *Termination by Insolvency.* The franchise granted hereunder shall, at the option of the County, cease and terminate one hundred twenty (120) days after the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business of the Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:
 - a. Such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Ordinance and the franchise granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) day's shall have remedied all defaults under the franchise; and
 - b. Such receivers, or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by the Court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and condition of the franchise herein granted.
2. *Termination by Judicial Action.* In the case of a foreclosure or other judicial sale of the plant, property and equipment of the Grantee or any part thereof, including or excluding the franchise, the County may serve notice of termination upon the Grantee and the successful bidder at such sale, in which event the franchise and all rights and privileges of the Grantee granted hereunder shall cease and terminate thirty (30) days after service of such notice, unless:
 - a. The County shall have approved the transfer of the franchise as provided by this Ordinance, and
 - b. Such successful bidder shall have covenanted and agreed with the County to assume and be bound by every term, provision, and conditions of the franchise herein granted.

R. *Equal Opportunity Policy*

1. *EEO.* Equal opportunity employment shall be afforded by all operators of cable television systems to all qualified persons, and no person shall be discriminated against in employment because of race, color, religion, age, national origin, sex, or handicap. Grantee shall comply with all equal opportunity provisions enacted by Federal, State and local authorities, and in particular Section 634 of the Communications Act (47 U.S.C. 554), as well as all such provisions contained in this Ordinance and the franchise.
2. *Local Employment and Procurement Practices.* Whenever reasonably possible, all services, personnel, hardware and supplies for the construction, maintenance and operation of the system shall be procured locally.

- S. *Notices.* All notices from Grantee to the County pursuant to this Ordinance and the franchise shall be to the County Manager or his/her designee. Grantee shall maintain with the County, throughout the term of the franchise, an address for service of notices by mail. Grantee shall also maintain with the County, a local office for the conduct of matters related to the franchise during normal business hours in addition to a local, toll-free, or collect telephone number. The Grantee shall be required to advise the County of such address(es) and telephone numbers and any changes thereof.
- T. *Failure of County to Enforce this Franchise, No Waiver of the Terms Thereof.* The Grantee shall not be excused from complying with any of the terms and conditions of this Ordinance or the franchise by any failure of the County upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.
- U. *Rights Reserved to the Grantor*
1. *Right to Purchase of the System by the County.*
 - a. *Right to Purchase.* In the event the Grantee forfeits or the County terminates the franchise, pursuant to provisions of this Ordinance, or at the normal expiration of the franchise term absent a franchise renewal, the County shall have the right, directly or as an intermediary, to purchase the franchised cable communications system. Purchase price shall be in accordance with Section 627 of the Communications Act (47 U.S.C. 547) and shall be based upon the value of the system determined pursuant to this Section.
 - b. *Date of Valuation.* The date of valuation shall be no earlier than the day following the date of expiration or termination and no later than the date the County makes a fair and reasonable offer for the system or the date of transfer of ownership, whichever occurs first.
 - c. *System Valuation.* Except in connection with purchase pursuant to Subsection L above, the value of the cable system shall be determined by a qualified appraiser appointed by the County. The appraiser shall determine the current worth of the assets based upon what a willing buyer would pay a willing seller for the assets involved, not including the value of the franchise itself and its attendant "goodwill" value. Under no circumstances shall the value under this Section be less than the book value of the assets, less accumulated depreciation. If the franchise is terminated or not renewed, no value shall be assigned to either the franchise or any right, privilege or expectancy arising to the Grantee out of the right to transact business under the franchise, and particularly no value shall be allowed for any increase in value arising out of any expectation of cable communications system's revenues beyond the forfeiture and termination date or expiration date, whichever is sooner.
 - d. *Intent to Purchase.* Except in connection with purchase pursuant to Subsection L above, upon receipt of notice of the County's intent to purchase the system at the value established above, the Grantee shall have thirty (30) days within which to accept that valuation as the purchase price of the system. In the event that purchase price is not acceptable, the parties shall have one hundred twenty (120) days from the date of the rejection of the offer in which to negotiate an acceptable purchase price.
 - e. *Transfer to County.* Upon exercise of this option pursuant to this section, and the payment of the agreed upon sum by the County to the Grantee, the Grantee shall immediately transfer to the County possession and title to all facilities and property, real and personal, of the cable communications system, free from any and all liens and encumbrances not agreed to be assumed by the County in lieu of some portion of the purchase price set forth above; and the Grantee shall execute such warranty deeds or other instruments of conveyance to the County as shall be necessary for this purpose.

- f. *Arbitration.* In the event the County and Grantee are unable to agree upon the value of the cable communications system within the time limits set forth above, either party may require by written notice to the other that the value of cable communications system be submitted to arbitration in the following in manner:
- i. County and the Grantee shall each within fifteen (15) days after such written notice select an arbitrator who shall be a disinterested person with reasonable knowledge and experience relative to the subject to be arbitrated. The two arbitrators thus selected shall immediately thereafter select a third arbitrator who shall likewise be a disinterested person having reasonable knowledge and experience relative to the subject to be arbitrated.
 - ii. Within thirty (30) days after appointment of all arbitrators and upon ten (10) days written notice to the parties, the panel of arbitrators shall commence a hearing on the issue of valuation and shall receive all relevant information from the parties.
 - iii. The hearing shall be recorded and may be transcribed at the request and expense of either party. All hearing proceedings, debate and deliberations shall be open to the public and at such times and places as contained in the notice or as thereafter publicly stated, except that if two arbitrators agree, debate and deliberations may be held in closed session as permitted by State open meeting laws.
 - iv. The value of the system as determined by the arbitration panel shall be the fair market value, determined on the basis of the cable system valued as a going concern, but with no value allocated to the franchise itself if terminated or not renewed. Under no circumstances shall the value established by the arbitration panel be less than the net book value of the assets nor, in the case of a terminated or revoked franchise, greater than the current replacement cost of the system as determined by the appraiser appointed under Paragraph 3(U)(1).
 - v. Within thirty (30) days after the close of the hearing, the panel of arbitrators shall prepare findings and decision agreed upon by a majority of the panel which shall be filed with the County Manager's Office and served by mail upon the Grantee. The decision of the panel regarding the value of the system shall be final and binding upon the parties. Should there be no majority decision, the proceedings shall become null and void and shall be started anew, unless the parties extend by written mutual agreement the time which the panel of arbitrators has to make a decision.
 - vi. Either party may seek judicial relief in the following circumstances: (i) party fails to select an arbitrator; (ii) the arbitrators fail to select a third arbitrator; (iii) one or more arbitrators is unqualified; (iv) designated time limits have been exceeded; (v) the panel has not proceeded expeditiously; (vi) the decision was procured by corruption, fraud or undue means; (vii) there was evident partiality on the part of one or more of the arbitrators; (viii) the arbitration panel exceeded its authority hereunder; (ix) based upon the record, the panel abused its discretion.
 - vii. In the event a court of competent jurisdiction determines that judicial relief is appropriate to the circumstances set forth above, the court in its discretion may order the arbitration procedure repeated and issue findings, orders and directions.
 - viii. The expenses of the arbitrators chosen by each party shall be borne by the party choosing such arbitrators, and the expenses of the third arbitrator and those expenses incurred by the panel as a whole shall be borne equally by the parties.
- g. *Notification.* Except in connection with a purchase pursuant to Subsection L, upon receipt of the decision of the arbitration panel, the County shall have thirty (30) days in

which to notify the Grantee of its intent to exercise its option to purchase the system. The purchase price shall be the value of the system as determined by the arbitration panel.

2. *Right of Inspection of Records.* The County shall have the right to inspect all books, records, reports, maps, plans, financial statements, and other like materials of the Grantee, at any time during normal business hours. Grantee shall provide such information in such form as may be required by the County.
 3. *Right of Inspection of Construction.* The County shall have the right to inspect all construction or installation work performed subject to the provisions of the franchise and to make such tests as it shall find necessary to ensure compliance with the terms of this Ordinance and all applicable laws.
 4. *Right of Inspection of Property.* At all reasonable times, Grantee shall permit examination by any duly authorized representative of the County of the system facilities, together with any appurtenant property of Grantee situated within or without the County.
 5. *Right of Intervention.* The County shall have the right of intervention in any suit or proceeding to which the Grantee is party, and the Grantee shall not oppose such intervention by the County.
 6. *Right to Require Removal of Property.* Upon denial of renewal the franchise, or upon its revocation, as provided for herein, the County shall have the right to require the Grantee to remove, at its own expense, all portions of the cable communications system required by public necessity from all streets and public ways within the County which removal shall be done and paid for in accordance with Subsection P(6) and Subsection P(7) above.
- V. *No Recourse Against the Grantor.* The Grantee shall have no recourse whatsoever against the County or its officials, boards, commissions, agents, or employees for any loss, cost, expense or damage arising out of any provision or requirements of the franchise or because of the enforcement of this Ordinance or the franchise.

Section 5. Regulation of Franchise

A. Regulatory Authority

1. The County shall exercise appropriate regulatory authority under the provisions of this Ordinance, the Communications Act, and all applicable law. This authority shall be vested in the Pitt County Board of Commissioners and administered through the County Manager or his/her designee in order to provide day-to-day administration and enforcement of the provisions of this Ordinance and any franchise granted hereunder, and to carry out the County's responsibilities with regard to cable communications.
2. Notwithstanding any other provisions of this Ordinance to the contrary, the Grantee shall at all times comply with all laws and regulations of the local, state and federal government. In the event that any actions of the state or federal government or any agency thereof, or any court of competent jurisdiction upon final adjudication, substantially reduce in any way the power or authority of the County under this Ordinance or the franchise, or if in compliance with any local, state, or federal law or regulation, the Grantee finds conflict with the terms of this Ordinance, the franchise, or any law or regulation of the County, then as soon as possible following knowledge thereof, the Grantee shall notify the County of the point of conflict believed to exist between such law or regulation and the laws or regulations of the County, this Ordinance and the franchise. The County or the Grantee may notify the other party that it wishes to renegotiate those provisions which are affected in any way by such modification in regulations or other statutory authority. Thereafter, the Grantee and the County shall negotiate in good faith with the County in the development of alternate provisions which shall fairly

restore the County to the maximum level of authority and power permitted by law, The County shall have the right to modify any of the provisions to such reasonable extent as may be necessary to carry out the full intent and purpose of this Ordinance and the franchise in accordance with Federal and State law.

3. The County reserves the right to exercise the maximum plenary authority, as may at any time be lawfully permissible, to regulate the cable communications system, the franchise and the Grantee. Should applicable legislative, judicial or regulatory authorities at any time, permit regulation not presently permitted to the County, the County may, following good faith negotiations, engage in any such additional regulation as may then be permissible, whether or not contemplated by this Ordinance or the franchise, including without limitation, regulation regarding franchise fees, taxes, programming, rates charged to subscribers and users, consumer protection, or any other similar or dissimilar matter.

B. *Supervision of the Franchise*

1. The County shall have the following regulatory responsibility:
 - a. Administration and enforcement of the provisions of this Ordinance and any franchise granted hereunder.
 - b. Award, renewal, extension or termination of a franchise pursuant to the provisions of this Ordinance, the franchise, and other applicable law.
 - c. Consent prior to sale or transfer of any franchise granted hereunder.
 - d. Performance evaluation of the Grantee.
 - e. Rate and service regulation, if applicable.
2. The County also reserves the right to perform the following functions:
 - a. Develop objectives and coordinate activities related to the operation of government channels.
 - b. Approve procedures and standards for public, government and educational access operations and services, including the use of dedicated channels and sharing of public facilities.
 - c. Coordinate plans for expansion, interconnection and growth of cable services.
 - d. Analyze the possibility of integrating cable communications with other County, State or regional telecommunications networks.
 - e. Formulate and recommend long-range telecommunications policy for the County, and determine the County's view of the future cable-related needs and interests of the community.
 - f. Provide the administrative effort necessary for the conduct of performance evaluations, and any other activities required for the administration of the franchise.
 - g. Monitor Grantee's process for handling citizen complaints and periodically inspect and analyze the records related to such complaints.
 - h. Receive applications for rate increases, if applicable, and provide staff assistance in the analysis and recommendations thereto.

- i. Monitor Grantee's adherence to operational standards, service requirements and line extension policies.
 - j. Assure compliance with applicable laws and ordinances.
 - k. Arrange tests and analysis of equipment and performance, as needed to insure compliance with this Ordinance and the franchise.
 - l. Assure continuity in service.
 - m. Receive for examination all data and reports required by this Ordinance.
3. *Cable TV Advisory Committee.* The County may establish a citizen's advisory committee entitled the Cable TV Advisory Committee. The responsibilities of the Committee shall include, but not be limited to, the following:
- a. Monitor and advise the Commission and County administration on the provisions of the County's cable television ordinance and related ordinances.
 - b. Serve as an advisory body for the public, educational, and governmental access channels of cable television and any institutional programming that may be developed.
 - c. Advise the County government of objectives to be obtained in the County's cable communications system based upon its continued evaluation of the County's cable television franchise, cable technology, and the future cable-related needs and interests of the community.
 - d. Prepare an annual report to the Commission.
 - e. Cooperate with the County and the Grantee in fulfilling its responsibilities herein.
4. *Interconnectivity.* Upon the request of the County as stated in the franchise agreement, the Grantee shall interconnect its cable communications system with any other broadband or like telecommunications facility operating in the County, including but not limited to other cable communications systems or a state-wide information highway. The Grantee further agrees that it will bear its share of the cost of any interconnection. Such costs will be allocated between and among the systems being interconnected in an equitable manner. The Grantee may not construct any physical facilities to provide an interconnection with other cable communications or data systems until the plans for such interconnection have been approved by the Commission.

C. *Rates and Charges*

- 1. *Schedule Filings.* Grantee shall file with the County schedules which shall describe all services offered, all rates and charges of any kind, and all terms and conditions relating thereto. No rates or charges shall be effective except as they appear on a schedule so filed. Grantee shall notify subscribers in writing at least thirty (30) days prior to the implementation of any change in services offered, rate charges, or terms and conditions related thereto.
- 2. *Nondiscriminatory Rates.* Grantee shall establish rates that are nondiscriminatory within the same general class of subscribers which must be applied fairly and uniformly to all subscribers in the franchise area for all services. Nothing contained herein shall prohibit the Grantee from offering (i) discounts to commercial and multiple family dwelling subscribers billed on a bulk basis; (ii) promotional discounts; (iii) reduced installation rates for subscribers who have multiple services; or (iv) discounts for senior citizens and/or low income residents. To the extent required by federal, state, or local law or regulation, Grantee's charges and rates for all services shall be itemized on subscriber's monthly bills.

3. *County Regulation.* To the extent that Federal or State law or regulation, and in particular Section 626 of the Communications Act (47 U.S.C. 543) and the regulations of the FCC, may now, or as the same may hereafter be amended to, authorize the County to regulate the rates for any particular service tiers, service packages, equipment, or any other services provided by Grantee, the County shall have the right to exercise rate regulation to the full extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the County.
4. *Rate Regulation of the Basic Tier and Charges.* The County will follow Pitt County's Rate and Service Regulation Ordinance and FCC Rate Regulations including, but not limited to, Report and Order, In the Matter of Implementation of Sections of Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket 92-226, FCC 93-177 (released May 3, 1993), or as hereafter amended from time to time, in its regulation of the basic service rates and charges of the Grantee. In connection with such regulation, the County will ensure a reasonable opportunity for consideration of the views of interested parties; and the County Manager, or his/her designee, is authorized to execute on behalf of the County and file with the FCC such certification forms or other instruments as are now or may hereafter be required by the FCC Rate Regulations in order to enable the County to regulate basic service rates and charges.
5. *Evaluation Criteria.* If and when exercising rate regulation not under criteria established by the FCC, the County shall consider, along with any other information it deems necessary or appropriate, the following factors in approving or disapproving initial rates or a rate increase request: the ability of the Grantee to render system services and to derive a reasonable profit therefrom under the existing rate schedule and under the proposed rate schedule; the revenues and profits derived from system services; the efficiency of the Grantee; the quality of the services offered by the Grantee; the fair market value of the system less depreciation; a fair rate of return over the life of the Franchise with respect to Grantee's investment; the extent to which Grantee has adhered to the terms of this Ordinance and the Franchise; fairness to County residents, subscribers, and users. The County shall not consider any valuation based upon the Franchise and the items of value shall neither be amortized as an expense nor shall a return be paid on them. The County may retain rate consultants as it deems appropriate, and all reasonable charges for such independent consultants shall be paid by the Grantee.
6. *Ability to Petition.* If applicable, the County shall have the right to petition the FCC or other appropriate agency or organization to obtain rate regulation authority or to petition the federal body to review or regulate rates in the County.
7. *Free Connections.* Grantee shall provide upon request and free of charge the drops set forth in the Franchise. Grantee shall discuss the location of each connection with the proper officials of each such institution receiving free connection.

D. *Performance Evaluation*

1. *Annual Evaluations.* The County and the Grantee shall, at the discretion of the County, hold scheduled performance evaluation sessions annually. All such evaluation sessions shall be open to the public.
2. Special evaluation sessions may be held at any time during the term of the franchise at the request of the County.
3. *Public Notice of Public Hearings on Performance.* All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with public notice, as provided in Section 10(A). Grantee shall notify subscribers of all such evaluation sessions by announcement on a designated channel on the system between the hours of 11:00 a.m. and 9:00 p.m. for five (5) consecutive days preceding each evaluation session.

4. *Items for Review.* Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to, system performance and construction, Grantee compliance with this Ordinance and the Franchise, customer service and complaint response, subscriber privacy, services provided, programming offered, service rate structures, franchise fees, penalties, free or discounted services, applications of new technologies, judicial and FCC filings, and line extensions.
5. *Cooperation.* During the review and evaluation by the County, the Grantee shall fully cooperate with the County and shall provide such information and documents as the County may need to reasonably perform its review.

Section 6. Bonds, Insurance and Indemnification

A. Performance Bond and Letter of Credit

1. *Performance Bond.* Upon the effective date of the franchise, the Grantee shall obtain and maintain during the entire term of the franchise and any extensions and renewals thereof, at its cost and expense, and file with the County, a corporate surety bond in an amount specified in the franchise to guarantee the faithful performance of the Grantee of all its obligations provided under this Ordinance and the franchise. Failure to timely obtain, file and maintain said bond shall constitute a substantial violation within the meaning of this Section.
2. *Conditions.* The performance bond shall provide the following conditions:
 - a. There shall be recoverable by the County jointly and severally from the principal and surety, any and all fines and liquidated damages due to the County and any and all damages, losses, costs, and expenses suffered or incurred by the County resulting from the failure of the Grantee to: faithfully comply with the provisions of this Ordinance and the franchise; comply with all orders, permits and directives of any County agency or body having jurisdiction over its acts or defaults; pay fees due to the County; pay any claims, liens or taxes due the County which arise by reason of the construction, operation, maintenance or repair of the cable system. Such losses, costs and expenses shall include, but not be limited to, attorney's fees and other associated expenses.
 - b. The total amount of the bond shall be forfeited in favor of the County in the event:
 - i. The Grantee abandons the cable system at any time during the term of the franchise or any extension thereto; or
 - ii. The Grantee assigns the franchise without the express written consent of the County.
3. *Reduction of Bond.* Upon written application by the Grantee, the County may, at its sole option, permit the amount of the bond to be reduced or waive the requirements for a performance bond subject to the following conditions: Reductions granted or denied upon application by the Grantee shall be without prejudice to the Grantee's subsequent applications or to the County's right to require the full bond at any time thereafter. However, no application for reduction shall be made by the Grantee within one (1) year of any prior application.
4. *Letter of Credit.* In lieu of the performance bond required pursuant to Paragraph 1 above, the Grantee may obtain, maintain, and file with the County an irrevocable letter of credit from a financial institution licensed to do business in the State in the amount specified in the franchise, naming the County as beneficiary. The form and content of such letter of credit shall be approved by the County and shall be released only upon expiration of the franchise or upon the replacement of the letter of credit by a letter of credit by a successor Grantee. Failure to obtain the letter of credit within the time specified herein shall constitute a substantial violation within the meaning of this Ordinance.

5. *Conditions.* The County may draw upon the letter of credit if the Grantee fails to: faithfully comply with the provisions of this Ordinance or the franchise; comply with all orders, permits, and directives of any County agency or body having jurisdiction over its acts or defaults; pay fees due to the County; or pay any claims, liens, or taxes due the County which arise by reason of the construction, operation, maintenance, or repair of the cable system.
6. *Use of Performance Bond and Letter of Credit.* Prior to drawing upon the performance bond or letter of credit for the purposes described in this Section, the County shall notify the Grantee in writing by certified or registered mail, return receipt requested, that payment is due and the Grantee shall have ten (10) day's from the receipt of such written notice to make a full and complete payment. If the Grantee does not make the payment within ten (10) days, the County may withdraw the amount thereof, with interest and penalties, from the performance bond or the letter of credit.
7. *Notification.* Within three (3) days of a withdrawal from the letter of credit or performance bond, the County shall send to the Grantee, by certified mail, return receipt requested, written notification of the amount, date and purpose of such withdrawal.
8. *Replenishment of Letter of Credit and Performance Bond.* No later than thirty (30) days after mailing to the Grantee by certified mail notification as described in Paragraph 7 above of a withdrawal pursuant to Paragraph 6 above, the Grantee shall replenish the performance bond and/or letter of credit in an amount equal to the amount so withdrawn. Failure to make timely replenishment of such amount to the letter of credit and/or performance bond shall constitute a substantial violation of this Ordinance.
9. *Non-Renewal, Alteration, or Cancellation of Letter of Credit or Performance Bond.* The performance bond or letter of credit required herein shall be in a form satisfactory to the County and shall require thirty (30) days written notice of any non-renewal, alteration or cancellation to both the County and the Grantee. The Grantee shall, in the event of any such cancellation notice, obtain, pay all premiums for, and file with the County, written evidence of the issuance of replacement bond or policies within thirty (30) days following receipt by the County or the Grantee of any notice of cancellation, and failure to do so constitutes a substantial violation of this Ordinance.
10. *Inflation.* To offset the effects of inflation the amounts of the bond or letter of credit provided for herein, shall be increased by the annual rate of inflation at the end of every three (3) year period of the franchise, applicable to the next three year period, upon the request of the County.

B. Liability and Insurance

1. *Letter of Insurance.* Prior to commencement of construction, but in no event later than sixty (60) days after the effective date of the franchise and thereafter, Grantee shall continuously maintain insurance as defined by this Section and shall throughout the duration of the franchise and any extensions or renewals thereof, the Grantee shall furnish to the County, certificates of insurance, approved by the County, for all types of insurance required under this Section. Failure to furnish said certificates of insurance in a timely manner shall constitute a violation of this Ordinance.
2. *Filing.* Any insurance policy or certificate thereof obtained by the Grantee in compliance with this Section shall be filed and maintained with the County Manager or his/her designee during the term of the franchise, and may be changed from time to time to reflect changing liability limits and/or to compensate for inflation. Grantee shall immediately advise the County of any litigation that may develop that would affect this insurance.

3. *No Limit or Liability.* Neither the provisions of this Section nor any damages recovered by the County hereunder, shall be construed to or limit the liability of the Grantee under any franchise issued hereunder or for damages.

4. *Enforcement.* All insurance policies maintained pursuant to this Ordinance or the franchise shall contain the following, or a comparable, endorsement:

It is hereby understood and agreed that this insurance policy may not be canceled by the insurance company nor the intention not to renew be stated by the insurance company until thirty (30) days after receipt by the County Manager, by registered or certified mail, of a written notice of such intention to cancel or not to renew.

5. *Hold Harmless Clause.* All contractual liability insurance policies maintained pursuant to this Ordinance or the franchise shall include the following hold harmless clause:

The Grantee agrees to indemnify, save harmless and defend the County, its officials, agents, servants, and employees, and each of them against and hold it and them harmless from any and all lawsuits, claims, demands, liabilities, losses and expenses, including court costs and reasonable attorney's fees, for or on account of any injury to any person, or any death at any time resulting from such injury, or any damage to any property, which [may arise or which may be alleged to have arisen out of or in connection with the work covered by the franchise and performed or caused to be performed. The foregoing indemnity shall apply except if such injury, death or damage is caused by the negligence or other fault of the County, its agents, servants, or employees, or any other person indemnified hereunder.

6. *State Institution.* All insurance policies provided under the provisions of this Ordinance or the franchise shall be written by companies authorized to do business in the State, and approved by the State's Commissioner of Insurance.

7. *Named Insured.* At any time during the term of the franchise, the County may request and the Grantee shall comply with such request, to name the County as an additional named insured for all insurance policies written under the provisions of this Ordinance or the franchise.

8. *Inflation.* To offset the effects of inflation and to reflect changing liability limits, all of the coverages, limits, and amounts of the insurance provided for herein will be increased at the end of every three (3) year period of the franchise at the annual rate of inflation, applicable to the next three year period, upon the request of the County.

9. *General Liability Insurance.* The Grantee shall maintain, and by its acceptance of any franchise granted hereunder specifically agree that it will maintain throughout the term of the franchise, general liability insurance insuring the Grantee in the minimum of:

- a. \$2,000,000 for property damage per occurrence;
- b. \$2,000,000 for property damage aggregate;
- c. \$5,000,000 for personal bodily injury or death to any one person; and
- d. \$10,000,000 bodily injury or death aggregate per single accident or occurrence.

10. *Policy Inclusions.* Such general liability insurance must include, at a minimum, coverage for all of the following: comprehensive form, premises--operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, broad form property damage, and personal injury.

11. *Automobile Liability Insurance.* The Grantee shall maintain, and by its acceptance of any franchise granted hereunder specifically agrees that it will maintain throughout the term of the

franchise, automobile liability insurance for owned, non-owned, or rented vehicles used by Grantee, its, agents, officials, or employees in the minimum amount of:

- a. \$1,000,000 for bodily injury and consequent death per occurrence;
- b. \$1,000,000 for bodily injury and consequent death to any one person.
- c. \$500,000 for property damage per occurrence.

12. *Worker's Compensation and Employer's Liability Insurance.* The Grantee shall maintain and by its acceptance of any franchise granted hereunder specifically agrees that it will maintain throughout the term of the franchise, Worker's Compensation and employer's liability, valid in the State, in the minimum amount of:

- a. Statutory limit for Worker's Compensation.
- b. \$100,000 for employer's liability.

C. *Indemnification*

1. Grantee shall, at its sole cost and expense, fully indemnify, defend and hold harmless the County, its officers, boards and commissions, and County employees against any and all claims, suits, actions, liability and judgments for damages (including but not limited to costs and expenses for reasonable legal fees and disbursements and liabilities assumed by the County in connection therewith):

- a. To persons or property, in any way arising out of or through the acts or omissions of Grantee, its servants, agents or employees, or to which Grantee's negligence shall in any way contribute unless caused by negligence or other fault of the County, its agents, servants or employees, or any other person indemnified hereunder.
- b. Arising out of any claim for invasion of the right of privacy, for 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 (excluding claims arising out of or relating to County programming).
- c. Arising out of Grantee's failure to comply with the provisions of any federal, State, or local statute, ordinances, or regulation applicable to Grantee in its business hereunder.

2. The foregoing indemnity is conditioned upon the following:

The County shall give Grantee prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section. Nothing herein shall be deemed to prevent the County from cooperating with Grantee and participating in the defense of any litigation by its own counsel at its sole cost and expense. No recovery by the County of any sum by reason of the liquidated damages required by this Ordinance shall be subject to litigation by the Company, except that any sum so received by the County shall be deducted from any recovery which the County might have against the Company under the terms of this Section.

Section 7. Design and Construction Provisions

A. *Authority to Construct*

1. *Authorization to Commence Construction and Application Procedures.* Within thirty (30) days of the acceptance by the Grantee of a franchise, the Grantee shall apply for any needed contracts for use of poles. Within thirty (30) days after completion of the make-ready survey identifying the routes of the system facility, the Grantee shall apply for all additional licenses

from the State, County, or other necessary parties, such as the railroads for crossing under or over their property. In any event, all necessary applications for permits, licenses, certificates and authorizations shall be applied for in a timely fashion so that such filing and processing shall not interfere with or cause delay with the construction scheduled as outlined in the franchise. Failure to make such timely application and timely filing shall constitute a substantial violation of this Ordinance.

2. *Power to Contract.* Upon grant of the franchise and in order to construct, operate and maintain a cable system in the County, the Grantee may enter into contracts with any public utility companies or any other owner or lessee of any poles or underground areas located within the County; obtain right-of-way permits from appropriate County, State, City, and Federal officials necessary to cross or otherwise use highways or roads under their respective jurisdiction; obtain permission from the Federal Aviation Administration to erect and maintain antennas; and obtain whatever other permits a County, City, State or Federal agency may require.

B. *Construction and Technical Standards*

1. *Compliance with Construction and Technical Standards.* Grantee shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinances, construction standards, governmental requirements, FCC technical standards, and detailed technical standards submitted by Grantee as part of its application, which standards are and shall be incorporated by reference herein. The Grantee, through the System, shall provide uniform, strong signals which are free from any significant distortion and interference. The System shall be designed, constructed, operated and maintained for 24-hours-a-day continuous operation. The System shall produce, for reception on subscribers' receivers which are in good working order, either monochrome or color pictures (providing the receiver is color capable) which are free from any significant interference or distortion which would cause any material degradation of video or audio quality.
2. *State of the Art.* The Grantee shall construct, install, operate and maintain its system in accordance with the highest standards of the art of cable communications taking into account the size and needs of the community as well as the costs and benefits to the residents, such standards to include but not be limited to the following:
 - a. The System will be spaced to permit a minimum of 550 MHz operation and will be capable of utilizing state-of-the-art converters and be compatible with cable ready television sets.
 - b. The System will utilize converters which will make the system adaptable for the development of future services.
 - c. The Grantee shall maintain its system facilities in a manner which will continue to enable it to add new services and associated equipment as they are developed, available, and proved marketable to subscribers. The new services and associated equipment will be added to the system facilities when they are determined by industry standards to be technically reliable and adaptable to the system at a cost to the subscriber that is acceptable in the marketplace.
3. *Poles.* Prior to the erection of any towers, poles or conduits or the upgrade or rebuild of the cable communications system under this Ordinance, the Grantee shall first submit to the County and other designated parties for approval a concise description of the facilities proposed to be erected or installed, including engineering drawings, if required, together with a map and plans indicating the proposed location of all such facilities. No erection or installation of any tower, pole, underground conduit, or fixture or any rebuilds or upgrading of the cable communications system shall be commenced by any person until approval, therefore, has been received from the State Department of Transportation or other appropriate governmental unit.

4. *Contractor Qualifications.* Any contractor or subcontractor proposed for work of construction, installation, operation, maintenance, and repair of system equipment must be properly licensed under laws of the State, and all local ordinances.
5. *System Equipment.* The Grantee's system and associated equipment erected by the Grantee within the County shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places. No pole or other fixtures placed in any public ways by the Grantee shall be placed in such a manner as to interfere with normal travel on such public way.
6. *Maps.* The County does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures. In public rights-of-way, where necessary, the location shall be verified by excavation.
7. *Quality of Construction.* Construction, installation, operation, and maintenance of the cable communications system shall be performed in an orderly and workmanlike manner, in accordance with then current technological standards. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.
8. *Construction Standards.* Grantee shall at all times comply with: (1) National Electrical Safety Code (National Bureau of Standards); (2) National Electrical Code (National Bureau of Fire Underwriters); (3) Bell System Code of Pole Line Construction; (4) applicable FCC or other Federal, State and local regulations; and standards as set forth in the franchise.
9. *Non-interference.* In any event, the system shall not endanger or interfere with the safety of persons or property in the franchise area or other areas where the Grantee may have equipment located.
10. *Antennas.* Any antenna structure used in the cable communications system shall comply with construction, marking, and lighting of antenna structure standards as required by Federal and State law or regulation.
11. *OSHA.* All worker facilities, conditions, and procedures that are used during construction, installation, operation, and maintenance of the cable system shall comply with the standards of the Occupational Safety and Health Administration.
12. *RF Leakage.* RF leakage shall be checked at reception location for emergency radio services to prove measurable interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no measurable interference to airborne navigational reception in the normal flight pattern. FCC Rules and Regulations shall govern. In no event shall Grantee be required to exceed FCC standards with regard to RE leakage.
13. *Standby Power.* The Grantee shall maintain equipment capable of providing standby power for a minimum of eight (8) hours for the headend.

C. *System Construction Schedule*

The franchise shall specify the construction schedule.

D. *Extension of Service*

The Grantee shall provide service to all unserved dwelling units where there are an average of twenty (20) homes per mile, within a three (3) mile area of existing service, within twelve (12) months. For example, over a three (3) mile extension of service, there must be a minimum of sixty (60) homes distributed throughout the three (3) mile area. In such cases where residential density does not meet the requirement, consideration will be made for line extensions based on FCC rules and regulations. The Grantee may not otherwise discriminate against low income or low density areas. For good cause, the Grantee may request and the County may grant reasonable extension of time. Failure to provide service under this provision shall subject the Grantee to penalties of \$500 per day.

E. *Use of Streets*

1. *Underground Installation.* All installations shall be underground in those areas of the County where public utilities providing telephone and electric service are underground at the time of installation. In areas of the County where either telephone or electric utility facilities are above ground at the time of installation, Grantee may install its service above ground, provided that at such time as those facilities are required to be placed underground by the State or are placed underground, the Grantee shall likewise place its services underground without direct additional cost to the County or to the individual subscribers so served within the County. Where not otherwise required to be placed underground by this Ordinance or the franchise, the Grantee's system shall be located underground at the request of the adjacent property owner, provided that the excess cost over the aerial location shall be borne by the property owner making the request. All cable passing under the roadway shall be installed in conduit.
2. *Approvals.* Prior to construction or alteration, however, the Grantee shall in each case file plans with the appropriate County agencies, complete use agreements with the utility companies, obtain all construction permits and receive written approval of the County before proceeding, which approval shall not be unreasonably withheld.
3. *Interference with Persons, Improvements, Public and Private Property and Utilities.* The Grantee's system and facilities, including poles, lines, equipment and all appurtenances, shall be located, erected and maintained so that such facilities shall:
 - a. Not endanger or interfere with the health, safety or lives or persons;
 - b. Not interfere with any improvements the County, City or State may deem proper to make;
 - c. Not interfere with the free and proper use of public streets, alleys, bridges, easements or other public ways, places or property, except to the minimum extent possible during actual construction or repair;
 - d. Not interfere with the rights and reasonable convenience of private property owners, except to the minimum extent possible during actual construction or repair; and
 - e. Not obstruct, hinder or interfere with any gas, electric, water or telephone facilities, easements, property rights, or other utilities facilities' easements located within the County.
4. *Restoration to Prior Condition.* In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its own cost and expense and in a manner approved by the County, replace and restore all paving, sidewalk, driveway, landscaping, or surface of any street or alley disturbed, consistent with the practices of local utilities. Such restoration shall be undertaken within no more than 10 business days after the damage is incurred and shall be completed as soon as possible thereafter. Such closing shall be at the expense of the Grantee.

5. *Private Property.* Grantee shall be subject to all laws, ordinances or regulations regarding private property or regulations regarding private property in the course of constructing, installing, operating or maintaining the Cable Communications System in the County. Grantee shall promptly repair or replace all private property, both real and personal, damaged or destroyed as a result of the construction, installation, operating, or maintenance of the Cable Communications System at its sole cost and expense.
6. *Relocation of the Facilities.* In the event that at any time during the period of the franchise, the State shall lawfully elect to alter, or change, the grade of any street, alley or other public ways, the Grantee, upon reasonable notice by the proper authority, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own cost and expense.
7. *Cooperation with Building Movers.* The Grantee shall, on the request of any person holding a building moving permit issued by the County, temporarily raise or lower its wire to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than fifteen (15) working days advance notice to arrange for such temporary wire changes.
8. *Tree Trimming.* The Grantee shall comply with all State laws and regulations regarding tree removal and trimming in public rights-of-way.
9. *Easements.* All necessary easements over and under private property shall be arranged for by the Grantee.

F. *Erection, Removal and Common Use of Poles*

Approval of New Poles. No poles shall be erected by the Grantee without prior approval of the State with regard to location, height, types and any other pertinent aspect. However, no location of any pole or wire-holding structure of the Grantee shall give rise to a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the State reasonably determines that the public convenience would be enhanced thereby.

G. *Construction Reporting Requirements*

1. *Progress Report.* Within thirty (30) days of the granting of a franchise pursuant to this Ordinance, the Grantee shall provide the County with a written progress report detailing work completed to date. Such report shall include a description of the progress in applying for any necessary agreements, licenses, or certifications and any other information the County Manager may deem necessary. The content and format of the report will be determined by the County Manager and may be modified at his/her discretion.
2. *Time Frame for Reports.* Such written progress reports shall be submitted to the County Manager's office on a monthly basis throughout the entire construction process. The County Manager or his/her designee may require more frequent reporting, if he/she determines it is necessary to better monitor the Grantee's progress.
3. *Subscriber Information.* Prior to the commencement of any system construction, the Grantee shall produce an informational document to be distributed to all residents of the area to be under construction, which shall describe the activity that will be taking place. The informational document shall be reviewed and approved by the County Manager or his/her designee prior to its distribution.

H. *Tests and Performance Monitoring*

1. *Rebuild Tests.* Not later than sixty (60) days after any new or substantially rebuilt portion of the system is made available for service to subscribers, at the time of annual FCC Proof of Performance testing, the Grantee shall conduct technical performance tests to demonstrate full compliance with all technical standards contained in this Ordinance, the franchise, and the technical standards and guidelines of the FCC.
2. *Report.* Such tests shall be performed by, or under the supervision of a qualified registered professional engineer or an engineer with proper training and experience. A copy of the report shall be submitted to the County, describing test results, instrumentation, calibration, and test procedures, and the qualification of the engineer responsible for the tests.
3. *Test Points.* System monitor test points shall be established at or near the output of the last amplifier in the longest feeder line, at or near trunk line extremities. Such periodic tests shall be made at the test points as shall be required by the FCC and/or the franchise.
4. *FCC Reports.* In addition to the performance test reports required herein, a copy of any performance test reports required by the FCC shall be submitted to the County within sixty (60) days of completion.
5. *Complaints.* Whenever there have been similar complaints made or when there exists other evidence, which, in the reasonable judgment of the County, casts doubt on the reliability or quality of the Grantee's system, the County shall have the right and authority to compel the Grantee to test, analyze, and report on the performance of its system. The County may require additional tests, full or partial repeat tests, different test procedures, or tests involving a specific subscriber's terminal. Reports on such tests shall be delivered to the County no later than fourteen (14) days after the County formally notifies the Grantee and shall include the following information: the nature of the complaints which precipitated the special tests; what system component was tested; the equipment used, and procedures employed in said testing; the results of such tests; and methods by which said complaints were resolved. Said tests and analyses shall be supervised by a professional engineer not on the permanent staff of the Grantee, who shall sign all records of the special tests and forward same to the County with a report interpreting the results of the tests and recommending what actions should be taken by the County. All such tests shall be at the expense of the Grantee.
6. *Consultants.* The County shall have the right, at its expense, to employ or contract with qualified consultants and attorneys if necessary or desirable, to assist in the administration of this, or any other section of this Ordinance or the franchise.

Section 8. Service Provisions

- A. *General Service Standards.* The County reserves the right to enforce all relevant service rules and regulations as set forth by federal, state, and local governments. These rules and regulations include, but are not limited, to FCC Customer Service Regulations, as hereafter amended by the FCC, and the County's Rate and Service Regulation Ordinance, as hereafter amended by the County from time to time.
- B. *Services to Subscribers and users*
 1. *Service.* Concurrently with the activation of the cable communications system in the County, the Grantee shall provide all services to subscribers as described herein and in the franchise at rates detailed in the rate schedule.
 - a. The system shall carry the broad categories of programming and services listed in the franchise. Should the Grantee desire to change the selection of programs or services offered on any of its tiers, it shall maintain the mix, quality and level of services provided

over the system. Any such change in programs or services offered shall comply with the conditions and procedures contained in the franchise, and shall be reported to the County at least thirty (30) days prior to the proposed implementation. The Grantee shall use its best efforts to ensure diversity of programming.

- b. A basic service tier shall be offered to subscribers throughout the term of this Ordinance and the franchise.
 - c. The Grantee shall provide and maintain, as designated in the franchise, the following access channels whose purposes are outlined below:
 - i. *Government Access Channel* which shall be a specifically designated channel for local governmental use and shall be managed, scheduled and programmed exclusively by the County.
 - ii. *Educational Channel* which shall be a specifically designated channel for use by local school authorities as are defined herein in Section 3, and shall be managed, scheduled and programmed exclusively by them.
 - iii. *Public Access Channel* which will be a specifically designated channel available on a non-discriminatory basis.
 - d. The Grantee shall make available Leased Access channels, as required by Federal law.
 - e. The Grantee shall produce and carry on a designated channel, on a daily basis, an alphanumeric program guide describing at a minimum, the programs offered on the access channels described above provided that programming information is furnished to the Grantee.
 - f. The Grantee shall fully provide, at a minimum, the services, facilities and equipment for public, educational and government access as indicated in the franchise.
2. *Emergency Override.* The Grantee shall, without charge, provide, service and maintain public emergency transmission facilities to the County, as described in the franchise.

C. *Installations, Connections and other Grantee Services*

1. *Standard Installations.* Standard installation shall consist of a service not exceeding one hundred fifty (150) feet from a single point or pedestal attachment to the customer's residence. Service drops in excess of 150 feet and concealed wiring in the home shall be charged to the consumer not to exceed additional installation costs before installation begins plus a reasonable profit if allowed by the FCC. The desire of the Subscriber as to the point of entry into the residence shall be observed whenever possible. Runs in building interiors shall be as unobtrusive as possible. The Grantee shall use due care in the process of installation and shall repair any damage to the subscriber's property caused by said installation. Such restoration shall be undertaken within no more than ten (10) days after the damage is incurred and shall be completed as soon as possible thereafter.
2. *Deposits.* Any deposit required by Grantee shall bear interest at a rate consistent with other service providers that require deposits.
3. *Antennas and Antenna Switches.* The Grantee shall not, as a condition to providing cable communications service, require any subscriber or potential subscriber, to remove any existing antenna structures for the receipt of over-the-air television signals. The Grantee shall install, upon the request of the subscriber, an RF or antenna switch where required for the provision of services provided by the Grantee as required by Federal law.

4. *Lockout Devices.* The Grantee shall provide to the potential subscriber, as part of its promotional literature, information concerning the availability of a lockout device for use by a subscriber. The Grantee may require a reasonable deposit or purchase price for the use of this device, as set forth in the rate schedule. The lockout device described herein shall be made available to all subscribers requesting it beginning on the first day that any cable service is provided.
5. *Reconnection.* Grantee shall restore service to customers wishing restoration of service provided customer shall first satisfy any previous obligations owed.
6. *Free Disconnection.* Subscribers shall have the right to have cable service disconnected without charge. Such disconnection shall be made as soon as practicable and in no case later than fifteen (15) day's following notice to Grantee of same. A refund of unused service charges shall be paid to the customer within thirty (30) days from the date of termination of service.
7. *Delinquent Accounts.* Grantee shall use its best efforts to collect on delinquent subscriber accounts. In all cases, the Grantee shall provide the customer with at least ten (10) working days written notice prior to disconnection.

D. *Service Calls and Complaint Procedures*

1. The Company shall establish, operate and maintain in the County a business office and maintenance and repair facility for the purpose of receiving inquiries, requests and complaints concerning all aspects of the construction, installation, operation, and maintenance of the system and for the payment of subscribers' service charges, and providing facilities for the production of programming.
2. The Grantee shall have a listed, local, toll-free, or collect telephone number for service calls and such telephone service shall be available twenty-four (24) hours a day, seven (7) day's a week according to FCC guidelines. Said number shall be made available to subscribers and the general public. The Grantee shall provide an unlisted telephone number to the County and utility companies to enable the County or utility companies to reach the Grantee in case of emergency.
3. The Grantee shall respond to and resolve subscribers' complaints or requests for service in connection with repairs and maintenance and malfunctions of system facilities. The Grantee shall respond as quickly as possible to such complaints and requests, but shall in any case respond within twenty-four (24) hours. Complaints or requests which may pose a potential health and safety hazard will be responded to immediately. In connection with billing complaints, the Grantee shall respond within seven (7) business days.
4. The Grantee shall prepare and file with the County copies of all of its rules and regulations in connection with the handling of inquiries, requests and complaints. The Grantee shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the name, address and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed, and furnish information concerning the County office responsible for the administration of the franchise, including, but not limited to, the address and telephone number of said office.
5. The Grantee shall keep full records in connection with all inquiries, complaints and requests in connection with the system. Such records shall identify the person contacting the Grantee, and the person responding on behalf of the Grantee, the subject matter of the contact, the date and time it was received, the resolution of the matter in question or the action taken by the Grantee in connection with the contact, and the date and time thereof, and such other

information as may be deemed pertinent by the Grantee. These records shall be made available for periodic inspection by the County.

6. The Grantee shall service or replace without charge all equipment provided by it to the subscriber, provided, however, that the Grantee may charge a subscriber for service to or replacement of any equipment damaged due to negligence of such subscriber or lost or stolen from the subscriber's residence or place of business.
7. The County may review and monitor unresolved customer complaints.

E. *Continuity of Service Mandatory*

1. It shall be the right of all subscribers to receive continuous, uninterrupted service insofar as their financial and other obligations to the Grantee are honored.
2. In the event that the Grantee elects to rebuild, modify or sell the system, or the County gives notice of intent to terminate or fails to renew its franchise, the Grantee shall cooperate with the County or new Grantee or operator in maintaining continuity of service to all subscribers for a period of six (6) months or such other time as mutually agreed upon. During such period, Grantee shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs for the services when it no longer operates the system.
3. *Failure to Provide Continuity.* In the event the Grantee fails to operate the system for seven (7) consecutive days without prior approval of the County or without just cause, the County may, at its option, operate the system or designate an operator until such time as Grantee restores service under conditions acceptable to the County or a permanent operator is selected. If the County is required to fulfill this obligation for the Grantee, the Grantee shall reimburse the County for all reasonable costs or damages incurred by the County as a result of the Grantee's failure to perform.

F. *Protection of Subscriber Privacy Mandatory*

Grantee shall at all times protect the privacy of subscribers, as provided in this Ordinance and other applicable Federal, State, and Local laws, and in particular, Section 631 of the Communications Act (47 U.S.C. 551).

G. *Rights of Individuals*

1. *Nondiscrimination Required.* Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, religion, national origin, age, sex, or handicap, provided the Subscriber shall pay all applicable fees for the service desired. Grantee shall comply at all times with all other applicable Federal, State and Local laws and regulations, and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this Ordinance by reference.
2. *Fairness of Accessibility.* The entire system of the Grantee shall be operated in a manner consistent with the principles of fairness and equal accessibility of its facilities.
3. *Information Accessibility.*
 - a. Each individual shall have the right to information concerning the provisions of this Ordinance and the rules and regulations formulated pursuant to it by the Commission, the Grantee, agent or entity created hereunder or pursuant to this Ordinance. The location and hours of operation for the delivery of such information shall be published in the

newspaper of the greatest circulation within the County and in such other media as the Commission may determine and at its expense.

- b. Each individual subscribing to the services of the cable communications system shall be provided with information covering rates and charges, billing procedures, delinquency policy, subscriber privacy notice, lock-out procedures, A/B switch policy, and an itemized channel line-up.
- c. To the extent required by federal or state law or regulation, such information as may herein be prescribed will be made available to the public and individual subscribers in such form required for understanding, including the deaf and blind, and in such languages as may be specified by the Commission.
- d. Each document required to be maintained, prepared, filed or submitted under the provisions of this Ordinance or pursuant to it, except those required and designated confidential by the Federal Communications Commission is a public document, available for public inspection and copying at the requestor's expense, at the office of the Grantee or the County Manager's office during normal business hours. The charge for such copying shall approximate the cost of mechanical reproduction and shall not include a charge for labor.

Section 9. Books, Records and Reports

A. Books and Records Available to the Grantor

1. The Grantee shall maintain an office within the franchise territory, and manage all of its operations in accordance with a policy of open books and records to the County Manager or his/her designee. The County shall have the right to inspect at any time during normal business hours, all books, records, maps, plans, income tax returns, financial statements, service complaint logs, performance test results and other like materials of the Grantee which relate to the operation of the franchise. Access to the aforementioned records shall not be denied by the Grantee on the basis that said records contain "proprietary" information.
2. Grantee shall permit any duly authorized representative of the County to examine and copy or transcribe any and all maps and other records kept or maintained by Grantee or under its control concerning the operations, finances, affairs, transactions or property of Grantee. If any of such maps or records are not kept in the County, or upon reasonable request made available in the County, and if the County shall determine that an examination of such maps or records is necessary or appropriate to the performance of any of their duties, then all travel and maintenance expenses necessarily incurred in making such examination shall be paid by Grantee.

B. Reports Required

The Grantee shall file with the County, unless otherwise waived:

1. *Regulatory Communications.* All reports required by the Federal Communications Commission (FCC) including, but not limited to annual proof of performance tests and results, and Equal Employment Opportunity (EEO) reports, and all petitions, applications and communications of all types submitted by Grantee to the FCC, the Security and Exchange Commission (SEC), or any other Federal or State regulatory commission or agency, having jurisdiction over any matter affecting operation of Grantee's system shall be submitted simultaneously to the County by delivery to the Clerk to the Board of Commissioners who shall advise interested County departments of such filing.

2. *Facilities Report.* An annual report setting forth the physical miles of plant construction and plant in operation during the fiscal year shall be submitted to the County. Such report shall also contain any revisions to the system "as built" maps filed with the County.
3. *Construction Reports.* Construction reports shall be sent to the County thirty (30) days after the franchise is awarded and monthly thereafter until construction is completed as specified in Sections 7(G)(1) and 7(G)(2) of this Ordinance.
4. *Proof of Performance Tests.* Proof of performance test results shall be supplied to the County when sections of the system are rebuilt and annually as required in Section 7(H) of this Ordinance.
5. *Test Required by County.* Tests required by County as specified in Section 7(H) of this Ordinance shall be submitted within fourteen (14) day's of notification.
6. *Change in Service.* A report on any change in programming or service shall be provided to the County thirty (30) days prior to implementation.
7. *Grantee Rules.* The Grantee's schedule of charges, contract or application forms of regular subscriber service policy regarding the processing of subscriber complaints, delinquent subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Grantee's policy in connection with its subscribers shall be filed with the County and conspicuously posted in the Grantee's local office. All such terms and conditions, including schedule of charges, must have been filed with the County prior in accordance with the provisions of this Ordinance to their becoming effective. Such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules or regulations.
8. *Proof of Bonds and Insurance.* Grantee shall submit to the County the required performance bond, or a certified copy thereof, and written evidence of payment of required premium, and all policies of insurance required by this Ordinance, or certified copies thereof, and written notice of payment of required premium under the terms and conditions described in Section 6 of this Ordinance.
9. *Financial and Ownership Reports.* The following financial reports for the franchise area shall be submitted annually to the County:
 - a. An ownership report, indicating all persons, who at any time during the preceding year did control or benefit from an interest in the franchise of five percent (5%) or more.
 - b. A fully-audited statement of gross annual revenues verifying all revenues from the Pitt County franchise as certified by a Certified Public Accountant. Upon request by the County, no more than four (4) times during the term of the franchise, the Grantee shall provide: an annual, fully-audited and certified financial report from the previous calendar year, (including year-end balance sheet; income statement and statement of sources and applications of funds).
 - c. A current annual statement of all capital expenditures including the cost of construction and of equipment.
 - d. An annual list of officers and members of the Board of Grantee and of any parent corporation.
10. *Operational Reports.* The following system and operational reports shall be submitted annually to the County:

- a. A report on the system's technical tests and measurements as set forth herein and in the franchise.
 - b. A report on programs and services offered by Grantee, including public, educational, government, and leased access.
 - c. An annual summary of the previous year's activities including, but not limited to, subscriber totals for each category of service offered including number of pay units sold, new services offered, and the amount collected annually from other users of the system and the character and extent of the service rendered thereto.
 - d. An annual summary of complaints received and handled in addition to any reports required in the franchise.
 - e. An annual projection of system and service plans for the future.
11. *Additional Reports.* The Grantee shall prepare and furnish to the County at the times and in the form prescribed, such additional reports with respect to its operation, affairs, transactions or property, as may be reasonably necessary and appropriate to the performance of any of the rights, functions or duties of the County in connection with this Ordinance or the franchise.
- C. *Records Required*
- 1. *Mandatory Records.* The Grantee shall at all times maintain:
 - a. A record of all complaints received and interruptions or degradation of service experience for the preceding period prior to a performance evaluation.
 - b. A full and complete set of plans, records and "as built" maps showing the exact location of all cable communication system equipment installed or in use in the County, exclusive of subscriber service drops.
 - c. To the extent required by federal or state law or regulation, a comprehensive record of all personnel transactions and utilization of contractors, subcontractors, vendors and suppliers by race and sex.
 - 2. *Other Records.* The County may, from time to time, impose reasonable requests for additional information, records and documents.

Section 10. Miscellaneous Provisions

- A. *Public Notice.* Public notice of any public meeting relating to this Ordinance or the franchise shall be in compliance with the County's public notice requirements.
- B. *Captions.* The captions to sections throughout this proposal are intended solely to facilitate reading and reference to the sections and provisions of this proposal. Such captions shall not affect the meaning or interpretation of this proposal.
- C. *Franchise Applications*
 - 1. Applicants for a franchise shall submit to the County written applications utilizing the standard format provided by the County, at the time and place designated by the County for accepting applications. The application shall include, at a minimum, the following:
 - a. Applicant's(s) proper business, corporate, or partnership name;

- b. If a corporation, applicant shall also state the corporation's process agent address for service of notice, provide a certified copy from the North Carolina Secretary of State of authorization to do business in the State;
 - c. If a partnership, application shall also contain names and addresses of all partners, names and addresses of general partner(s) responsible for overseeing the management of the franchise;
 - d. Financial statement certified by a Certified Public Accountant;
 - e. Insurance Bonds and Certificates.
- 2. In awarding a franchise, the County: shall allow the applicant's cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area as specified in Section 7(D); may require adequate assurance that the cable operator will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support; and qualifications to provide cable service.
 - 3. An application fee in the amount of \$6000 shall be paid by each franchise applicant at the time of application for franchise which fee shall be in the form of cash, certified check, or money order to defer the cost of studying, investigating, and otherwise processing such application and which shall be in consideration thereof and not refundable or returnable in whole or in part. To offset the effects of inflation, the amount of the application fee provided for herein, is subject to reasonable increase in accord with the annual rate of inflation.
- D. *Public Hearings.* Whenever a public hearing is required by this Ordinance and related communications ordinances, the public hearing must be advertised in a newspaper with general circulation within the County at least ten (10) working days before the hearing, the hearing shall be open to the public and provide for public comment and any reliable, relevant evidence that is not unduly repetitive shall be admissible.

This Ordinance shall be effective upon adoption.

ADOPTED, this the 21st day of March, 1994.