

Chapter 7.5
CABLE TELEVISION FRANCHISE

ARTICLE I. INTENT, SHORT TITLE, DEFINITIONS

- § 7.5-10. Intent
- § 7.5-11. Short Title
- § 7.5-12. Definitions

ARTICLE II. GRANT OF FRANCHISE

- § 7.5-20. Franchise Required
- § 7.5-21. Franchise to Install and Operate
- § 7.5-22. Franchise Territory
- § 7.5-23. Term of Franchise
- § 7.5-24. Geographical Coverage
- § 7.5-25. Nonexclusive Franchise
- § 7.5-26. Multiple Franchises
- § 7.5-27. Franchise Applications
- § 7.5-28. Application - Contents
- § 7.5-29. Consideration of Applications
- § 7.5-30. Franchise Renewal
- § 7.5-31. Franchise Non-Transferable
- § 7.5-32. Receivership and Foreclosure
- § 7.5-33. Federal or State Jurisdiction
- § 7.5-34. Rates
- § 7.5-35. Rate Change Procedure

ARTICLE III. FINANCIAL AND INSURANCE REQUIREMENTS

- § 7.5-40. Franchise Fee
- § 7.5-41. Security Fund
- § 7.5-42. Hold Harmless
- § 7.5-43. Insurance

**ARTICLE IV. DESIGN, CONSTRUCTION REQUIREMENTS;
TECHNICAL STANDARDS; ABANDONMENT**

- § 7.5-50. Design and Construction Requirements
- § 7.5-51. Technical Standards
- § 7.5-52. Abandonment or Removal

ARTICLE V. CONSUMER PROTECTION

- § 7.5-60. Minimum Consumer Protection and Service Standards
- § 7.5-61. Additional Service Standards
- § 7.5-62. Complaint Procedure
- § 7.5-63. Continuity of Service Mandatory
- § 7.5-64. Identification of Employees
- § 7.5-65. Rights of Individuals

ARTICLE VI. RECORDS, REPORTS AND SURVEYS

- § 7.5-70. Records Required and Grantor's Right to Inspect
- § 7.5-71. Annual Reports
- § 7.5-72. Copies of Federal and State Communications
- § 7.5-73. Public Reports
- § 7.5-74. Subscriber Satisfaction Survey Opinion Surveys
- § 7.5-75. Reports - General

ARTICLE VII. SYSTEM PERFORMANCE REVIEW; SPECIAL EVALUATION

- § 7.5-80. Annual Review of System Performance
- § 7.5-81. Special Review of System Performance
- § 7.5-82. Special Evaluation Sessions

ARTICLE VIII. FRANCHISE ENFORCEMENT; CONTINUITY OF SERVICE

- § 7.5-90. Remedies for Franchise Violations
- § 7.5-91. Grantor's Power to Revoke
- § 7.5-92. Procedure for Remedying Franchise Violations
- § 7.5-93. Force Majeure; Grantee's Inability to Perform
- § 7.5-94. Extended Operation and Continuity of Service

ARTICLE IX. MISCELLANEOUS PROVISIONS

- § 7.5-100. Grantee Property
- § 7.5-101. Theft of Service and Tampering
- § 7.5-102. Rights Reserved to Grantor
- § 7.5-103. Separability

ARTICLE I. INTENT, SHORT TITLE, DEFINITIONS

Sec. 7.5-10. Intent

(a) The County of Solano, pursuant to Government Code Section 53066, is authorized to grant one or more nonexclusive franchises to construct, operate, maintain and reconstruct cable television systems within the unincorporated areas of the county.

(b) The board of supervisors finds that the development of cable television and communications systems has the potential to have great benefit and impact upon the residents of the County of Solano. Because of the complex and rapidly changing technology associated with cable television, the board of supervisors further finds that the public convenience, safety and general welfare is best served by adoption of this ordinance, which establishes regulatory powers which shall be vested in the board of supervisors or such persons as the board shall designate. It is the intent of this Chapter and subsequent amendments to specify the means to provide the best possible cable television service to the public. Any franchise granted pursuant to this Chapter shall be deemed to include this finding as an integral part thereof.

(Ord. No. 1408, §1)

Sec. 7.5-11. Short title

This Chapter shall be known and may be cited as the "County of Solano Cable Television Franchise Ordinance."

(Ord. No. 1408, §1)

Sec. 7.5-12. Definitions

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

Basic cable service means any service tier which includes the retransmission of local television broadcast signals.

Board or supervisors or **Board** means the Board of Supervisors of the County of Solano.

Cable operator or **operator** means any person or group of persons who provide cable service over a cable system.

Cable television system or **System**, also referred to as "Cable Communications System" or "Cable System," means a facility consisting of a set of closed

transmission paths and associated signal generation, reception, and control equipment, that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:

- (a) A facility that serves only to retransmit the television signals of one or more television broadcast stations;
- (b) A facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility uses any public rights-of-way;
- (c) A facility of a common carrier, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or
- (d) Any facilities of any electric utility used solely for operating its electric utility system.

Cable service means the total of the following:

- (a) The one-way transmission to subscribers of video programming or other programming service; and
- (b) Subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

Channel or **Cable channel** means a portion of the electro-magnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel as defined by the Federal Communications Commission.

Franchise means an initial authorization, or renewal thereof, issued by the board of supervisors, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system.

Franchise agreement means a franchise grant ordinance or a contractual agreement containing the specific provisions of the franchise granted, including references, specifications, requirements and other related matters.

Franchise fee means any tax, fee or assessment of any kind imposed by a franchising authority or other governmental entity on a Grantee or cable subscriber, or both, solely because of their status as such. The term "franchise fee" does not include:

(a) Any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services, but not including a tax, fee, or assessment which is discriminatory against cable operators or cable subscribers);

(b) Capital costs which are required by the franchise to be incurred by Grantee for public, educational, or governmental access facilities;

(c) Requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or

(d) Any fee imposed under Title 17, United States Code.

Franchise property means any cable, lines, related electronic equipment, supporting structures, appurtenances and other property installed and maintained by a cable operator for the purpose of providing a cable television system.

Grantee means any "person" receiving a franchise pursuant to this Chapter and under the granting franchise ordinance or agreement, and its lawful successor, transferee or assignee.

Grantor or County means the County of Solano as represented by the board of supervisors or any designee acting within the scope of its jurisdiction.

Gross annual receipts means the annual gross receipts received by a Grantee from all sources of operations of the Cable Television System within the county utilizing the public streets and rights-of-way for which a franchise is required in order to deliver such cable service, excluding refundable deposits, rebates or credits and uncollectible receivables, except that any sales, excise, or other taxes collected for direct pass-through to local, state or federal government shall not be included.

Initial service area means the area of the county which will receive service initially, as set forth in the Franchise Agreement.

Installation means the connection of the system to subscribers' terminals, and the provision of service.

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

Public, Educational, or Government Access Facilities or "PEG Access Facilities means the total of the following:

(a) Channel capacity designated for public, education, or governmental use; and

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

Section means any section, subsection, or provision of this Chapter.

Service Area or **Franchise Area** means the entire geographic area within the unincorporated area of the County of Solano as it is now constituted or may in the future be constituted, unless otherwise specified in the franchise granting ordinance or agreement.

Service tier means a category of cable service or other services provided by a Grantee and for which a separate rate is charged by the Grantee.

Standard installation shall mean the customary outdoor placement of a single cable for a distance of up to one hundred fifty (150) feet from Grantee's distribution plant, and shall include trenching through turf, dirt, gravel, landscaping, or limited sections of public streets if and as needed, but shall not include greater distances nor trenching in extensive paved areas such as parking lots either of which shall be made available by Grantee on a time-and-material (actual cost) basis.

State means the State of California.

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

Subscriber means any person who or which elects to subscribe to, for any purpose, a service provided by the Grantee by means of or in connection with the cable system.

(Ord. No. 1408, §1)

ARTICLE II. GRANT OF FRANCHISE

Sec. 7.5-20. Franchise required

It shall be unlawful for any person to construct, install, maintain, or operate a cable television system in the unincorporated areas of the county within any street without a franchise awarded pursuant to the provisions of this Chapter.

(Ord. No. 1408, §1)

Sec. 7.5-21. Franchise to Install and Operate

A franchise granted by the board of supervisors under the provisions of this Chapter shall set forth the obligations of a Grantee and shall authorize the Grantee to do the following:

- (a) Engage in the business of providing cable television service, and such other services as may be permitted by law, to subscribers within the designated service area.
- (b) Erect, install, construct, repair, rebuild, reconstruct, replace, maintain, and retain cable, lines related electronic equipment, supporting structures, appurtenances, and other property in connection with the operation of a cable system in, on, over, under, upon, along, and across streets or other public places within the designated service area.
- (c) Operate said franchise property for the origination, reception, transmission, amplification, and distribution of television and radio signals and for the delivery of cable services.

(Ord. No. 1408, §1)

Sec. 7.5-22. Franchise territory

A franchise shall be valid within that unincorporated area of the county described in the franchise agreement, generally adjacent to a specific city.

(Ord. No. 1408, §1)

Sec. 7.5-23. Term of franchise

- (a) A franchise granted hereunder shall be for the term established in the franchise agreement.
- (b) A franchise granted hereunder may be renewed upon application of the Grantee pursuant to the provisions of this Chapter and applicable state and federal law.

(Ord. No. 1408, §1)

Sec. 7.5-24. Geographical coverage

- (a) Grantee shall design, construct, and maintain the cable television system to have the capability to pass every dwelling unit presently and hereafter constructed within the defined franchise area of the unincorporated areas of the county, unless otherwise provided in the franchise agreement.
- (b) After service has been established by activating trunk and distribution cables for any service area, Grantee shall provide service to any requesting

subscriber within that service area within seven (7) working days from the date of a written request; provided, that the Grantee is able to secure all rights-of-way necessary to extend service to such subscriber within such seven (7) working-day period on reasonable terms and conditions.

(Ord. No. 1408, §1)

Sec. 7.5-25. Nonexclusive franchise

Any franchise granted shall be nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional franchises for a cable television system or any component thereof, as it deems appropriate, subject to applicable state and federal law and this Chapter.

(Ord. No. 1408, §1)

Sec. 7.5-26. Multiple franchises

(a) Grantor may grant any number of franchises on a county-wide or limited-area basis. Grantor may limit the number of the requirements of applicable law and specific local considerations, such as:

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

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

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

(b) Each Grantee awarded a franchise to serve a defined unincorporated area of the county shall offer service to all residences in that unincorporated area, in accordance with construction and service schedules mutually agreed upon between Grantor and Grantee, and consistent with applicable law.

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

(Ord. No. 1408, §1)

Sec. 7.5-27. Franchise applications

Any person desiring a franchise or to renew a franchise for a Cable Television System shall file an application with the county. A reasonable nonrefundable

application fee established by resolution shall accompany the application or renewal application to cover all costs associated with processing and reviewing the application; including, without limitation, costs of administrative review, financial, legal and technical evaluation of the applicant; consultants (including technical and legal experts and all costs incurred by such experts); notice and publication requirements with respect to the consideration of the application and document preparation expenses. In the event such costs exceed the application fee, the selected applicant(s) shall pay the difference to the county within thirty (30) days following receipt of an itemized statement of such costs.

(Ord. No. 1408, §1)

Sec. 7.5-28. Applications - contents

An application for a franchise or renewal of a franchise for a Cable Television System shall contain:

- (a) A statement as to the proposed franchise and service area.
- (b) Resume of prior history of applicant, including the expertise of applicant in the cable television field.
- (c) List of partners, general and limited, of the applicant, if a partnership; or the percentage of stock owned or controlled by each shareholder to the extent known by the corporation, if a corporation.
- (d) List of officers, directors and managing employees of applicant, together with a description of the background of each such person.
- (e) The names and addresses of any parent or subsidiary of applicant or any other business entity owning or controlling applicant in whole or in part, or owned or controlled in whole or in part by applicant.
- (f) A current financial statement of applicant verified by a CPA audit or otherwise certified to be true, complete, and correct to the reasonable satisfaction of the county.
- (g) Proposed construction and service and/or system upgrade schedule.
- (h) Proposed public, educational or governmental access facilities.
- (i) Any additional information that the county reasonably deems applicable.

(Ord. No. 1408, §1)

Sec. 7.5-29. Consideration of applications for franchise

(a) Upon receipt of any application for a franchise, the director of general services shall prepare a report and make recommendations respecting such application to the board of supervisors.

(b) A public hearing shall be set prior to any franchise grant, at a time and date approved by the board of supervisors. Within thirty (30) days after the close of the hearing, the board of supervisors shall make a decision based upon the evidence received at the hearing as to whether or not the franchise should be granted and, if granted, subject to what conditions. The board of supervisors may grant one or more franchises, or may decline to grant any franchise.

(Ord. No. 1408, §1)

Sec. 7.5-30. Franchise renewal

Franchise renewals shall be in accordance with applicable law, including, but not necessarily limited to, the Cable Communications Policy Act of 1984. Grantor and Grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the franchise. Grantee shall reimburse Grantor for costs associated with its renewal application as provided in Section 7.5-27.

(Ord. No. 1408, §1)

Sec. 7.5-31. Franchise non-transferable

(a) Grantee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation or otherwise, the franchise or any of the rights or privileges therein granted, without the prior written consent of the board of supervisors and then only upon such terms and conditions as may be prescribed by the board, which consent shall not be unreasonably denied or delayed. Any attempt to sell, transfer, lease, assign or otherwise dispose of the franchise without the consent of the board of supervisors shall be null and void. The granting of a security interest in any Grantee assets, or any mortgage or other hypothecation, shall not be considered a transfer for the purposes of this section.

(b) A change in control of Grantee shall be deemed a transfer of the franchise and subject to the requirements of subsection (a). "Change in control," as used herein is not limited to change in major stockholders or partnership interests, but includes actual working control in whatever manner exercised. In the event that Grantee is a corporation, prior approval of the board of supervisors shall be required where ownership or control of more than ten percent (10%) of the voting stock of Grantee is acquired by a person or group of persons acting in concert, none of whom own or control the voting stock of the Grantee as of the effective date of the franchise, singularly or collectively.

(c) Grantee shall notify the board of supervisors in writing of any foreclosure or any other judicial sale of all or a substantial part of the franchise property of

the Grantee or upon the termination of any lease or interest covering all or a substantial part of said franchise property. Such notification shall be considered by the board of supervisors as notice that a change in control of ownership of the franchise has taken place and the provisions of this Section governing the consent of the board of supervisors to such change in control of ownership shall apply.

(d) For the purpose of determining whether it shall consent to such a sale, transfer, assignment, sublet, disposition or other change of control, Grantor may inquire into the qualifications of the prospective transferee or controlling party, and Grantee shall assist the board of supervisors in any such inquiry. In seeking the board's consent to any change of ownership or control, Grantee shall have the responsibility to insure that the prospective transferee or controlling party completes an application in form and substance reasonably satisfactory to Grantor, which application shall include the information required under subsections (a) through (i) of Section 7.5-28 of this Chapter. An application shall be submitted to the board of supervisors not less than sixty (60) days prior to the date of transfer or change of control. The transferee or controlling party shall be required to establish that it possesses the financial, legal, and technical ability and qualifications to operate and maintain the system and comply with all franchise requirements for the remainder of the term of the franchise. If, after considering the application, the board of supervisors finds that such transfer is in the public interest, the board shall transfer and assign the rights and obligations of such franchise to the applicant. The consent of the Grantor to such transfer shall not be unreasonably denied or delayed.

(e) Any financial institution having a pledge of the Grantee or its assets for the advancement of money for the construction and/or operation of the franchise shall have the right to notify the Grantor that it or its designee satisfactory to the Grantor shall take control of and operate the Cable Television System, in the event of a Grantee default in its financial obligations. Further, said financial institution shall also submit a plan for such operation within thirty (30) days of assuming such control that will insure continued service and compliance with all franchise requirements during the term the financial institution exercises control over the system. The financial institution shall operate the franchise subject to the revocation provisions of Section 7.5-91, and shall not exercise control over the system for a period exceeding one (1) year unless extended by the board of supervisors in its discretion. During said period of time, the financial institution shall have the right to petition the board of supervisors to transfer the franchise to another Grantee.

(f) Grantee shall reimburse Grantor for Grantor's reasonable processing and review expenses in connection with a transfer of the franchise or of control of the franchise including, without limitation, costs of administrative review, financial, legal and technical evaluation of the proposed transferee, consultants (including technical and legal experts and all reasonable costs incurred by such experts),

notice and publication costs and document preparation expenses, as set forth in Section 7.5-27 and the franchise agreement.

(Ord. No. 1408, §1)

Sec. 7.5-32. Receivership and foreclosure

(a) A franchise granted hereunder shall, at the option of Grantor, cease and terminate one hundred twenty (120) days after appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of 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, unless:

(1) such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Chapter and the franchise granted pursuant hereto; and the receivership or trustees, within said one hundred twenty (120) days, shall have remedied all Grantee's defaults under the franchise or provided a plan for the remedy of such faults which is satisfactory to the Grantor; and

(2) 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 limitation of the franchise granted.

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

(1) Grantor shall have approved the transfer of the franchise, pursuant to Section 7.5-31; and

(2) Such successful bidder shall have covenanted and agreed with Grantor to assume and be bound by all terms and conditions of the franchise.

(Ord. No. 1408, §1)

Sec. 7.5-33. Federal or state jurisdiction

(a) This Chapter and any franchise granted pursuant thereto shall be construed in a manner consistent with all applicable federal and state laws and regulations. Whenever the Federal Communications Commission (FCC) or Public Utilities Commission (PUC) of the State of California or any other federal or state agency shall now or hereafter exercise any paramount jurisdiction over any specific provisions of this Chapter, such paramount jurisdiction shall preempt or preclude the exercise of like jurisdiction by the county. Any modification of such federal or state law shall, to the extent applicable, be considered a part of this Chapter as of the effective date of such modification.

(b) In the event that the state or federal government discontinues preemption in any area of cable communications over which it exercises paramount jurisdiction in such manner as to allow local regulation, the board of supervisor may, if it so elects, adopt rules and regulations in these areas; provided, that such rules and regulations shall not apply to any franchise issued pursuant to this Chapter prior to the adoption of such rules and regulations to the extent they materially adversely affect such franchise by establishing additional or more stringent requirements with respect to system rebuilds; channel capacity; system design and construction; public, educational or governmental access facilities; support for any such facilities; interconnect commitments; or activation of interactive capability or institutional networks. Such new local rules and regulations may, however, affect existing franchises with respect to franchise renewal procedures, franchise fees, consumer protection provisions, regulation of rates, technical standards and related provisions.

(c) This Chapter shall apply to all franchises granted or renewed after the effective date of this Chapter.

(Ord. No. 1408, §1)

Sec. 7.5-34. Rates

The Grantee shall establish rates for its services that shall be applied fairly and nondiscriminatorily to all subscribers in the franchise area. The Grantor retains the right to institute rate regulation to the extent permitted by applicable law, and to reinstitute such regulation in the event that currently preemptive deregulation ceases to exist.

(Ord. No. 1408, §1)

Sec. 7.5-35. Rate change procedure

(a) To the extent local regulation of rates is permitted under federal and state law, existing rates may be changed from time to time pursuant to this section. Failure to enforce this section by the Grantor shall not amount to a waiver of its provisions.

(b) If rate regulation by Grantor is permitted in the future, and Grantor exercises such authority, Grantor may establish additional requirements for information to be provided as part of any rate change request. Grantor may require Grantee to submit any information so long as the information is reasonably necessary to permit Grantor to make its decision as to whether to approve the rate change in whole or in part. Grantor shall arrive at its decision within ninety (90) days after all such requested information has been received, or the request shall be deemed to be approved.

(Ord. No. 1408, §1)

ARTICLE III. FINANCIAL INSURANCE REQUIREMENTS

Sec. 7.5-40. Franchise fee

(a) Grantee of a franchise shall pay to the Grantor a franchise fee in the amount and on the schedule set forth in the franchise agreement.

(b) Grantee shall furnish annually to Grantor a statement, within sixty (60) days of the close of the calendar year, either audited and certified by an independent certified public accountant or certified by a financial officer of the Grantee, reflecting the total amounts of gross receipts and all payments, deductions and computations for the period covered by the payment. Upon ten (10) days prior written notice, Grantor shall have the right to conduct an independent audit of Grantee's records, in accordance with generally accepted accounting procedures, and if such audit indicates a franchise fee underpayment of two percent (2%) or more, the Grantee shall assume all reasonable costs of such an audit.

(c) No acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for further or additional sums payable as a franchise fee under this ordinance or for the performance of any other obligation of the Grantee.

(d) In the event that any franchise payment or recomputed amount is not made on or before the dates specified in the franchise agreement, Grantee shall pay as additional compensation:

(1) An interest charge, computed from such due date, at an annual rate equal to the average rate of return on invested funds of the Grantor during the period for which payment was due; and

(2) If the payment is late for forty-five (45) days or more, a sum of money equal to five percent (5%) of the amount due in order to defray those additional expenses and costs incurred by the Grantor by reason of delinquent payment.

(Ord. No. 1408, §1)

Sec. 7.5-41. Security fund

(a) Grantor may require Grantee to deposit into an interest bearing account established by Grantor and Grantee, a sum established in the Franchise Agreement as a security fund. This sum shall be held by a neutral party experienced in acting as an escrow agent, and shall be maintained on deposit for a term as provided in the Franchise Agreement, with any interest payable to Grantee.

(b) The security fund shall be available to Grantor as provided in Section 7.5-90 to satisfy any and all claims, liens, fees and/or taxes due Grantor from Grantee which arise by reason of construction, operation, or maintenance of the system, and to satisfy any actual or liquidated damages arising out of a franchise breach, subject to the procedures and amounts designated in the Franchise Agreement.

(c) Subject to Grantor approval, the security fund requirements may be satisfied by conveyance of an irrevocable letter of credit to the Grantor, or by provision of a corporate surety bond, in a form approved by Grantor and which meets Grantor's standards for credit worthiness.

(Ord. No. 1408, §1)

Sec. 7.5-42. Hold Harmless

(a) Grantee, as a condition of any franchise grant, shall indemnify, defend and hold Grantor, its officers, agents and employees harmless from any liability, claims, damages, costs or expenses, including reasonable attorney fees, arising from injury to persons or damages to property to the extent caused by any conduct undertaken by the Grantee, its officers, agents or employees, by reason of the franchise; and that Grantee shall at its sole cost and expense, upon demand of Grantor, appear in and defend any and all suits, actions or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative or otherwise, brought or instituted or had by third persons or duly constituted authorities, against or affecting Grantor, its officers, agents or employees, and arising out of or pertaining to any conduct of the Grantee, its agents or employees which is within the scope of the indemnity.

(b) In the event that multiple franchises are granted, each new Grantee shall indemnify and hold Grantor harmless from and against any lawsuits which challenge Grantor's issuance of a cable television franchise to the new Grantee under California Government Code Section 53066.6. In the event of any lawsuit alleging that Grantor violated Government Code 53066.3 in the issuance of a franchise to the new Grantee, Grantor shall:

- (1) Promptly notify the indemnifying Grantee; and
- (2) Cooperate fully with the Grantee; and

(3) Make no compromise or settlement of any such action without the prior written consent of the Grantee.

(c) The settlement of any claim or action by the Grantor without the Grantee's prior written consent shall release the Grantee from its obligations contained in this Government Code 53066.3 indemnification. This indemnification shall continue in effect for a period of up to one (1) year following the effective date of any relevant franchise agreement; provided, that the Grantee shall continue that indemnification through the full period of litigation, should any such litigation take place.

(Ord. No. 1408, §1)

Sec. 7.5-43. Insurance

(a) On or before the effective date of any franchise, the Grantee shall obtain policies of commercial general and business auto liability, Workers' Compensation and property insurance from companies authorized to transact business in California by the Insurance Commissioner of California.

(b) The policy of liability insurance shall:

(1) Be issued to Grantee and name Grantor, its elected or appointed officers, agents, volunteers and employees as additional insureds;

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

Negligent acts or omissions of Grantee
and its agents, servants and employees,
committed in the conduct of franchise
operations; and/or

Use of motor vehicles;

(3) Provide a combined single limit for commercial general liability and business automobile liability insurance in the amount provided for in the franchise agreement. Such insurance policy shall be subject to the review and approval of Grantor's legal counsel; and

(4) Be noncancellable without thirty (30) days prior written notice thereof directed to Grantor.

(c) The policy of Workers' Compensation Insurance shall:

(1) Have been previously approved as to substance and form by the California Insurance Commissioner;

(2) Cover all employees of Grantee who in the course and scope of their employment are to conduct the franchise operations;

(3) Provide for every benefit and payment presently or hereinafter conferred by Division 4 of the Labor Code of the state upon an injured employee, including vocational rehabilitation and death benefits.

(d) The policy of property insurance shall provide fire insurance with extended coverage on the franchise property used by Grantee in the conduct of franchise operations in an amount adequate to enable Grantee to resume franchise operations following the occurrence of any risk covered by this insurance.

(e) Grantee shall file with Grantor prior to commencement of franchise operations either certified copies of these insurance policies or a certificate of insurance and an endorsement in the form required by Grantor for each of the required policies executed by the company issuing the policy or by a broker authorized to issue such a certificate, certifying that the policy is in force and providing the following information with respect to said policy:

(1) The policy number;

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

(3) The names of the named insureds and any additional insured required by this Chapter or the franchise agreement;

(4) The subject of the insurance;

(5) The type of coverage provided by the insurance; and

(6) Amount or limit of coverage provided by the insurance.

(f) A franchise shall not be effective until Grantee has complied with the aforementioned provisions of this Section.

(g) In the event Grantee fails to maintain any of the above-described policies in full force and effect, Grantor, after two (2) business days' notice to Grantee, shall have the right to procure the required insurance and recover the cost thereof from Grantee. Grantor shall also have the right to suspend the franchise during any period that Grantee fails to maintain said policies in full force and effect.

(h) No more than once during any three (3) year period, Grantor may require Grantee to increase the amounts of the insurance coverage provided herein. Such increase may be required by Grantor after complying with the hearing procedure provided for in Section 7.5-82 herein. Increases in insurance coverage required by Grantor shall be based upon current prudent business practices of like enterprises involving the same or similar risks.

(Ord. No. 1408, §1)

ARTICLE IV. DESIGN, CONSTRUCTION REQUIREMENTS; TECHNICAL STANDARDS; ABANDONMENT

Sec. 7.5-50. Design and construction requirements

(a) Grantee shall not construct any cable system facilities until Grantee has secured the necessary permits from Grantor and all other public agencies with permit authority.

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

(c) In those areas of the county where grantee's cables are located on the above-ground transmission or distribution facilities of the public utility providing telephone or electric power service, and in the event that the facilities of both such public utilities subsequently are placed underground, then the Grantee likewise shall reconstruct, operate and maintain its transmission and distribution facilities underground, at Grantee's cost. Certain of Grantee's equipment, such as pedestals, amplifiers and power supplies, which normally are placed above ground, may continue to remain in above-ground enclosures, unless otherwise provided in the Franchise.

(Ord. No. 1408, §1)

Sec. 7.5-51. Technical standards

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

(b) Material failure to maintain specified technical standards shall constitute a material breach of the franchise.

(Ord. No. 1408, §1)

Sec. 7.5-52. Abandonment or removal of franchise property

(a) In the event that Grantee discontinues the use of any franchise property or a portion thereof for a continuous period of twelve (12) months, Grantee shall be deemed to have abandoned that cable system facility or equipment or that portion thereof.

(b) Grantor, upon such terms as Grantor may impose, may give Grantee permission to abandon, without removing, any system facility or equipment laid, directly constructed, operated or maintained under the franchise. Unless such permission is granted or unless otherwise provided in this Chapter, the Grantee shall remove all abandoned above-ground facilities and equipment upon receipt of written notice from Grantor and shall restore any affected street to its former state at the time such facilities and equipment were installed, so as not to impair its usefulness. In removing its facilities and equipment, Grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles, or attachments. Grantor shall have the right to inspect and approve the condition of the public ways, public places, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this Chapter and the security fund as provided herein shall continue in full force and effect during the period of removal and until full compliance by Grantee with the terms and conditions of this Section.

(c) A Grantee reserves and shall retain ownership of all facilities, equipment and property installed by it pursuant to any franchise under authority granted by this Chapter, except in the event such property is abandoned. Upon abandonment of any franchise property in place, the Grantee, if required by the Grantor, shall submit to the Grantor an instrument, satisfactory in form to the Grantor, transferring to the Grantor the ownership of the franchise facilities and equipment abandoned.

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

(e) Notwithstanding anything to the contrary set forth in this Chapter, with prior permission of Grantor, the grantee may abandon any underground franchise property in place so long as it does not materially interfere with the use of the street or public rights-of-way in which such property is located, or with the use thereof by any public utility or other cable Grantee.

(Ord. No. 1408, §1)

ARTICLE V. CONSUMER PROTECTION

Sec. 7.5-60. Minimum consumer protection and service standards

(a) Grantee shall maintain a local office or offices to provide the necessary facilities, equipment and personnel to comply with the following consumer protection and standards under normal conditions of operation:

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

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

(3) A business and service office within the county, open during normal business hours at least eight (8) hours daily, and at least four (4) hours weekly on evenings or weekends, and adequately staffed to accept subscriber payments and respond to service requests and complaints.

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

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

(6) Grantee shall schedule, within a specified four (4) hour time period, all appointments with subscribers for installation or service, unless customer agrees otherwise in advance.

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

(c) Grantee shall maintain a written log, or an equivalent stored in computer memory and capable of access and reproduction in printed form, for all service interruptions and requests for cable service that result in a service call.

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

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

(2) For an isolated outage: Within 24 hours, including weekends, of receiving requests for service identifying an isolated outage of sound or picture for one or more channels.

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

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

No charge shall be made to the subscriber for any service call unless Grantee demonstrates that the service request has been made repeatedly and is non-cable system in origin, or involves subscriber negligence, or damage to Grantee's property by the subscriber.

(e) Grantee shall determine the nature of the problem within 48 hours of beginning work and resolve all cable system-related problems within five (5) business days unless Grantee demonstrates that to do so is technically infeasible.

(f) Upon thirty (30) days' notice in writing from Grantor, Grantee shall establish its compliance with any or all of the standards required above. Grantee shall provide sufficient documentation to permit Grantor to verify compliance.

(g) A repeated and verifiable pattern of non-compliance with the consumer protection standards of A-E above, after Grantee's receipt of written notice and an opportunity to cure, may be deemed a material breach of the franchise agreement, subject to any and all remedies prescribed by a franchise and applicable law.

(Ord. No. 1408, §1)

Sec. 7.5-61. Additional service standards

Additional service standards and standards governing consumer protection and response by Grantee to subscriber complaints not otherwise provided for in this Chapter may be established in the franchise agreement, and Grantee shall comply with such standards in the operation of the cable television system. A verified and continuing pattern of non-compliance may be deemed a material breach of the franchise.

(Ord. No. 1408, §1)

Sec. 7.5-62. Complaint procedure

(a) **Complaints to Grantee.** Grantee shall establish and submit to Grantor for approval written procedures for receiving, acting upon and resolving subscriber complaints. The written procedures shall prescribe the manner in which a subscriber may submit a complaint to Grantee either orally or in writing that Grantee has violated any provision of Section 7.5-60, or the terms and conditions of the subscriber's contract with Grantee. At the conclusion of Grantee's investigation of a subscriber complaint, but in no event more than 10 days after receiving the complaint, Grantee shall notify the subscriber and the Grantor in writing of the results of the investigation and its proposed action or resolution, if any. The Grantee shall also notify the subscriber of the subscriber's right to file a complaint with the Grantor in the event the subscriber is dissatisfied with the Grantee's decision. No other proceedings to resolve subscriber complaints shall be undertaken until the procedure established by this section has been exhausted.

(b) **Complaints to Grantor.** A subscriber who is dissatisfied with Grantee's proposed decision or who was not sent a written decision within the 10-day period shall be entitled to have the complaint reviewed by the Grantor. The subscriber shall initiate the review by filing a written complaint together with the Grantee's written decision, if any, with the Grantor and by the Grantor notifying the Grantee of the filing. The subscriber shall make such filing and notification within twenty (20) days of receipt of Grantee's decision or, if no Grantee decision has been provided, within thirty (30) days after filing the original complaint with Grantee. The Grantor may extend these time limits for reasonable cause.

(c) **Review By Grantor.** The Grantor shall determine, solely upon a review of a subscriber complaint and the Grantee's decision, if any, whether further action is warranted. In the event the Grantor does not initiate further proceedings within fifteen (15) days of the filing of the complaint, the Grantee's proposed action or resolution shall be final. If the Grantor decided to initiate further investigation, the Grantor shall require the Grantee and the subscriber to submit within ten (10) days notice thereof a written statement of the facts and arguments in support of their respective positions. The Grantee or the subscriber may request in such statement that a hearing be conducted by the Grantor. A hearing, if requested, shall be conducted by the Grantor following notice in writing specifying the time

and place for such hearing. The hearing shall be conducted informally, and the parties may offer any evidence pertinent to the dispute. The parties shall produce any additional evidence, including testing reports from the Grantee, which the Grantor may deem necessary to an understanding and determination of the dispute. The director of general services shall issue a written decision within fifteen (15) day of the conclusion of the hearing, setting forth the basis of the decision. The director's decision shall be final unless appealed by the Grantee to arbitration.

(d) **Appeals to Arbitration.** Any final decision or action of the Grantor relative to a subscriber complaint, including the imposition of damages, if any, may be further appealed solely by Grantee within ten (10) days of such decision or action by delivering written notice of appeal to the Grantor. The Grantor shall be heard by a three-person arbitrational panel. The first arbitrator shall be chosen by the Grantor and the second arbitrator shall be chosen by the Grantee within ten (10) days of notice of the Grantor's selection. The third arbitrator shall be chosen by the first two arbitrators. The appeal shall be conducted in accordance with procedures established by the arbitration panel. The decision of the panel shall be final. The Grantee shall defray the full cost of the arbitration proceedings. In the event the Grantee fails or refuses to advance fee or costs as required by the arbitration panel, the appeal shall be forfeited. At the conclusion of arbitration, the arbitrators shall return to Grantee any unexpended balance.

(e) **Billing Disputes.** In the event a subscriber disputes a portion of their monthly service charge, the subscriber shall continue to pay the undisputed portion during the pendency of a complaint submitted under the provisions of this ordinance. Grantee shall not discontinue service during the pendency of such a complaint.

(f) **Remedies for Violations.** The Grantor or the Arbitrator panel may, as part of a subscriber complaint decision issued under the provisions of this section, impose damages on the Grantee as specified in Section 7.5-90(c).

(Ord. No. 1408, §1)

Sec. 7.5-63. Continuity of Service Mandatory

(a) Each subscriber shall have the right to continue receiving service if it honors its financial and other obligations to the Grantee. In the event that the Grantee elects to rebuild, modify, or sell the system, or the Grantor gives notice of intent to terminate or not to renew the franchise, the Grantee shall act so as to ensure that all subscribers receive service so long as the franchise remains in force.

In the event of a change of Grantee, or in the event a new operator acquires the system, the original Grantee shall cooperate with the Grantor, new Grantee or operator in maintaining continuity of service to all subscribers. During such

period, Grantee shall be entitled to the revenues for any period during which it operates the system.

(b) In the event Grantee fails to operate the system for seven (7) consecutive days without prior approval or subsequent excuse by the Grantor, the Grantor may, at its option, operate the system or designate an operator until such time as Grantee restores service under conditions acceptable to the Grantor or a permanent operator is selected. If the Grantor should fulfill this obligation for the Grantee, then during such period as the Grantor fulfills such obligation, the Grantor shall be entitled to collect all revenues from the system, and the Grantee shall reimburse the Grantor for all reasonable costs or damages in excess of the revenues collected by the Grantor that are the result of the Grantee's failure to perform.

(Ord. No. 1408, §1)

Sec. 7.5-63. Identification of Employees

Every field representative of the Grantee shall be clearly identified on sight to the public as a representative of the Grantee. Every vehicle of the Grantee shall be similarly identified.

(Ord. No. 1408, §1)

Sec. 7.5-64. Rights of Individuals

(a) Grantee shall not deny service, deny access, or otherwise unlawfully discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, age or sex. Grantee shall comply at all times with all other applicable federal, state and local laws and regulations, and all executive and administrative orders, relating to nondiscrimination, including without limitation Section 51 of the California Civil Code which is incorporated in this Section by reference.

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

(c) Neither Grantee, nor any person, agency, or entity shall, without the subscriber's consent, tap, or arrange for the tapping of any cable, line, signal input device, or subscriber outlet or receiver for any purpose except routing maintenance of the system, detection of unauthorized service, polling with audience participating, or audience viewing surveys to support advertising research regarding viewers where individual viewing behavior cannot be identified.

(d) In the conduct of providing its services or in pursuit of any collateral commercial enterprise resulting, Grantee shall take reasonable steps to prevent

the invasion of a subscriber's or general citizen's right of privacy or other personal rights through the use of the system as such rights are delineated or defined by applicable law. Grantee shall not without lawful court order or other applicable valid legal authority utilize the system's interactive two-way equipment or capability for unauthorized personal surveillance of any subscriber or general citizen.

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

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

(1) Any list of the names and addresses of subscribers containing the names and addresses of subscribers who request in writing to be removed from such list; and

(2) Any list which identifies the viewing habits of individual subscribers, without the prior written consent of such subscribers. This does not prohibit the Grantee from providing composite ratings of subscriber viewing to any party.

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

(Ord. No. 1408, §1)

ARTICLE VI. RECORDS, REPORTS AND SURVEYS

Sec. 7.5-70. Records required and Grantor's right to inspect

(a) Grantee shall at all times maintain:

(1) A record of all complaints received and interruptions or degradation of service experienced for the preceding two (2) years; provided, that such complaints result in or require a service call.

(2) A full and complete set of plans, records and "as-built" maps showing the location of the cable television system installed or in use in the county, exclusive of subscriber service drops and equipment provided in subscribers' homes.

(3) A monthly summary of service calls, identifying the number, general nature and disposition of such calls. A summary of such service calls shall be submitted to the Grantor within thirty (30) days following the end of each month in a form reasonably acceptable to the Grantor, if requested in writing by Grantor.

(b) The Grantor may impose reasonable requests for additional information, records and documents from time to time, provided they reasonably relate to the scope of the county's rights under this Chapter or the Grantee's franchise agreement.

(Ord. No. 1408, §1)

Sec. 7.5-71. Annual reports

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

(a) A summary of the previous year's (or in the case of the initial reporting year, the initial year's) activities in development of the cable system, including but not limited to services begun or discontinued during the reporting year;

(b) A list of Grantee's officers, members of its board of directors, and other principals of Grantee;

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

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

(e) Information as to the number of homes passed, subscribers, additional television outlets, and penetration of basic and pay service in the service area;

(f) Any other information which the Grantor shall reasonably request.

(Ord. No. 1408, §1)

Sec. 7.5-72. Copies of federal and state communications

Grantee shall submit to Grantor copies of all pleadings, applications and reports submitted by Grantee to, as well as copies of all decisions, correspondence and actions by any federal, state or local court, regulatory agency, or other governmental body which are non-routine in nature and which will materially affect its cable television operations within the franchise area. Grantee shall submit such documents to Grantor simultaneously with their submission to such court, agency, and/or body; or within thirty (30) days after their receipt from such court, agency and/or body.

(Ord. No. 1408, §1)

Sec. 7.5-73. Public reports

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

(Ord. No. 1408, §1)

Sec. 7.5-74. Subscriber satisfaction survey; opinion surveys

(a) Upon request of the Grantor, but not more than once annually, the Grantee shall conduct a subscriber satisfaction survey pertaining to quality of service, which may be transmitted to subscribers in subscriber statements for cable services. The form and content of such survey shall be reasonably acceptable to the Grantor. The cost of such survey shall be borne by the Grantee.

(b) The Grantee shall furnish to the Grantor the results of any opinion survey conducted by the Grantee which identifies satisfaction or dissatisfaction among subscribers within the County with the Grantee's cable service. The results of such survey shall be furnished to the Grantor within thirty (30) days following completion of the survey results.

(Ord. No. 1408, §1)

Sec. 7.5-75. Reports - General

(a) All reports and records required under this Chapter shall be furnished at the sole expense of Grantee, except as otherwise provided in this Chapter or the franchise agreement.

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

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

(Ord. No. 1408, §1)

ARTICLE VII. SYSTEM PERFORMANCE REVIEW; SPECIAL EVALUATION.

Sec. 7.5-80. Annual review of system performance

Once each year throughout the term of the franchise, the board of supervisors may conduct a review of Grantee's system performance and quality of service. The board review shall include, but is not limited to, the various reports required pursuant to this Chapter, results of technical performance tests, the record of subscriber complaints and Grantee's response to complaints, and the information acquired in any subscriber surveys. In addition, any subscriber may submit oral or written comments or complaints for board consideration. Within thirty (30) days after conclusion of a system performance review, the board may issue its evaluation of Grantee's franchise compliance and quality of service.

If Grantor determines that Grantee is not in compliance with the requirements of this Chapter or the Grantee's franchise, Grantor may direct Grantee to correct the areas of noncompliance within a reasonable period of time. Failure of Grantee, after given reasonable notice, to correct the areas of noncompliance within the period specified or to commence compliance within such period and diligently achieve compliance thereafter, shall be considered a material breach of the franchise, and Grantor may exercise any remedy within the scope of this Chapter and the franchise agreement which Grantor considers appropriate.

Sec. 7.5-81. Special review of system performance

(a) Grantor shall have the right to compel the Grantee to test, analyze and report on the performance of the system in order to protect the public against substandard cable service where complaints or other evidence exists which, in the judgment of the Grantor, casts reasonable doubt on the reliability or quality of cable service to the effect that the Grantee is not in compliance with the requirements of this Chapter or its franchise. Prior to exercising its right under this Section, Grantor shall provide Grantee with at least thirty (30) days notice and an opportunity to be heard by the board of supervisors. Such tests or analyses shall be made at Grantee's sole cost and the report thereof shall be delivered to the Grantor no later than thirty (30) days after the Grantor provides Grantee with notice, or if Grantee requests a hearing, thirty (30) days after the board of supervisors determines after hearing Grantee that it is exercising such right.

(b) Such report shall include the following information: the nature of the complaints which precipitated the special tests; what system component was tested; the equipment used and procedures employed in said testing; the results of such tests; and the method by which such complaints were resolved. Any other information pertinent to the special test shall be recorded.

(Ord. No. 1408, §1)

Sec. 7.5-82. Special evaluation sessions

Grantor, in addition to the annual Review of System Performance pursuant to Section 7.5-80 and any Special Review of System Performance pursuant to Section 7.5-81, may hold special evaluation sessions at any time during the term of a franchise, provided such sessions are held no more often than once every three (3) years. The Grantee shall be notified of the place, time and date thereof and the topics to be discussed. Such sessions shall be open to the public and advertised in a newspaper of general circulation at least thirty (30) days before each session. The sessions may include an evaluation of any items considered relevant to the cable system, the subscribers and the county. Either the Grantor or the Grantee may propose items for discussion or evaluation.

(Ord. No. 1408, §1)

**ARTICLE VIII. FRANCHISE ENFORCEMENT; CONTINUITY
OF SERVICE**

Sec. 7.5-90. Remedies for franchise violations

If Grantee fails to perform in a timely or satisfactory manner any obligation required by this Chapter or by a franchise granted hereunder, Grantor, after giving Grantee notice and any opportunity to cure such nonperformance in accordance with the provisions of Section 7.5-92, or pursuant to Section 7.5-62(f), may at its option and in its sole discretion:

(a) Cure the violation and recover the actual cost thereof from the security fund established herein, if such violation is not cured within thirty (30) days after written notice to the Grantee of Grantor's intention to cure and draw upon the security fund.

(b) Assess against Grantee liquidated damages in an amount set forth in the Franchise Agreement for any such violation(s), if such violation is not cured, or if Grantee has not commenced a cure, on a schedule acceptable to Grantor, within thirty (30) days after written notice to the Grantee of Grantor's intention to assess liquidated damages. By acceptance of a franchise granted hereunder, a Grantee agrees that Grantor may draw upon the security fund as herein provided. A draw upon the security fund shall not constitute a waiver by Grantor of any other right or remedy it may have under the franchise or under applicable law, including without limitation, its right to recover from Grantee such additional damages,

losses, costs and expenses, including actual attorneys' fees, as may have been suffered or incurred by Grantor by reason of or arising out of such breach of the franchise.

(c) Order and direct Grantee to issue rebates or credits to subscribers for violations of the consumer service standards of this ordinance or a franchise which have materially degraded the quality of service in an amount determined by Grantor to provide monetary relief substantially equal to the reduced quality of service resulting from Grantee's failure to perform.

(Ord. No. 1408, §1)

Sec. 7.5-91. Grantor's power to revoke

Grantor, after following the procedures set forth in Section 7.5-90, may revoke any franchise granted pursuant to this Chapter and rescind all rights and privileges associated with it in the following circumstances, each of which represents an incident of default by Grantee and a material breach of the franchise:

(a) If Grantee fails to perform its material obligations under this Chapter or the franchise agreement and continues such default after notice and a reasonable opportunity to cure the default.

(b) If Grantee fails to provide or maintain in full force and affect the insurance coverage or security fund as required herein after notice and reasonable opportunity to cure the default.

(c) If Grantee violates any order or ruling of any regulatory body having jurisdiction over the Grantee which relates to the Grantee's franchise, unless such order or ruling is being contested by Grantee by appropriate proceedings conducted in good faith.

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

(e) If Grantee repeatedly fails to remedy defaults for which lesser penalties have previously been imposed.

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

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

(Ord. No. 1408, §1)

Sec. 7.5-92. Procedure for remedying franchise violations

Except as otherwise provided in Section 7.5-62(f), prior to imposing any remedy against Grantee specified in Section 7.5-90 or Section 7.5-91, Grantor shall give Grantee notice and opportunity to be heard on the matter, in accordance with the following procedures:

(a) Grantor shall notify Grantee of the violation in writing by personal delivery or registered or certified mail, and demand correction within a reasonable time, which shall not be less than five (5) days in the case of the failure of the Grantee to pay any sum or other amount due the Grantor under this Chapter or the Grantee's franchise and not less than thirty (30) days in all other cases. Within ten (10) days after receipt of a written notice of violation from Grantor, Grantee may request a hearing before the director of general services in a proceeding affording due process. Such hearing shall be held within thirty (30) days of receipt of the request. Grantee may appeal the decision of the director of general services to the board of supervisors.

(b) If the Grantee fails to request a hearing before the director of general services and does not correct the violation or commence correction of the violation within the time prescribed and diligently proceed to remedy such violation or if the Grantee appeals the decision of the director of general services, the Grantor shall then give written notice of not less than twenty (20) days of a public hearing to be held before the board of supervisors. Said notice shall specify the violations alleged to have occurred. At the public hearing, the board shall hear and consider all relevant evidence and, thereafter, render findings and its decision.

(c) In the event the board of supervisors finds that Grantee has corrected the violation or has diligently commenced correction of such violation after notice thereof from grantor and is diligently proceeding to fully remedy such violation, or that no violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed.

(d) In the event the board of supervisors finds that the alleged violations exist and that Grantee has not corrected the same in a satisfactory manner or has not diligently commenced correction of such violation after notice thereof from Grantor, and is not diligently proceeding to fully remedy such violation, the board of supervisors may impose one (1) or more of the remedies specified in Section 7.5-90 or may revoke the franchise as provided in Section 7.5-91 as it, in its discretion, deems appropriate under the circumstances.

(Ord. No. 1408, §1)

Sec. 7.5-93. Force Majeure; grantee's inability to perform

In the event Grantee's performance of any of the terms, conditions or obligations required by this Chapter or a franchise granted hereunder is prevented by a

cause or event not within Grantee's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof; provided, however, that such inability to perform shall not relieve a Grantee from any obligation to issue rebates or credits for interruption of service which may be imposed pursuant to Section 7.5-90(c). For the purpose of this Section, causes or events not within the control of Grantee shall include without limitation acts of God, strikes, sabotage, riots or civil disturbances, restraints imposed by order of a governmental agency or court, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires, but shall not include financial inability of the Grantee to perform or failure of the Grantee to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of Grantee, or the failure of the Grantee to secure supplies, services or equipment necessary for the installation, operation, maintenance or repair of the cable communications system where the Grantee has failed to exercise reasonable diligence to secure such supplies, services or equipment.

(Ord. No. 1408, §1)

Sec. 7.5-94. Extended operation and continuity of services

Upon either expiration or revocation of the franchise, the Grantor shall have discretion to permit Grantee to continue to operate the cable television system for an extended period of time, not to exceed twelve (12) months from the date of such expiration or revocation, or as extended by resolution of Grantor. Grantee shall, as trustee for its successor-in-interest, continue to operate the system under the terms and conditions of this Chapter and the franchise and to provide the regular subscriber service and any and all of the services that may be provided at that time. It shall be the right of all subscribers to continue to receive all available services provided their financial and other obligations to Grantee are honored. The Grantee shall use reasonable efforts to provide continuous, uninterrupted service to its subscribers, including operation of the system during transitional periods following franchise expiration or termination.

(Ord. No. 1408, §1)

ARTICLE IX. MISCELLANEOUS PROVISIONS

Sec. 7.5-100. Grantee property

All property, plant, equipment and facilities contracted, installed, operated and maintained by a Grantee pursuant to this ordinance or a franchise granted hereunder shall be and remain the property solely of the Grantee and shall not become or be deemed a fixture or part of any public street or right-of-way or any other real property within the unincorporated areas of the county except upon abandonment by Grantee in accordance with Section 7.5-52.

(Ord. No. 1408, §1)

Sec. 7.5-101. Theft of service and tampering

No person, whether or not a subscriber to a cable system, shall knowingly or intentionally damage or cause to be damaged any wire, cable, conduit, equipment, apparatus, or appurtenance of the Grantee, or commit any act with intent to cause damage, or tap, tamper with, or otherwise connect any wire or device to a wire, cable, conduit, apparatus, or appurtenance of the Grantee with the intent to obtain a signal or impulse from the cable system without authorization from the Grantee, or to obtain cable or other communications services with intent to cheat or defraud the Grantee of any lawful charge to which it is entitled.

(Ord. No. 1408, §1)

Sec. 7.5-102. Rights reserved to grantor

(a) In addition to any rights specifically reserved to the Grantor by this Chapter, the Grantor reserves to itself every right and power which is required to be reserved by a provision of any ordinance or under the franchise, and the Grantee by accepting a franchise hereunder agrees to be bound thereby and to comply with any action or requirement of the Grantor in its exercise of any such right or power.

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

(Ord. No. 1408, §1)

Sec. 7.5-103. Separability

If any provision of this Ordinance is held by any court or by any federal or state agency of competent jurisdiction, to be invalid as conflicting with any federal or state law, rule or regulation now or hereafter in effect, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such law, rule or regulation, such provisions shall be considered a separate, distinct, and independent part of this Chapter, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed, so that the provision hereof which had been held invalid or modified is no longer in conflict with such law, rule or regulation, said provision

shall thereupon return to full force and effect and shall thereafter be binding on Grantor and Grantee, provided that Grantor shall give Grantee thirty (30) days written notice of such change before requiring compliance with said provision or such longer period of time as may be reasonably required for Grantee to comply with such provision.

(Ord. No. 1408, §1)