



OFFICE OF THE CITY MANAGER

TO: Mayor Bogaard and Members of the City Council

FROM: City Manager

DATE: April 24, 2000

SUBJECT: Differences Between the Proposed Cable, Video, and Telecommunications Service Providers Ordinance and Title 18

This memo is in response to issues raised by City Council at its meeting of April 17, 2000. It describes the differences between the existing Title 18 and the proposed amendments and provides information on changes made to the proposed ordinance language to address specific issues raised by Councilmembers Streator and Tyler.

Title 18 of the Municipal Code (attached) was adopted in 1982 in anticipation of a citywide cable television franchise. It was tailored in 1983 to address the specific requirements of the City's cable TV franchise with Falcon Communications.

There are several differences between Title 18 and the proposed Cable, Video, and Telecommunications Service Providers Ordinance. First, the proposed ordinance brings Title 18 into conformance with current federal regulations. It remedies the following inconsistencies:

- Section 18.06.020 relates to franchise renewal procedures. These provisions are inconsistent with the federal statutory scheme governing renewals of cable TV franchises set forth in federal law.
- Chapter 18.16, regarding franchise transfers and assignments, is inconsistent with current federal law which sets forth procedures for franchising authority approval of a sale or transfer of a cable television franchise.
- Several sections of Chapter 18.18 pertain to the City's authority to regulate the cable operator's rates for cable programming services, equipment rental charges, and other services. These sections are inconsistent with the limited regulatory authority the City currently possesses under federal statutes and regulations.
- Chapter 18.26 and Chapter 18.30 contain provisions related to the cable company's customer service standards. There are now several federal and state statutes that are applicable to a cable operator's customer service obligations.

Second, the existing Title 18 pertains only to cable television system operators. Since 1983, new types of telecommunications service providers have emerged. Some are based on differing technologies, such as use of satellites to transmit TV programming to viewers. Others were created by the federal Telecommunications Act of 1996. The new

types of video and telecommunications service providers addressed in the proposed ordinance include: open video system providers (phone companies entering the TV programming market); providers using various types of satellite systems; wireless cable systems (e.g., broadcasting from Mt. Wilson to viewers within the line of sight from that location); and telephone companies. The City has significant authority to regulate and collect franchise or license fees from open video system providers. The City's authority over other types of providers is limited to managing access to public rights-of-way. None of this is currently addressed in Title 18.

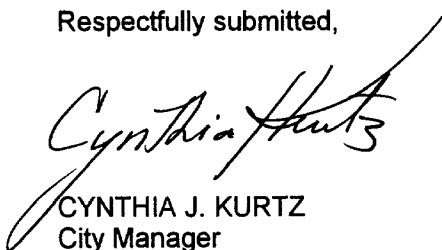
Finally, Title 18 includes numerous provisions tailored to the City's 1983 franchise with Falcon Communications. Among the tailored provisions are a specified cable TV franchise term of 15 years, limits on the dollar amounts of letters of credit and performance bonds, and enforcement provisions that are no longer applicable. The proposed ordinance instead addresses general topics of regulation. Staff recommends that specific provisions be incorporated in franchise or license agreements with individual companies. This helps the City avoid having obsolete or inapplicable provisions in the ordinance governing our regulation of cable, video and other telecommunications companies.

In response to your discussion of the ordinance on April 17, we have amended several sections of the proposed ordinance. Specifically:

- Section 18.04.050 D.2 – Billing and Information Standards – was amended to require cable operators, **in both telephonic and written communications** with customers, to provide rate information that includes all franchise fees, utility users tax, and any other fees.
- Section 18.04.050 G.1 – Disconnection/Downgrades – was amended to preclude charges to customers for downgrading service, unless a visit to the customer's home or business is required to remove operator-owned equipment.
- Section 18.04.050 H. – Changes in Service – was amended to limit nominal charges for service changes to upgrades only. This is an attempt to address Councilwoman Streater's issue, while recognizing the concern Charter Communications has voiced regarding customer requests for service upgrades and downgrades within a short period of time (e.g., to view a special sporting event).

I hope the information above is helpful. If you have any questions, please don't hesitate to contact Robert Person at 744-4222.

Respectfully submitted,



CYNTHIA J. KURTZ
City Manager



Ordinance Fact Sheet

TO: CITY COUNCIL

DATE: APRIL 17, 2000

FROM: CITY MANAGER

SUBJECT: ORDINANCE AMENDING TITLE 18 OF THE PASADENA MUNICIPAL CODE REGARDING CABLE, VIDEO AND TELECOMMUNICATIONS SERVICE PROVIDERS

TITLE OF PROPOSED ORDINANCE:

An Ordinance of the City of Pasadena Adopting an Ordinance Regulating Cable, Video, and Telecommunications Service Providers and Amending Title 18 of the Pasadena Municipal Code.

BACKGROUND:

Changing Legal and Technological Environment

Title 18 of the Pasadena Municipal Code governs the City's regulation of cable television systems. It was adopted in 1982 and amended in 1983. Since then, there have been significant amendments to federal and state laws relating to cable television franchises. Title 18 is currently in conflict with many of these new federal and state provisions.

The proposed Title 18 remedies these conflicts. It is based on:

- the federal Cable Communications Policy Act of 1984
- the federal Cable Television Consumer and Competition Act of 1992
- the federal Telecommunications Act of 1996
- applicable regulations of the Federal Communications Commission
- the state Cable Television and Video Provider Customer Service Information Act of 1992, and
- the state Video Customer Service Act of 1993

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There have also been significant changes in the types of telecommunications service providers using City rights-of-way since 1983. Service providers are taking advantage of technological changes to offer services like video programming using line-of-sight technologies, and Internet access via the cable TV system and wireless antennas mounted on traffic signals. The Telecommunications Act of 1996 also created several new categories of telecommunications service providers. The existing Title 18 fails to address these new types of service providers, including some over which the City now has significant regulatory authority.

Staff also has reviewed the existing Title 18 in light of current negotiations with the City's incumbent cable TV provider, Charter Communications. Staff determined that Title 18 includes several provisions that are quite restrictive for the franchise renewal, including a specified franchise term of 15 years, limits on the dollar amounts of letters of credit and performance bonds, and provisions for enforcement of the title that may not be applicable for the current franchise renewal or future franchise and license agreements.

The existing Title 18 includes many specific provisions that staff believe are better left to individual franchise and license agreements. In contrast, the proposed ordinance addresses regulation topics in general terms. This avoids the situation of having obsolete or irrelevant provisions in the ordinance when future cable television franchises are negotiated and executed.

In the course of the current franchise renewal, the City Council and staff have gathered input from cable TV subscribers. Many have asked what the City can do to encourage the highest level of customer service from our franchised cable operator and other video and telecommunications service providers. Title 18, as it now exists, contains minimal customer service provisions. The proposed ordinance includes customer protection and service standards that staff believes will help promote high quality cable, video and telecommunications services for Pasadena residents and businesses.

Contents of the Proposed Ordinance

The attached ordinance contains six chapters relating to the following:

- Chapter 18.02 sets forth the purpose and intent of the ordinance
- Chapter 18.04 relates to franchises for cable television systems, identifying:
 - City authority for regulation of cable TV providers
 - the purpose and content, in general terms, of cable television franchises
 - cable TV franchise applications and renewals
 - consumer protection and service standards for cable TV providers
- Chapter 18.06 relates to City regulation of open video systems¹ based on regulations adopted in connection with the Federal Telecommunications Act of 1996, including:

¹ Open video systems, or OVS, is a new regulatory concept rather than technology. The OVS service category was created by the Telecommunications Act of 1996 to encourage entry of telephone companies into the cable TV market. OVS providers will likely use the same or

- requirements for open video system providers to file an application with the City
- requirements for franchise or license agreements between the City and open video system providers
- consumer protection and service standards for open video system providers
- Chapter 18.08 addresses other video and telecommunications services and systems, including:
 - providing regulatory guidelines based on the type of service provider (as dictated by federal law)
 - implementing customer service standards for these other providers as authorized by federal and state law, as well as penalties for breach of those customer service obligations
 - limited regulatory requirements that the City may exercise over the increasing number of telephone corporations being certified by the California Public Utilities Commission. This includes registration of phone companies with the City and some control over the timing of street cuts for installation of phone company infrastructure.
 - cross-referencing provisions of the Zoning Code related to telecommunications antennas.
- Chapter 18.10 provides definitions of terms and phrases used in the ordinance.
- Chapter 18.12 sets forth sanctions for violation of the title and a severability clause.

PURPOSE OF ORDINANCE:

This ordinance amends Title 18 of the Pasadena Municipal Code. These amendments are being proposed to:

- Bring Title 18 into conformity with current state and federal law related to cable television and other video and telecommunications service providers
- Recognize new categories of video and telecommunications service providers, putting in place guidelines for the City to regulate and, where authorized by law, to collect fair and reasonable franchise or license fees from other video and telecommunications service providers using public rights-of-way in Pasadena
- Facilitate maximum control of public rights-of-way in light of current federal and state regulations
- Incorporate customer service standards for cable, video, and telecommunications service providers based on federal and state regulatory guidelines and industry best practices.

similar technologies as traditional cable TV. Unlike a cable operator, however, an OVS provider is required to make up to two-thirds of its system capacity available to unaffiliated programmers.

REASON WHY LEGISLATION IS NEEDED:

The Pasadena Municipal Code may only be amended by an ordinance of the City Council.

PROGRAMS, DEPARTMENTS OR GROUPS AFFECTED:

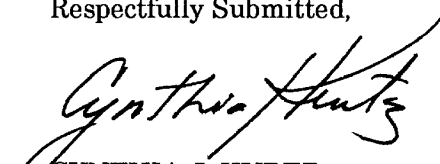
This ordinance will affect a variety of cable, video, and telecommunications service providers doing business in Pasadena. These include services provided by: cable television systems; open video systems; antenna television systems; wireless cable systems²; direct broadcast satellite providers³; and telephone companies providing voice and/or data services.

Departments responsible for implementing the amended Title 18 include the City Manager's Office, Public Works and Transportation, and Finance.

FISCAL IMPACT:

The proposed ordinance provides the mechanism for collection of franchise or license fees and application or registration fees from cable, video, and telecommunications service providers in Pasadena. Specific application and registration fee amounts need to be adopted as part of the City's fee schedule. Staff anticipates that revenues related to cable, video, and other telecommunications service providers will increase from current levels, although it is not possible to estimate by how much at this point in time.

Respectfully Submitted,



CYNTHIA J. KURTZ
City Manager

Prepared by:



Lori B. Sandoval
Technical Planning Manager

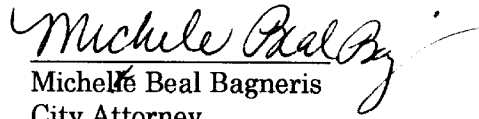
² Wireless cable systems, also known as multichannel multipoint distribution systems, are wireless video services transmitted over land rather than by satellite. They use microwave frequencies that cannot be received with normal TV antenna.

³ These include satellite providers such as DirectTV and Dish Network.

Approved by:



Robert K. Person
Assistant to the City Manager/
Information Technology Administrator



Michelle Beal Bagneris
City Attorney

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PASADENA
REGULATING CABLE, VIDEO, AND
TELECOMMUNICATIONS SERVICE PROVIDERS AND
AMENDING TITLE 18 OF THE PASADENA MUNICIPAL
CODE

THE CITY COUNCIL OF THE CITY OF PASADENA DOES ORDAIN AS
FOLLOWS:

Section 1. This ordinance, due to its length and the corresponding costs of publication, will be published by title and summary as permitted by Section 508 of the City Charter. The approved summary of this ordinance reads as follows:

" SUMMARY

This ordinance amends Title 18 of the Pasadena Municipal Code, which was previously entitled " Cable Communications Systems." The new Title 18 is entitled " Cable, Video, and Telecommunications Service Providers Ordinance." Chapter 18.02 sets forth the purpose and intent of the ordinance, which is to regulate cable television operators, open video system operators, and other video and telecommunications service providers in a competitively neutral and nondiscriminatory manner. Chapter 18.04 relates to franchises for cable television systems. Section 18.04.040 identifies in general terms the various subject matters that may be addressed in a cable television franchise agreement. Section 18.04.050 sets forth comprehensive consumer protection and service standards that apply to all video, voice, and data services that are provided by a franchised cable television service provider.

Chapter 18.06 sets forth a regulatory scheme that relates to " open video systems." These provisions are contained in federal laws and regulations that were adopted in connection with the Federal Telecommunications Act of 1996. Chapter 18.08 addresses video and telecommunications services and systems other than cable television systems and open video systems. Certain categories of video providers are required to register with the City and to provide specified information concerning customer service standards. The City is authorized under state law to establish by ordinance a schedule of monetary penalties for the material breach of those customer service obligations. Chapter 18.08 also cross-references Title 17 (the Zoning Code) that contains provisions concerning the siting and construction of satellite earth station antennas (" satellite dishes"), amateur radio station antennas, wireless telecommunication antenna facilities and antenna arrays. Chapter 18.08 also sets forth certain limited regulatory authority that

the City may exercise over telephone corporations that are being certified by the California Public Utilities commission to provide local and long-distance telephone service and that desire to sue the City's public rights-of-way, easements, and other public property. Chapter 18.10 sets forth definitions for various terms and phrases that are used in the ordinance. Chapter 18.12 sets forth sanctions for violation of Title 18 and a severability clause."

Ordinance No. _____ shall take effect 30 days following its publication by title and summary."

Section 2. Title 18 of the Pasadena Municipal Code is repealed in its entirety.

Section 3. The Pasadena Municipal Code is amended by adding a new Title 18 to read as follows:

"TITLE 18. CABLE, VIDEO, AND TELECOMMUNICATIONS SERVICE PROVIDERS

CHAPTER 18.02. GENERAL PROVISIONS

18.02.010 Title

This chapter is known and may be cited as the "Cable, Video, and Telecommunications Service Providers Ordinance" of the City of Pasadena.

18.02.020 Purpose and Intent

A. The City Council finds and determines as follows:

1. The development of cable, video, and telecommunications services and systems may provide significant benefits for, and have substantial impacts upon, the residents of the City.

2. Because of the complex and rapidly changing technology associated with cable, video, and telecommunications services and systems, the public convenience, safety, and general welfare can best be served by establishing regulatory powers to be exercised by the City.

3. This title adopts provisions that authorize the City to regulate cable, video, and telecommunications service providers to the extent authorized by federal and state law, including but not limited to the federal Cable Communications Policy Act of 1984, the federal Cable Television Consumer and Competition Act of 1992, the federal Telecommunications Act of 1996, applicable regulations of the

Federal Communications Commission, and applicable California statutes and regulations.

4. The cable, video, and telecommunications services that are addressed in this ordinance include services provided by cable television systems, open video systems, master antenna television systems, satellite master antenna television systems, direct broadcast satellite systems, multichannel multipoint distribution systems, local multipoint distribution systems, and other providers of video programming, whatever their technology, as well as voice and data services provided by telephone corporations.

B. The purpose and intent of this title is to provide for the attainment of the following objectives:

1. To enable the City to discharge its public trust in a manner consistent with rapidly evolving federal and state regulatory policies, industry competition, and technological development.

2. To authorize and to manage reasonable access to the City's public rights-of-way and public property for cable, video, and telecommunications purposes on a competitively neutral and nondiscriminatory basis.

3. To obtain fair and reasonable compensation for the City and its residents for authorizing the private use of the public rights-of-way and public property.

4. To promote competition in cable, video, and telecommunications services, minimize unnecessary local regulation of cable, video, and telecommunications service providers, and encourage the delivery of advanced and competitive cable, video, and telecommunications services on the broadest possible basis to local government and to the businesses, institutions, and residents of the City.

5. To establish clear local guidelines, standards, and time frames for the exercise of local authority with respect to the regulation of cable, video, and telecommunications service providers.

6. To encourage the profitable deployment of advanced cable, video, and telecommunications infrastructures that satisfy local needs, deliver enhanced government services, and provide informed consumer choices in an evolving cable, video, and telecommunications marketplace.

18.02.030 Defined Terms and Phrases

Various terms and phrases used in this title are defined below in Section 18.10.010 of Chapter 18.10.

CHAPTER 18.04. CABLE TELEVISION SYSTEMS

18.04.010 Authority and Findings

A. In accordance with applicable federal and state law, the City is authorized to grant one or more nonexclusive franchises to construct, reconstruct, operate, and maintain cable television systems within the City limits.

B. The City Council finds that the development of cable television and related telecommunications services may provide significant benefits for, and substantial impacts upon, the residents of the City. Because of the complex and rapidly changing technology associated with cable television, the City Council further finds that the public convenience, safety, and general welfare can best be served by establishing regulatory powers to be exercised by the City. This chapter is intended to specify the means for providing to the public the best possible cable television and related telecommunications services, and every franchise issued in accordance with this chapter is intended to achieve this primary objective. It is the further intent of this chapter to adopt regulatory provisions that will enable the City to regulate cable television and related telecommunications services to the maximum extent authorized by federal and state law.

18.04.020 Franchise Terms and Conditions

A. Franchise Purposes

A franchise granted by the City under the provisions of this chapter may authorize the Grantee to do the following:

1. To engage in the business of providing cable service and such other telecommunications services as may be authorized by law and which Grantee elects to provide to its subscribers within the designated franchise service area.

2. To erect, install, construct, repair, rebuild, reconstruct, replace, maintain, and retain, cable lines, related electronic equipment, supporting structures, appurtenances, and other property in connection with the operation of the cable system in, on, over, under, upon, along and across streets or other public places within the designated franchise service area.

3. To maintain and operate the franchise

properties for the origination, reception, transmission, amplification, and distribution of television and radio signals, and for the delivery of cable services and such other services as may be authorized by law.

B. Franchise Required

1. It is unlawful for any person to construct, install, or operate a cable television system within any street or public way in the City without first obtaining a franchise under the provisions of this chapter.

2. The City Council finds and determines that certain multichannel video programming distributors and video providers, as those terms are defined in Section 18.10.010 of Chapter 18.10, provide cable service, including video programming, to subscribers within limited geographic areas where multi-family dwelling complexes and congregate-living complexes are located. That cable service, including video programming, is sometimes provided, in whole or in part, by the transmission of signals over wires or lines that are owned or controlled by telecommunications service providers or other public utilities and that are within or cross streets or public ways within the boundaries of a local franchising authority. The multichannel video programming distributor or video provider may obtain from the telecommunications service provider or other public utility, by lease, license, or similar contractual arrangement, the right to use those wires or lines in order to provide cable service, including video programming, to subscribers or customers within the multi-family dwelling complexes and congregate-living complexes referenced above. The City Council further finds and determines that these contractual arrangements for signal transmission facilitate the provision of cable service, including video programming, and create a nexus between that cable service and the use of the streets and public ways of the City. Consequently, to the maximum extent authorized under California law, it is the intent of the City Council to subject multi-channel video programming distributors and video providers that intend to use this signal-transmission methodology to the franchise requirements set forth in this chapter, subject to such waivers and modifications of those requirements as may, in the discretion of the City Council or its designee, be warranted in view of the limited geographic area that is proposed to be served.

C. Term of the Franchise

1. A franchise granted under this chapter will be for the term specified in the franchise agreement, commencing upon the effective date of the ordinance or resolution adopted by the City Council that authorizes the franchise.

2. A franchise granted under this chapter

may be renewed upon application by the Grantee in accordance with the then-applicable provisions of state and federal law and of this chapter.

D. Franchise Territory

A franchise is effective within the territorial limits of the City, and within any area added to the City during the term of the franchise, unless otherwise specified in the ordinance or resolution granting the franchise or in the franchise agreement.

E. Federal or State Jurisdiction

This chapter will be construed in a manner consistent with all applicable federal and state laws, and it applies to all franchises granted or renewed after the effective date of this chapter, to the extent authorized by applicable law.

F. Franchise Non-Transferable

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

2. The requirements of subsection (1) apply to any change in control of Grantee. The word "control" as used herein is not limited to the ownership of major stockholder or partnership interests, but includes actual working control in whatever manner exercised. If Grantee is a corporation, prior authorization of the City Council is required where ownership or control of more than ten percent (10%) of the voting stock of Grantee is acquired by a person or a group of persons acting in concert, none of whom, singularly or collectively, owns or controls the voting stock of the Grantee as of the effective date of the franchise.

3. Grantee must notify the City in writing of any foreclosure or judicial sale of all or a substantial part of the Grantee's franchise property, or upon the termination of any lease or other interest covering all or a substantial part of that franchise property. That notification will be considered by the City as notice that a change in control of ownership of the

franchise has taken place, and the provisions of this paragraph that require the prior consent of the City Council to that change in control of ownership will apply.

4. For the purpose of determining whether it will consent to an acquisition, transfer, or change in control, the City may inquire as to the qualifications of the prospective transferee or controlling party, and Grantee must assist the City in that inquiry. In seeking the City's consent to any change of ownership or control, Grantee or the proposed transferee, or both, must complete Federal Communications Commission Form 394 or its equivalent. This application must be submitted to the City not less than 120 days prior to the proposed date of transfer. The transferee must establish that it possesses the legal, financial, and technical capability to operate and maintain the cable system and to comply with all franchise requirements during the remaining term of the franchise. If the legal, financial, and technical qualifications of the applicant are satisfactory, the City will consent to the transfer of the franchise. The consent of the City to that transfer will not be unreasonably denied or delayed.

5. Any financial institution holding a pledge of the Grantee's assets to secure the advance of money for the construction or operation of the franchise property has the right to notify the City that it, or a designee satisfactory to the City, will take control of and operate the cable television system upon Grantee's default in its financial obligations. Further, that financial institution must also submit a plan for such operation within 90 days after assuming control. The plan must insure continued service and compliance with all franchise requirements during the period that the financial institution will exercise control over the system. The financial institution may not exercise control over the system for a period exceeding one year unless authorized by the City, in its sole discretion, and during that period of time it will have the right to petition the City to transfer the franchise to another Grantee.

6. Grantee must reimburse the City for the City's reasonable review and processing expenses incurred in connection with any transfer or change in control of the franchise. These expenses include, without limitation, costs of administrative review, financial, legal, and technical evaluation of the proposed transferee, consultants (including technical and legal experts and all costs incurred by these experts), notice and publication costs, and document preparation expenses. No reimbursement may be offset against any franchise fee payable to the City during the term of the franchise.

G. Geographical Coverage

1. Unless otherwise provided in the franchise agreement, Grantee must design, construct, and maintain

the cable television system so as to have the capability to pass every dwelling unit and commercial building in the City, subject to any service-area line extension requirements of the franchise agreement.

2. After service has been established by activating trunk or distribution cables for any service area, Grantee must provide service to any requesting subscriber in that service area within seven days from the date of request, provided that the Grantee is able to secure on reasonable terms and conditions all rights-of-way necessary to extend service to that subscriber within that seven-day period.

H. Nonexclusive Franchise

Every franchise granted is nonexclusive. The City 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. If an additional franchise is proposed to be granted to a subsequent Grantee, a noticed public hearing must first be held in accordance with the provisions of Government Code 53066.3.

I. Multiple Franchises

1. The City may grant any number of franchises, subject to applicable state and federal law. The City may limit the number of franchises granted, based upon, but not necessarily limited to, the requirements of applicable law and specific local considerations, such as:

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

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

c. 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 within the public rights-of-way.

2. The City may require that any new Grantee be responsible for its own underground trenching and the associated costs if, in the City's opinion, the rights-of-way in any particular area cannot reasonably accommodate additional cables.

18.04.030 Franchise Applications and Renewal

A. Filing of Applications

Any person desiring an initial franchise for a cable television system must file an application with the City. A reasonable nonrefundable application fee in an amount established by resolution of the City Council must accompany the application. That application fee will cover all costs associated with reviewing and processing 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 those experts), notice and publication requirements, and document preparation expenses. If those costs exceed the application fee, the applicant must pay the difference to the City within 30 days following receipt of an itemized statement of those costs.

B. Applications - Contents

An application for an initial franchise for a cable television system must contain, as applicable:

1. A statement as to the proposed franchise service area and an explanation as to whether this proposed service area is, or will be, a part of a larger regional cluster of franchise service areas.

2. A resume of the applicant's prior history, including the experience and expertise of the applicant in the cable television and telecommunications industry.

3. A list of the partners, general and limited, of the applicant, if a partnership, or the percentage of stock owned or controlled by each stockholder, if a closely-held corporation. If the applicant is a publicly-owned corporation, each owner of 10 percent or more of the issued and outstanding capital stock must be identified.

4. A list of officers, directors, and managing employees of the applicant, together with a description of the background of each such person.

5. A statement as to the number of people employed by the applicant, whether on a full-time or part-time basis.

6. The names and addresses of any parent or subsidiary of the applicant, or any other business entity owning or controlling applicant in whole or in part, or that is owned or controlled in whole or in part by the applicant.

7. A current financial statement of the applicant verified by a certified public accountant or otherwise certified to be true, complete, and correct to the reasonable satisfaction of the City.

8. The proposed construction and service schedule.

9. Any additional information that the City deems to be reasonably necessary.

C. Consideration of Initial Applications

1. Upon receipt of an application for an initial franchise, the City Manager or the City Manager's designee must prepare a report and make recommendations to the City Council concerning that application.

2. A public hearing will be noticed prior to any initial franchise grant, at a time and date approved by the City Council. Within 30 days after the close of the hearing, the City Council will make a decision based upon the evidence received at the hearing as to whether the franchise should be granted, and, if granted, subject to what conditions. The City Council may grant one or more franchises, or may decline to grant any franchise.

D. Franchise Renewal

Franchise renewals will be processed in accordance with then-applicable law. The City and Grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the franchise.

18.04.040 Contents of Cable Television Franchise Agreements

A. The terms and provisions of a franchise agreement for the provision of cable television or related telecommunications services may relate to or include, without limitation, the following subject matters:

1. The nature, scope, geographical area, and duration of the franchise.

2. The applicable franchise fee to be paid to the City, including the amount, the method of computation, and the time for payment.

3. Requirements relating to compliance with and implementation of state and federal laws and regulations pertaining to the operation of the cable television system.

4. Requirements relating to the construction, upgrade, or rebuild of the cable television system, as well as the provision of special services, such as outlets for public buildings, emergency alert capability, and parental control devices.

5. Requirements relating to the maintenance of a performance bond, a security fund, a letter of credit, or similar assurances to secure the performance of the Grantee's obligations under the franchise agreement.

6. Requirements relating to comprehensive liability insurance, workers' compensation insurance, and indemnification.

7. Requirements relating to consumer protection and customer service standards, which requirements may include, without limitation, those set forth below in Section 18.04.050 of this chapter.

8. Requirements relating to the Grantee's support of local cable usage, including the provision of public, educational, and governmental access channels, the coverage of public meetings and special events, and financial support for governmental access channels.

9. Requirements relating to the Grantee's obligation to provide an institutional network, and channel capacity on that institutional network for educational or governmental use, subject to the City's rules and procedures for the use of such channel capacity and for compatibility with any telecommunications network that has been or may be developed by the City.

10. Requirements relating to construction, operation, and maintenance of the cable television system within the public rights-of-way, including compliance with all applicable building codes and permit requirements of the City, the abandonment, removal, or relocation of facilities, and compliance with FCC technical standards.

11. Requirements relating to recordkeeping, accounting procedures, reporting, periodic audits, and performance reviews, and the inspection of Grantee's books and records.

12. Acts or omissions constituting material breaches of or defaults under the franchise agreement, and the applicable penalties or remedies for such breaches or defaults, including fines, penalties, liquidated damages, suspension, revocation, and termination.

13. Requirements relating to the sale, assignment, or other transfer or change in control of the franchise.

14. The Grantee's obligation to maintain continuity of service and to authorize, under certain specified circumstances, the City's operation and management of the cable system.

15. Such additional requirements, conditions, policies, and procedures as may be mutually agreed upon by the parties to the franchise agreement and that will, in the judgment of City staff and the City Council, best serve the public interest and protect the public health, welfare, and safety.

B. If there is any conflict or inconsistency between the provisions of a franchise agreement authorized by the City Council and provisions of this chapter, the provisions of the franchise agreement will control.

18.04.050 Consumer Protection and Service Standards

A. Applicability

Unless preempted by paramount federal or state law, or unless otherwise provided in a franchise, license, lease, or similar written agreement with the City, a Grantee must maintain the necessary facilities, equipment, and personnel to comply with the consumer protection and service standards of this section, which standards apply, without limitation, to all video, voice, and data services that are provided by the Grantee to its subscribers.

B. Operational Standards

1. The Grantee must comply, under normal operating conditions, with the following operational standards and requirements:

a. Sufficient toll-free telephone line capacity must be available during normal business hours to ensure that telephone calls are answered before the fourth ring. Telephone answer time by a customer service representative, including wait time, may not exceed 30 seconds. Callers who must be transferred may not be required to wait more than 30 seconds before being connected to a service representative.

b. Under normal operating conditions, a caller must receive a busy signal less than three percent of the time.

c. Emergency toll-free telephone line

capacity must be available on a 24-hour basis, including weekends and holidays. After normal business hours, the telephone calls may be answered by an answering service in accordance with the telephone answering standards set forth above in subparagraphs (a) and (b). Calls received after normal business hours must be responded to by a trained company representative on the next business day.

d. A local business and service or payment office must be located within the franchise service area and must be open during normal business hours at least eight hours daily on weekdays, and at least four hours weekly on evenings or weekends, and adequately staffed with trained customer service representatives to accept subscriber payments and to respond to service requests, inquiries, and complaints.

e. An emergency system maintenance and repair staff must be available that is capable of responding to and repairing major system malfunctions on a 24-hour per day basis.

f. A trained installation staff must provide service to any subscriber requiring a standard installation within seven business days after receipt of a request, in all areas where trunk and feeder cable have been activated. "Standard installations" are those that are located up to 150 feet from the existing distribution system, unless otherwise defined in the franchise agreement.

g. All officers, agents, and employees of the Grantee, or of its contractors or subcontractors, who, in the normal course of work come into contact with members of the public, or who require entry onto subscribers' premises, must carry a photo-identification card in a form approved by the City. The Grantee must account for all identification cards at all times. All vehicles of the Grantee or its subcontractors must be clearly identified as vehicles engaged in providing services for the Grantee.

h. In processing a request for installation of service, the Grantee may not request more personal-identity information than is necessary to verify the identity of a subscriber. This information may vary depending upon the circumstances, but Grantee may not deny service to a potential subscriber if that person fails to provide a driver's license number or a social security number. Service may, however, be denied by Grantee if a potential subscriber fails to produce any verifiable personal-identity information after being requested to do so.

i. The Grantee must schedule, within a specified four-hour time period Monday through Saturday (legal holidays excluded), all appointments with subscribers for

installation of service, service calls, and other activities at the subscriber's location. The Grantee may schedule installation and service calls outside of normal business hours for the convenience of the subscriber. The Grantee may not cancel an appointment with a subscriber after the close of business on the business day prior to the scheduled appointment.

If a Grantee representative is delayed in keeping an appointment with a subscriber and will not be able to honor the scheduled appointment, the subscriber must be contacted prior to the time of the scheduled appointment, and the appointment must be rescheduled, as necessary, at a time that is convenient for the subscriber. The Grantee must use its best efforts to contact every customer within two weeks after an installation or repair work is completed to ensure that the customer is satisfied with the work.

j. Subscribers who have experienced one missed appointment due to the fault of the Grantee will receive an installation free of charge if the appointment was for an installation. If an installation was to have been provided free of charge, and for all other appointments, the subscriber will receive one month of the subscribed-to service or service tier, free of charge. Subscribers also will be entitled to receive a free installation, or one-month free service, as provided above, if the Grantee fails to complete a standard installation within seven days of receiving an installation request due to its fault, its failure to schedule an appointment within a specified four-hour time period, or its failure to notify the subscriber that the Grantee's representative will be late for an appointment. Subscribers who have experienced two missed appointments due to the fault of the Grantee will receive two months of the subscribed-to service or service tier, free of charge, in addition to the free installation or free month of service provided for the first missed appointment.

k. Upon a subscriber's request, the Grantee will arrange for pickup or replacement of converters or other equipment provided by the Grantee at the subscriber's address within 14 days after the request is made if the subscriber is mobility-limited.

2. The standards of subparagraphs (a) and (c) above must be met not less than 90 percent of the time, measured on a quarterly basis.

C. Service Standards

1. The Grantee will render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Except in emergency situations, scheduled interruptions will occur during a period of minimum use of the cable system, preferably between midnight and 6:00 a.m. Unless the scheduled interruption lasts

for no more than two hours and occurs between midnight and 6:00 a.m. (in which event 24-hours prior notice must be given to the City), 48 hours prior notice must be given to subscribers.

2. The Grantee will maintain a repair force of technicians who will respond to subscriber requests for service within the following time frames:

a. For a system outage: Within two hours, including weekends, of receiving subscriber calls or requests for service that by number identify a system outage of sound or picture of one or more channels, affecting five or more subscribers of the system.

b. 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.

c. For inferior signal quality: No later than the following business day, excluding Sundays and holidays, after a request for service identifying a problem concerning picture or sound quality.

3. The Grantee will be deemed to have responded to a request for service under the provisions of this paragraph (B) 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 must leave written notification of arrival.

4. The Grantee may not charge for the repair or replacement of defective or malfunctioning equipment provided by the Grantee to subscribers, unless the defect or malfunction was caused by the subscriber.

5. The Grantee must determine the nature of the problem within 24 hours after commencing work and resolve all cable-system related problems within three business days, unless technically infeasible.

D. Billing and Information Standards

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

2. To ensure that subscribers are fully informed of the charges they will incur, both current and potential subscribers must, in their telephonic and written

communications with Grantee's representatives, be quoted rates and charges that are inclusive of all applicable franchise fees, utility users tax, and any other fees that are imposed upon a subscriber.

3. The first billing to a subscriber after a new installation or service change must be prorated based upon when the new or changed service commenced. Subscribers must not be charged a late fee or otherwise penalized for any failure attributable to the Grantee, including the failure to bill the subscriber correctly and in a timely manner.

4. In case of a billing dispute, the Grantee must respond in writing to a written complaint from a subscriber within 10 days after receiving the complaint at the office specified on the billing statement for receiving that complaint.

5. If a subscriber in good faith disputes all or any part of a billing, the subscriber has the option of withholding the disputed amount without the threat of disconnection until the dispute is resolved, provided that:

a. The subscriber pays all undisputed charges;

b. The subscriber provides written notification to Grantee of the dispute in a timely manner; and

c. The subscriber cooperates in determining the appropriateness of the charges that are in dispute.

6. The Grantee must, upon request from the subscriber, provide a credit or refund to a subscriber whose service has been interrupted for two hours or more in any one day by other than a planned outage as to which the subscriber has received reasonable advance notice. This credit or refund will be equal to a pro-rata share of the subscriber's monthly billing for one full day. All credits for service must be issued no later than the customer's next billing cycle following the determination that a credit is warranted. For subscribers terminating service, refunds must be issued promptly, but no later than 30 days after the return of any Grantee-supplied equipment. Failure to provide credits or refunds as required by this section will entitle the subscriber to an additional \$10 rebate.

7. Late fees imposed by the Grantee must not exceed the amount authorized under California law.

8. Subject to prior review by the City, the Grantee must provide written information on each of the following

matters at the time of the installation of service, at least annually to all subscribers, and at any time upon request:

- a. Products and services offered.
- b. Prices and options for programming services and conditions of subscription to programming and other services.
- c. Installation and service maintenance policies.
- d. Instructions on the use of the cable service.
- e. Channel positions of programming carried on the cable system.
- f. Billing and complaint procedures, including the address and telephone number of both the Grantee's and the City's office designated for dealing with cable-related complaints.
- g. Consumer protection and service standards and penalties for noncompliance, which standards must include procedures for refunds and credits, disconnection and termination of service, and the scheduling of service calls.

9. Subscribers must be notified of any changes in rates, programming services, or channel positions as soon as possible through announcements on the cable system and in writing. Notice must be given to subscribers a minimum of 30 days in advance of those changes if the change is within the control of the Grantee. In addition, the Grantee must notify subscribers through announcements on the cable system and in writing 30 days in advance of any significant changes in the information required above in subsection (8).

10. The Grantee must offer to subscribers the option to receive an A/B switch at the time of initial cable service installation and must provide to subscribers written information on the use of that switch. The Grantee may charge a reasonable price for the switch. Upon subscriber request, the Grantee must provide an A/B switch after the initial installation of cable service. If the subscriber requests installation of a switch in order to receive broadcast television without a cable hookup, the Grantee may charge reasonable fees for that installation and equipment.

11. The Grantee must maintain a public file containing all notices provided to subscribers under these consumer protection and service standards and all promotional offers made by Grantee to subscribers. These documents must be

maintained for a minimum period of four years.

E. Verification of Compliance with Standards

1. Upon 15 days prior written notice, the City may require the Grantee to provide a written report demonstrating its compliance with any of the consumer protection and service standards specified in this Section 18.04.050. The Grantee must provide sufficient documentation to enable the City to verify compliance.

2. A repeated and verifiable pattern of noncompliance with the consumer protection and service standards of this Section 18.04.050, after the Grantee's receipt of written notice and an opportunity to cure, may be deemed a material breach of the franchise agreement.

F. Subscriber Complaints and Disputes

1. The Grantee must establish written procedures for receiving, acting upon, and resolving subscriber complaints without intervention by the City. The written procedures must prescribe the manner in which a subscriber may submit a complaint, either verbally or in writing, specifying the subscriber's grounds for dissatisfaction. The Grantee must file a copy of these procedures with the City.

2. Grantee must maintain a log or similar written record that lists the date and time of each customer complaint, identifies the subscriber, describes the nature of the complaint, and specifies what action was taken, and when, in response to the complaint. This written record must be maintained at the Grantee's local office for a period of three years and must be available during regular business hours for review by the City's authorized representative in order to determine the Grantee's compliance with the City's consumer protection and service standards.

3. All subscribers have the right to continue receiving service so long as their financial and other obligations to the Grantee are honored. If the Grantee elects to rebuild, modify, or sell the system, or if the City gives notice of intent to terminate or not to renew the franchise, the Grantee must act so as to ensure that all subscribers receive service while the franchise remains in force.

4. Upon a change of control of the Grantee, or if a new operator acquires the cable system, the original Grantee must cooperate with the City, the new Grantee, or the new operator in maintaining continuity of service to all subscribers. During that transition period, the Grantee is entitled to the revenues derived from its operation of the cable system.

G. Disconnection/Downgrades

1. A subscriber may terminate or downgrade service at any time, and the Grantee must promptly comply with the subscriber's request within five days or at the time requested by the subscriber. No period of notice prior to voluntary termination or downgrade of service may be required of subscribers. Grantee ~~will impose no charges for the voluntary~~ may not impose any fee for termination of service or downgrade of service, unless a visit to the subscriber's premises is required to remove a converter box or other equipment or property owned by Grantee.

2. The Grantee must provide each new subscriber with a three-day right to rescind the subscriber's order for service, which right will commence on the day following the date on which the order is placed; provided, that this right may not be exercised after the service ordered has been activated.

3. Every subscriber who is billed for Grantee's services will have not less than 15 days from the date that the bill is mailed to pay the invoiced charges. Payments must be promptly posted by the Grantee to subscribers' accounts. Residential service may not be disconnected by Grantee for nonpayment of a delinquent account without 15 days prior written notice. That notice may not be mailed until after the sixteenth day from the date that the bill was mailed to the subscriber. No late charge may be assessed by the Grantee earlier than the twenty-second day after the date that the bill was mailed to the subscriber. If the subscriber pays all past due amounts, including late charges, before any scheduled disconnection date, the Grantee may not disconnect service. If service is disconnected for nonpayment of past due fees or charges, the Grantee must promptly reinstate service upon payment in full by the subscriber of all such fees and charges, including late charges. Residential service may be disconnected only on those days and at those times when the subscriber can contact a customer service representative of the Grantee, either in person or by telephone.

4. Notwithstanding the requirements of subsection (3) above, the Grantee may immediately disconnect service to a subscriber if the subscriber is damaging or destroying the Grantee's cable system or equipment. In the event

of disconnection on such grounds, the Grantee will resume service to the subscriber upon receiving adequate assurances that the subscriber has ceased the practices or conduct that resulted in disconnection and has paid all proper fees and charges, including any amounts reasonably owed the Grantee for the damage caused by the subscriber.

5. The Grantee may also disconnect service to a subscriber when signal leakage occurs that exceeds federal limits. If service is disconnected, the Grantee will immediately restore service without charge upon the satisfactory correction of the signal leakage problem.

6. Upon termination of service to a subscriber, the Grantee will remove its equipment from the subscriber's premises within 30 days. The equipment will be deemed abandoned if it is not removed within such time period unless the Grantee has been denied access to the subscriber's premises.

7. Grantee must issue security or subscriber deposit refund checks promptly, but no later than 45 days following the termination of service, less any deductions authorized by law.

H. Changes in Service

Except as otherwise provided by federal law, subscribers must not be required to pay any additional fee or charge, other than the regular service fee and a nominal charge for service upgrades, in order to receive the services selected. No charge may be imposed for any service or product that the subscriber has not affirmatively selected. Payment of the regular monthly bill will not by itself constitute an affirmative selection.

I. Deposits

The Grantee may require a reasonable, nondiscriminatory deposit on equipment provided to subscribers, which deposit must not exceed the actual replacement cost of that equipment. Such deposits must be placed in an interest bearing account. The deposit must be returned, with interest earned to the date of repayment, within 30 days after the equipment is returned to the Grantee.

J. Parental Control Option and Channel Scrambling

1. The Grantee must provide parental control devices to all subscribers who desire to block the video or audio portion of any programming that the subscriber finds objectionable. Such devices will be provided at no charge to the subscriber, unless otherwise required by federal law or unless a

converter box is required to be installed for the purpose of providing the parental control device.

2. Grantee must provide subscribers with at least 30 days prior written notice of any proposed scrambling or descrambling of a channel that carries R-rated or similar adult programming.

K. Privacy Rights of Subscribers

1. Grantee must at all times protect the privacy rights of all subscribers in accordance with applicable state and federal laws, including the provisions of 47 U.S.C. 551 of the Communications Act.

2. At least annually, Grantee must provide notice to each subscriber in the form of a separate, written statement that clearly and conspicuously informs the subscriber of the following:

a. The nature of personal-identity information collected or to be collected with respect to the subscriber and the nature of the use of that information.

b. The nature, frequency, and purpose of any disclosure that may be made of that information, including an identification of the types of persons to whom the disclosure may be made.

c. The period during which that information will be maintained by the Grantee.

d. The times and place at which the subscriber may have access to that information in accordance with federal and state law.

e. The limitations provided in federal and state law with respect to the collection and disclosure of that information by the Grantee and the rights of the subscriber under applicable law.

3. The following provisions apply to the protection of information relating to subscriber preferences:

a. Grantee may not disclose individual subscriber preferences, viewing habits, beliefs, philosophy, creeds, or religious beliefs to any third person, firm, agency, governmental unit, or investigating agency without court authority or the prior written consent of the subscriber.

b. The subscriber's written consent, if given, must be limited to a period of time not to exceed one

year, or a term agreed upon by the Grantee and the subscriber.

c. The Grantee may not condition the delivery or receipt of cable services to any subscriber on any such written consent.

d. A subscriber may revoke, without penalty or cost, any consent previously given by delivering to the Grantee written notice of the subscriber's intent to so revoke.

4. The Grantee may not disclose, or sell, or permit the disclosure or sale of its subscriber lists without the prior affirmative written consent of each subscriber; provided that the Grantee may use its subscriber lists as necessary for the construction, marketing, and maintenance of the Grantee's services and facilities authorized by a franchise, and the concomitant billing of subscribers for cable services; and provided further that, consistent with applicable law, the City may use Grantee's subscriber lists for the purpose of communicating with subscribers in connection with matters relating to the operation, management, and maintenance of the cable system, except as may be otherwise provided in Section 631 of the Communications Act.

5. The prohibitions contained in this paragraph (K) apply to the Grantee, its affiliates and subsidiaries, and to the officers, directors, employees, agents, and holders of equity interests in the Grantee and its affiliates and subsidiaries.

L. Nondiscrimination

Grantee may not unlawfully discriminate between or among subscribers within one type or class in the availability of services, at either standard or differential rates set forth in published rate schedules. No charges may be made for services except as set forth in published schedules that are available for inspection at Grantee's office, quoted by Grantee on the telephone, or displayed or communicated to existing or prospective subscribers. This paragraph does not apply to offers or promotions of limited duration.

M. Entry on Private Property

Whenever possible, Grantee will provide verbal or written notice to affected property owners before entering upon their property. The notice must include Grantee's telephone number that property owners may call with regard to any matters related to the proposed entry.

N. Additional Requirements

1. If the Grantee fails to operate the system for seven consecutive days without the City's prior approval or subsequent ratification, the City may, at its sole option, operate the system or designate an operator until the Grantee restores service under conditions acceptable to the City, or until a permanent operator is selected. If the City satisfies this obligation on behalf of the Grantee, then during that time period the City is entitled to collect all revenues derived from the system, and the Grantee will indemnify the City against any damages that the City may suffer as a result of the Grantee's failure to operate the system.

2. Additional standards relating to service, consumer protection, and response by the Grantee to subscriber complaints not otherwise provided for in this Section 18.04.050 may be set forth in the franchise, license, lease, or similar written agreement, or by separate ordinance, and the Grantee must comply with those standards in the operation of the cable television system. A verified and continuing pattern of noncompliance may be deemed a material breach of the written agreement, provided that the Grantee receives written notice and an opportunity to cure before any penalty or other remedy is imposed.

3. Grantee may not scramble or otherwise encrypt signals carried on the basic service tier. Requests for waivers of this prohibition must demonstrate either a substantial problem with theft of basic tier service or a compelling need to scramble basic signals for other reasons. Grantee must also provide "open cable" specifications that allow the use of set-top boxes and encryption devices that are available for purchase in retail stores.

0. Penalties for Noncompliance

1. Purpose. The purpose of this paragraph (0) is to authorize the imposition of penalties for the violation of the customer service standards established by this Section 18.04.050. These penalties are in addition to any other remedies provided by this chapter, the franchise, license, lease, or similar written agreement, or any other law, and the City has the discretion to elect the remedy that it will apply. The imposition of penalties authorized by this paragraph will not prevent the City or any other affected party from exercising any other remedy to the extent permitted by law, including but not limited to any judicial remedy as provided below by subsection (2) (d).

2. Administration, Appeals, and Penalties.

a. The City Manager or the City Manager's designee is authorized to administer this paragraph (0). Decisions by the City Manager to assess penalties against

the Grantee must be in writing and must contain findings supporting the decisions. Decisions by the City Manager are final, unless appealed to the City Council.

b. If the Grantee or any interested person is aggrieved by a decision of the City Manager, the aggrieved party may, within 10 days of the written decision, appeal that decision in writing to the City Council. The appeal letter must be accompanied by the fee established by the City Council for processing the appeal. The City Council may affirm, modify, or reverse the decision of the City Manager.

c. Schedule of Penalties. The following schedule of monetary penalties may be assessed against the Grantee for the material breach of the provisions of the customer service standards set forth in this Section 18.04.050, provided that the breach is within the reasonable control of the Grantee:

(i) For a first material breach, the maximum penalty is \$200 for each day of material breach, but not to exceed \$600 for each occurrence of material breach, irrespective of the number of customers affected.

(ii) For a second material breach of the same nature within a 12-month period for which the City has provided notice and a penalty has previously been assessed, the maximum penalty is \$400 for each day of the material breach, but not to exceed a cumulative total of \$1,200 for each occurrence of the material breach, irrespective of the number of customers affected.

(iii) For a third or further material breach of the same nature within a 12-month period for which the City has provided notice and a penalty has previously been assessed, the maximum penalty is \$1,000 for each day of the material breach, but not to exceed a cumulative total of \$3,000 for each occurrence of the material breach, irrespective of the number of customers affected.

(iv) The maximum penalties referenced above may be modified by the City and the Grantee in the franchise, license, lease, or similar agreement.

d. Judicial Remedy. This paragraph (O) does not preclude any affected party from seeking any judicial remedy available to that party without regard to this paragraph.

e. Notification of Breach. The City must give the Grantee written notice of any alleged breach of the consumer protection and service standards and allow the Grantee at least 30 days from receipt of the notice to remedy the

specified breach. For the purpose of assessing penalties, a material breach is deemed to have occurred for each day, following the expiration of the period for cure specified in the City's written notice, that any breach has not been remedied by the Grantee, irrespective of the number of customers affected.

P. Free Service for Noncompliance

Notwithstanding any other penalties or remedies provided by this Section 18.04.050, or any other law, the Grantee must provide the following months of free service to subscribers affected by the Grantee's failure to comply with the specified consumer protection and service standard:

1. One Month Free Service. The Grantee will provide one month of free service to each subscriber affected by the failure of the Grantee to timely and satisfactorily comply with any of the following requirements:

a. The pickup or replacement of converters or other equipment within 14 days after subscriber request. (Paragraph (B)(1)(k).)

b. Forty-eight hour notice of service interruption. (Paragraph (C)(1).)

c. Response time for system outages and inferior signal quality. (Paragraph (C)(2).)

d. Resolution of cable system related problems within three business days. (Paragraph (C)(5).) One additional month of free service will be provided for each seven-day period that the problem remains unresolved.

e. Written response to billing complaints. (Paragraph (D)(4).)

f. Credits and refunds. (Paragraph (D)(6).)

g. Provision of all required information to subscribers. (Paragraph (D)(8).)

h. Notification of rate, service, or channel changes. (Paragraph (D)(9).)

i. Completion of termination or downgrade of service. (Paragraph (G)(1).)

j. Provision of parental control devices. (Paragraph (J)(1).)

2. Three Months Free Service. The Grantee

will provide three months of free service to each subscriber affected by the Grantee's disconnection of subscriber service without just cause, provided that Grantee fails to restore service within four hours after the disconnection. (Paragraph (G) (3).)

3. Definition of Free Service. The free service required by this paragraph (P) relates to the service tier or tiers subscribed-to by the affected subscriber.

CHAPTER 18.06. OPEN VIDEO SYSTEMS

18.06.010 Applicability

The provisions of this chapter apply to an open video system operator, as defined below in Chapter 18.10, that intends to deliver video programming to consumers in the City over an open video system.

18.06.020 Application Required

A. Before commencing the delivery of video programming services to consumers in the City over an open video system, the open video system operator must file an application with the City. That application must include or be accompanied by the following, as applicable:

1. The identity of the applicant, including all affiliates of the applicant.
2. Copies of FCC Form 1275, all "Notices of Intent" filed under 47 CFR 76.1503(b)(1), and the Order of the FCC, all of which relate to certification of the applicant to operate an open video system in accordance with Section 653(a)(1) of the Communications Act and the FCC's rules.
3. The area or areas of the City that the applicant desires to serve.
4. A description of the open video system services that will be offered by the applicant over its existing or proposed facilities.
5. A description of the transmission medium that will be used by the applicant to deliver the open video system services.
6. Information in sufficient detail to establish the applicant's technical qualifications, experience, and expertise regarding the ownership and operation of the open video system described in the application.

7. Financial statements prepared in accordance with generally accepted accounting principles that demonstrate the applicant's financial ability to:

a. Construct, operate, maintain and remove any new physical plant that is proposed to be constructed in the City.

b. Comply with the City's public, educational, and governmental access requirements as specified below in Section 18.06.040 B(4).

c. Comply with the City's requirement that gross revenue fees be paid in the sum of 5 percent (5%), as specified below in Section 18.06.040 (B) (2).

8. An accurate map showing the location of any existing telecommunications facilities in the City that the applicant intends to use, to purchase, or to lease.

9. If the applicant's operation of the open video system will require the construction of new physical plant in the City, the following additional information must be provided:

a. A preliminary construction schedule and completion dates.

b. Preliminary engineering plans, specifications, and a network map of any new facilities to be constructed in the City, in sufficient detail to identify:

(i) The location and route requested for the applicant's proposed facilities.

(ii) The locations, if any, for interconnection with the facilities of other telecommunications service providers.

(iii) The specific structures, improvements, facilities, and obstructions, if any, that the applicant proposes to remove or relocate on a temporary or permanent basis.

c. The applicant's statement that, in constructing any new physical plant, the applicant will comply with all applicable ordinances, rules, and regulations of the City, including the payment of all required permit and processing fees.

10. The information and documentation that is required to be submitted to the City by a video provider, as specified below in paragraph (B) of Section 18.08.020.

11. Such additional information as may be requested by the City Manager.

12. A nonrefundable filing fee in an amount established by resolution of the City Council.

B. If any item of information specified above in paragraph (A) is determined under paramount federal or state law to be unlawful, the City Manager is authorized to waive the requirement that such information be included in the application.

18.06.030 Review of the Application

Within 30 days after receipt of an application filed under Section 18.06.020 that is deemed to be complete, the City Manager will give written notice to the applicant of the City's intent to negotiate an agreement setting forth the terms and conditions under which the operation of the proposed open video system will be authorized by the City. The commencement of those negotiations will be on a date that is mutually acceptable to the City and to the applicant.

18.06.040 Agreement Required

A. No video programming services may be provided in the City by an open video system operator unless the operator and the City have executed a written agreement, which may be designated as a franchise, setting forth the terms and conditions under which the operation of the proposed open video system will be authorized by the City.

B. The agreement between the City and the open video system operator may contain terms and conditions that relate to the following subject matters, to the extent that such terms, conditions, and subject matters are not preempted by federal statute or regulations:

1. The nature, scope, and duration of the agreement, including provisions for its renewal or extension.

2. The obligation of the open video system operator to pay to the City, at specified times, fees on the gross revenue received by the operator, as authorized by 47 CFR

76.1511, in accordance with the following standards and procedures:

a. The amount of the fees on the gross revenue will be five percent (5%), and will be paid in lieu of the franchise fees authorized under Section 622 of the Communications Act.

b. The term "gross revenue" means (i) all gross revenue received by an open video system operator or its affiliates, including all revenue received from subscribers and all carriage revenue received from unaffiliated video programming providers; and (ii) all advertising revenue received by the operator or its affiliates in connection with the provision of video programming, where such revenue is included in the calculation of the cable franchise fee paid to the City by the franchised cable operator. The term "gross revenue" does not include revenue, such as subscriber or advertising revenue, collected by unaffiliated video programming providers.

3. The obligation of the open video system operator to comply with requirements relating to information collection and recordkeeping, accounting procedures, reporting, periodic audits, and inspection of records in order to ensure the accuracy of the fees on the gross revenue that are required to be paid as specified above in paragraph (B) (2).

4. The obligation of the open video system operator to meet the City's requirements with respect to public, educational, and governmental access channel capacity, services, facilities, and equipment, as provided for in 47 CFR 76.1505. In this regard, the following standards and procedures are applicable:

a. The open video system operator is subject to the same public, educational, and governmental access requirements that apply within the cable television franchise service area with which its system overlaps.

b. The open video system operator must ensure that all subscribers receive all public, educational, and governmental access channels within the franchise service area in which the City's subscribers are located.

c. The open video system operator may negotiate with the City to establish the operator's obligations with respect to public, educational, and governmental access channel capacity, services, facilities, and equipment. These negotiations may include the City's franchised cable operator if the City, the open video system operator, and the franchised cable operator so desire.

d. If the open video system operator and the City are unable to reach an agreement regarding the operator's obligations with respect to public, educational, and governmental access channel capacity, services, facilities, and equipment within the City's jurisdiction, then the following obligations will be imposed:

(i) The open video system operator

must satisfy the same public, educational, and governmental access obligations as the City's franchised cable operator by providing the same amount of channel capacity for public, educational, and governmental access and by matching the City's franchised cable operator's annual financial contributions in support of public, educational, and governmental access services, facilities, and equipment that are actually used by the City. For in-kind contributions, such as cameras or production studios, the open video system operator may satisfy its statutory obligation by negotiating mutually agreeable terms with the City's franchised cable operator, so that public, educational, and governmental access services to the City are improved or increased. If such terms cannot be agreed upon, the open video system operator must pay to the City the monetary equivalent of the franchised cable operator's depreciated in-kind contribution, or, in the case of facilities, the annual amortization value. Any matching contributions provided by the open video system operator must be used to fund activities arising under Section 611 of the Communications Act.

(ii) The City will impose upon the open video system operator the same rules and procedures that it imposes upon the franchised cable operator with regard to the open video system operator's use of channel capacity designated for public, educational, and governmental access use when that capacity is not being used for such purposes.

e. The City's franchised cable operator is required under federal law to permit the open video system operator to connect with its public, educational, and governmental access channel feeds. The open video system operator and the franchised cable operator may decide how to accomplish this connection, taking into consideration the physical and technical characteristics of the cable and the open video systems involved. If the franchised cable operator and the open video system operator cannot agree on how to accomplish the connection, the City has the right to decide. The City may require that the connection occur on City-owned property or on public rights-of-way.

f. All costs of connection to the franchised cable operator's public, educational, and governmental access channel feed must be borne by the open video system operator. These costs will be counted towards the open video system operator's matching financial contributions set forth above in subparagraph (d)(i).

g. The City will not impose upon the open video system operator any public, educational, or governmental access obligations that are greater than those imposed upon the franchised cable operator.

h. If there is no existing franchised

cable operator, the provisions of 47 CFR 76.1505(d)(6) will be applicable in determining the obligations of the open video system operator.

i. The open video system operator must adjust its system to comply with new public, educational, and access obligations imposed on the City's franchised cable operator following a renewal of the cable television franchise; provided, however, that the open video system operator will not be required to displace other programmers using its open video system to accommodate public, educational, and governmental access channels. The open video system operator must comply with such new public, educational, and governmental access obligations whenever additional capacity is or becomes available, whether it is due to increased channel capacity or to decreased demand for channel capacity.

5. If the City and the open video system operator cannot agree on the application of the FCC's rules regarding the open video system operator's obligations to provide public, educational, and governmental access under the provisions of subsection (4) set forth above, then either party may file a complaint with the FCC in accordance with the dispute resolution procedures set forth in 47 CFR 76.1514. No agreement will be executed by the City until the dispute has been finally resolved.

6. If the open video system operator intends to maintain an institutional network, as defined in Section 611(f) of the Communications Act, the City will require that educational and governmental access channels be designated on that institutional network to the same extent that those channels are designated on the institutional network of the City's franchised cable operator. In addition, to the extent authorized by federal law, the open video system operator may be required by the City to satisfy the same financial obligations and other requirements that are imposed upon the franchised cable operator to support data-transmission and related services that are provided by the institutional network.

7. The authority of an open video system provider to exercise editorial control over any public, educational, or governmental use of channel capacity will be restricted in accordance with the provisions of 47 CFR 76.1505(f).

8. The obligation of the open video system operator to comply with all applicable federal, state, and local statutes, ordinances, and regulations relating to customer service standards, including the Cable Television and Video Customer Service and Information Act (Government Code 53054, et seq.), the Video Customer Service Act (Government Code

53088, et seq.), and Section 18.04.050 of Chapter 18.04 of this title.

9. If new physical plant is proposed to be constructed within the City, the obligation of the open video system operator to comply with the following rights-of-way use and management responsibilities that are also imposed by the City upon other telecommunications service providers in a nondiscriminatory and competitively neutral manner:

a. Compliance with all applicable City codes, including applications for excavation, encroachment, and construction permits and the payment of all required permit and inspection fees.

b. The coordination of construction activities.

c. Compliance with established standards and procedures for constructing lines across private property.

d. Compliance with all applicable insurance and indemnification requirements.

e. The repair and resurfacing of construction-damaged streets.

f. Compliance with all public safety requirements that are applicable to telecommunications service providers using public property or public rights-of-way.

10. Acts or omissions constituting breaches or defaults of the agreement, and the applicable penalties, liquidated damages, and other remedies, including fines or the suspension, revocation, or termination of the agreement.

11. Requirements relating to the sale, assignment, or transfer of the open video system.

12. Requirements relating to the open video system operator's compliance with and implementation of state and federal laws, rules, and regulations pertaining to the operation of the open video system.

13. Such additional requirements, conditions, terms, policies, and procedures as may be mutually agreed upon by the City and the open video system operator and that will, in the judgment of the City Council, best serve the public interest and protect the public health, welfare, and safety.

CHAPTER 18.08. OTHER VIDEO AND TELECOMMUNICATIONS
SERVICES AND SYSTEMS

18.08.010 Other Multichannel Video Programming
Distributors

The term "cable system," as defined in federal law and as set forth in Chapter 18.10 below, does not include a facility that serves subscribers without using any public rights-of-way. Consequently, the categories of multichannel video programming distributors identified below are not deemed to be "cable systems" and are therefore exempt from the City's franchise, lease, and license requirements and from certain other local regulatory provisions authorized by federal law, provided that their distribution or transmission facilities do not involve the use of the City's public rights-of-way.

A. Multichannel multipoint distribution service ("MMDS"), also known as "wireless cable," which typically involves the transmission by an FCC-licensed operator of numerous broadcast stations from a central location using line-of-sight technology.

B. Local multipoint distribution service ("LMDS"), another form of over-the-air wireless video service for which licenses are auctioned by the FCC, and which offers video programming, telephony, and data networking services.

C. Direct broadcast satellite ("DBS"), also referred to as "direct-to-home satellite services," which involves the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without the use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite. Local regulation of direct-to-home satellite services is further proscribed by the following federal statutory provisions:

1. 47 U.S.C. 303(v) confers upon the FCC exclusive jurisdiction to regulate the provision of direct-to-home satellite services.

2. Section 602 of the Communications Act states that a provider of direct-to-home satellite service is exempt from the collection or remittance, or both, of any tax or fee imposed by any local taxing jurisdiction on direct-to-home satellite service. The terms "tax" and "fee" are defined by federal statute to mean any local sales tax, local use tax, local intangible tax, local income tax, business license tax, utility tax, privilege tax, gross receipts tax, excise tax, franchise fees, local telecommunications tax, or any other tax, license, or fee that is imposed for the privilege of doing business,

regulating, or raising revenue for a local taxing jurisdiction.

18.08.020 Video Providers - Registration; Customer Service Standards

A. Unless the customer protection and customer service obligations of a video provider, as that term is defined in Chapter 18.10, are specified in a franchise, license, lease, or similar written agreement with the City, a video provider must comply with all applicable provisions of the following state statutes:

1. The Cable Television and Video Customer Service and Information Act (Government Code 53054, et seq.).

2. The Video Customer Service Act (Government Code 53088, et seq.).

B. All video providers that are operating in the City on the effective date of this title, or that intend to operate in the City after the effective date of this title, and are not required under applicable law to operate under a franchise, license, lease, or similar written agreement with the City, must register with the City. The registration form must include or be accompanied by the following:

1. The video provider's name, address, and local telephone numbers.

2. The names of the officers of the video provider.

3. A copy of the video provider's written policies and procedures relating to customer service standards and the handling of customer complaints, as required by Government Code 53054, et seq. These customer service standards must include, without limitation, standards regarding the following:

a. Installation, disconnection, service and repair obligations, employee identification, and service call response time and scheduling.

b. Customer telephone and office hours.

c. Procedures for billing, charges, refunds, and credits.

d. Procedures for termination of service.

e. Notice of the deletion of a programming service, the changing of channel assignments, or an increase in rates.

f. Complaint procedures and procedures for bill dispute resolution.

g. The video provider's written acknowledgement of its obligation under Government Code 53055.1 to provide to new customers a notice describing the customer service standards specified above in subparagraphs (a) through (f) at the time of installation or when service is initiated. The notice must also include, in addition to all of the information described above in subparagraphs (a) through (f), all of the following:

(i) A listing of the services offered by the video provider that clearly describes all levels of service and the rates for each level of service.

(ii) The telephone number or numbers through which customers may subscribe to, change, or terminate service, request customer service, or seek general or billing information.

(iii) A description of the rights and remedies that the video provider may make available to its customers if the video provider does not materially meet its customer service standards.

h. The video provider's written commitment to distribute annually to its employees and customers, and to the City, a notice describing the customer service standards specified above in subparagraphs (a) through (f). This annual notice must include the report of the video provider on its performance in meeting its customer service standards, as required by Government Code 53055.2.

4. Unless a video provider is exempt under federal law from its payment, a registration fee in an amount established by resolution of the City Council to cover the reasonable costs incurred by the City in reviewing and processing the registration form.

5. In addition to the registration fee specified above in subsection (4), the written commitment of the video provider to pay to the City, when due, all costs and expenses reasonably incurred by the City in resolving any disputes between the video provider and its subscribers, which dispute resolution is mandated by Government Code 53088.2(o).

C. The customer service obligations imposed upon

video providers by the Video Customer Service Act (Government Code 53088 et seq.) consist of the following:

1. Every video provider must render reasonably efficient service, make repairs promptly, and interrupt service only as necessary.

2. All video provider personnel contacting subscribers or potential subscribers outside the office of the provider must be clearly identified as associated with the video provider.

3. At the time of installation, and annually thereafter, all video providers must provide to all customers a written notice of the programming offered, the prices for that programming, the provider's installation and customer service policies, and the name, address, and telephone number of the City's office that is designated for receiving complaints.

4. All video providers must have knowledgeable, qualified company representatives available to respond to customer telephone inquiries Monday through Friday, excluding holidays, during normal business hours.

5. All video providers must provide to customers a toll-free or local telephone number for installation, service, and complaint calls. These calls must be answered promptly by the video providers.

6. All video providers must render bills that are accurate and understandable.

7. All video providers must respond promptly to a complete outage in a customer's service. The response must occur within 24 hours of the reporting of such outage to the provider, except in those situations beyond the reasonable control of the video provider. A video provider will be deemed to respond to a complete outage when a company representative arrives at the outage location within 24 hours and begins to resolve the problem.

8. All video providers must provide a minimum of 30 days' written notice before increasing rates or deleting channels. All video providers must make every reasonable effort to submit the notice to the City in advance of the distribution to customers. The 30-day notice is waived if the increases in rates or deletion of channels are outside the control of the video provider. In those cases, the video provider must make reasonable efforts to provide customers with as much notice as possible.

9. Every video provider must allow every

residential customer who pays his or her bill directly to the video provider at least 15 days from the date the bill for services is mailed to the customer, to pay the listed charges unless otherwise agreed to pursuant to a residential rental agreement establishing tenancy. Customer payments must be posted promptly. No video provider may terminate residential service for nonpayment of a delinquent account unless the video provider furnishes notice of the delinquency and impending termination at least 15 days prior to the proposed termination. The notice must be mailed, postage prepaid, to the customer to whom the service is billed. Notice must not be mailed until the 16th day after the date the bill for services was mailed to the customer. The notice of delinquency and impending termination may be part of a billing statement. No video provider may assess a late fee any earlier than the 22nd day after the bill for service has been mailed.

10. Every notice of termination of service pursuant to the preceding subsection 9 must include all of the following information:

- a. The name and address of the customer whose account is delinquent.
- b. The amount of the delinquency.
- c. The date by which payment is required in order to avoid termination of service.
- d. The telephone number of a representative of the video provider who can provide additional information and handle complaints or initiate an investigation concerning the service and charges in question.

Service may only be terminated on days in which the customer can reach a representative of the video provider either in person or by telephone.

11. Any service terminated without good cause must be restored without charge for the service restoration. Good cause includes, but is not limited to, failure to pay, payment by check for which there are insufficient funds, theft of service, abuse of equipment or system personnel, or other similar subscriber actions.

12. All video providers must issue requested refund checks promptly, but no later than 45 days following the resolution of any dispute, and following the return of the equipment supplied by the video provider, if service is terminated.

13. All video providers must issue security or customer deposit refund checks promptly, but no later than 45

days following the termination of service, less any deductions permitted by law.

14. Video providers must not disclose the name and address of a subscriber for commercial gain to be used in mailing lists or for other commercial purposes not reasonably related to the conduct of the businesses of the video providers or their affiliates, unless the video providers have provided to the subscriber a notice, separate or included in any other customer notice, that clearly and conspicuously describes the subscriber's ability to prohibit the disclosure. Video providers must provide an address and telephone number for a local subscriber to use without toll charge to prevent disclosure of the subscriber's name and address.

D. As authorized by Government Code 53088(q), the following schedule of penalties is adopted. These penalties may be imposed for the material breach by a video provider of the consumer protection and service standards that are set forth above in paragraph (C), provided that the breach is within the reasonable control of the video provider. These penalties are in addition to any other remedies authorized by this chapter or by any other law, and the City has discretion to elect the remedy that it will apply. The imposition of penalties authorized by this paragraph (D) will not prevent the City or any other affected party from exercising any other remedy to the extent permitted by law, including but not limited to any judicial remedy as provided below by subsection (2).

1. Schedule of Penalties.

a. For a first material breach: the maximum penalty is \$200 for each day of material breach, but not to exceed a cumulative total of \$600 for each occurrence of material breach, irrespective of the number of customers affected.

b. For a second material breach of the same nature for which a monetary penalty was previously assessed within the preceding 12-month period: the maximum penalty is \$400 per day, not to exceed a cumulative total of \$1,200 for each occurrence of the material breach, irrespective of the number of customers affected.

c. For a third or further material breach of the same nature for which a monetary penalty was previously assessed within the preceding 12-month period: the maximum penalty is \$1,000 per day, not to exceed a cumulative total of \$3,000 for each occurrence of the material breach, irrespective of the number of customers affected.

d. For the failure of a video provider

to distribute the annual notice required by Government Code 53055.1: the maximum penalty is \$500 for each year in which the notice is not distributed as required by state statute.

e. The maximum penalties referenced above may be increased by any additional amount authorized by state law.

2. Judicial Remedies Not Affected.

The imposition of penalties in accordance with the provisions of subsection (1) above does not preclude any affected party from pursuing any judicial remedy that is available to that party.

3. Administration, Notice, and Appeal.

a. The City Manager or the City Manager's designee is authorized to administer this paragraph (D). Decisions by the City Manager to assess penalties against a video provider must be in writing and must contain findings supporting the decisions. Decisions by the City Manager are final, unless appealed to the City Council.

b. If the video provider or any interested person is aggrieved by a decision of the City Manager, the aggrieved party may, within 10 days of the written decision, appeal that decision in writing to the City Council. The appeal letter must be accompanied by the fee established by the City Council for processing the appeal. The City Council may affirm, modify, or reverse the decision of the City Manager.

c. The imposition of monetary penalties under subsection (1) above is subject to the following requirements and limitations:

(i) The City must give the video provider written notice of any alleged material breach and must allow the video provider at least 30 days from receipt of that notice to remedy the breach.

(ii) For the purpose of assessing monetary penalties, a material breach will be deemed to have occurred for each day, following the expiration of the period for cure specified in subparagraph (i) above, that the material breach has not been remedied by the video provider, irrespective of the number of customers affected.

18.08.030 Antennas For Telecommunications Services

Title 17 of this Code sets forth the City's regulatory requirements relating to the siting and construction of the following categories of antennas that are commonly used in

providing or receiving telecommunications services:

A. Satellite earth station antennas, which are parabolic or dish-shaped antennas or devices that are designed for over-the-air reception of radio or television broadcast signals, multichannel multipoint distribution service, or direct broadcast satellite services.

B. Amateur radio station antennas, which are typically placed on a support structure and are used solely for the purpose of transmitting and receiving radio signals in connection with the operation of an amateur radio station in accordance with licenses issued by the FCC.

C. Wireless telecommunications antenna facilities, which are unstaffed facilities for the transmission or reception of wireless telecommunications services, commonly consisting of an antenna array, connection cables, a support structure to achieve the necessary elevation, and an equipment facility to house accessory equipment, which may include cabinets, pedestals, shelters, and similar protective structures.

D. Antenna arrays, which consist of one or more rods, poles, panels, discs, or similar devices used for the transmission or reception of radio frequency signals, including the operation of digital radio communications systems.

18.08.040 Telecommunications Service Provided By Telephone Corporations

A. The City Council finds and determines as follows:

1. The federal Telecommunications Act of 1996 preempts and declares invalid all state rules that restrict entry or limit competition in both local and long-distance telephone service.

2. The California Public Utilities Commission ("CPUC") is primarily responsible for the implementation of local telephone competition, and it issues certificates of public convenience and necessity to new entrants that are qualified to provide competitive local telephone exchange services and related telecommunications service, whether using their own facilities or the facilities or services provided by other authorized telephone corporations.

3. Section 234(a) of the California Public Utilities Code defines a "telephone corporation" as "every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state."

4. Section 616 of the California Public

Utilities Code provides that a telephone corporation "may condemn any property necessary for the construction and maintenance of its telephone line."

5. Section 2902 of the California Public Utilities Code authorizes municipal corporations to retain their powers of control to supervise and regulate the relationships between a public utility and the general public in matters affecting the health, convenience, and safety of the general public, including matters such as the use and repair of public streets by any public utility and the location of the poles, wires, mains, or conduits of any public utility on, under, or above any public streets.

6. Section 7901 of the California Public Utilities Code authorizes telephone and telegraph corporations to construct telephone or telegraph lines along and upon any public road or highway, along or across any of the waters or lands within this state, and to erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters.

7. Section 7901.1 of the California Public Utilities Code confirms the right of municipalities to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed, which control must be applied to all entities in an equivalent manner, and may involve the imposition of fees.

8. Section 50030 of the California Government Code provides that any permit fee imposed by a city for the placement, installation, repair, or upgrading of telecommunications facilities, such as lines, poles, or antennas, by a telephone corporation that has obtained all required authorizations from the CPUC and the FCC to provide telecommunications services, must not exceed the reasonable costs of providing the service for which the fee is charged, and must not be levied for general revenue purposes.

B. In recognition of and in compliance with the statutory authorizations and requirements set forth above in paragraph A, the following regulatory provisions are applicable to a telephone corporation that desires to provide telecommunications service by means of facilities that are proposed to be constructed within the City's public rights-of-way:

1. The telephone corporation must apply for and obtain, as may be applicable, an excavation permit, an encroachment permit, or a building permit ("ministerial permit.")

2. In addition to the information required by this Code in connection with an application for a ministerial permit, a telephone corporation must submit to the City the following supplemental information:

a. A copy of the certificate of public convenience and necessity issued by the CPUC to the applicant, and a copy of the CPUC decision that authorizes the applicant to provide the telecommunications service for which the facilities are proposed to be constructed in the City's public rights-of-way.

b. If the applicant has obtained from the CPUC a certificate of public convenience to operate as a "competitive local carrier," the following additional requirements are applicable:

(i) As required by Decision No. 95-12-057 of the CPUC, the applicant must establish that it has filed with the City in a timely manner a quarterly report that describes the type of construction and the location of each construction project proposed to be undertaken in the City during the calendar quarter in which the application is filed, which information is sufficient to enable the City to coordinate multiple projects, as may be necessary.

(ii) If the applicant's proposed construction project will extend beyond the utility rights-of-way into undisturbed areas or other rights-of-way, the applicant must establish that it has filed a petition with the CPUC to amend its certificate of public convenience and necessity and that the proposed construction project has been subjected to a full-scale environmental analysis by the CPUC, as required by Decision No. 95-12-057 of the CPUC.

(iii) The applicant must inform the City whether its proposed construction project will be subject to any of the mitigation measures specified in the Negative Declaration ["Competitive Local Carriers (CLCs) Projects for Local Exchange Communication Service throughout California"] or to the Mitigation Monitoring Plan adopted in connection with Decision No. 95-12-057 of the CPUC. The City's issuance of a ministerial permit will be conditioned upon the applicant's compliance with all applicable mitigation measures and monitoring requirements imposed by the CPUC upon telephone corporations that are designated as "competitive local carriers."

C. In recognition of the fact that numerous excavations in the public rights-of-way diminish the useful life of the surface pavement, and for the purpose of mitigating the adverse impacts of numerous excavations on the quality and longevity of public street maintenance within the City, the following policies and procedures are adopted:

1. The City Manager is directed to ensure that all public utilities, including telephone corporations, comply with all local design, construction, maintenance and safety standards that are contained within, or are related to, a ministerial permit that authorizes the construction of facilities within the public rights-of-way.

2. The City Manager is directed to coordinate the construction and installation of facilities by public utilities, including telephone corporations, in order to minimize the number of excavations in the public rights-of-way. In this regard, based upon projected plans for street construction or renovation projects, the City Manager is authorized to establish on a quarterly basis one or more construction time periods or "windows" for the installation of facilities within the public rights-of-way. Telephone corporations and other public utilities that submit applications for ministerial permits to construct facilities after a predetermined date may be required to delay such construction until the next quarterly "window" that is established by the City.

CHAPTER 18.10. DEFINITIONS

18.10.010 Defined Terms and Phrases

A. For the purposes of this Title 18, the words, terms, phrases, and their derivations set forth in this chapter have the meanings set forth below. Words used in the present tense include the future tense, and words in the singular include the plural number.

"Affiliate" means, when used in relation to any person, another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person. For purposes of this definition, the term "own" means to own an equity interest, or its equivalent, of 10 percent or more.

"Cable service" means the one-way transmission to subscribers of video programming, or other programming services, and subscriber interaction, if any, that is required for the selection or use of that video programming or other programming service. For the purposes of this definition, "video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station; and "other programming service" means information that a cable system operator makes available to all subscribers generally.

"Cable system," or "cable communications system" or "cable television 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 that includes video programming and that is provided to multiple subscribers within a community. The term "cable system" does not include:

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

(ii) a facility that serves subscribers without using any public right-of-way;

(iii) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Telecommunications Act of 1996, except that such facility will be considered a cable system (other than for purposes specified in Section 621(c) of the 1984 Cable Act) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;

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

(v) any facilities of an electric utility that are used solely for operating its electric utility system.

"Cable system operator" means any person or group of persons:

(i) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in that cable system; or

(ii) who otherwise controls or is responsible for, through any arrangement, the management and operation of that cable system.

"City" means the City of Pasadena as represented by its City Council or by any delegate acting within the scope of its delegated authority.

"_____ CFR _____" means the Code of Federal Regulations. Thus, the citation of "47 CFR 80.1" refers to Title 47, part 80, section 1, of the Code of Federal Regulations.

"Communications Act" means the Communications Act of 1934 (47 U.S.C. 151, et seq.), as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996.

"FCC" or "Federal Communications Commission" means the federal administrative agency, or any lawful successor, that is authorized to regulate telecommunications services and telecommunications service providers on a national level.

"Franchise" means an initial authorization, or the renewal of an initial authorization, issued by the City Council, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, or otherwise, that authorizes the construction or operation of a cable system or an open video system.

"Franchise fee" means any fee or assessment of any kind that is authorized by state or federal law to be imposed by the City on a Grantee as compensation in the nature of rent for the Grantee's use of the public rights-of-way. The term "franchise fee" does not include:

- (i) Any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Grantees or their services);
- (ii) Capital costs that are required by the franchise to be incurred by a Grantee for public, educational, or governmental access facilities;
- (iii) Costs or charges that are incidental to the award or enforcement of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or
- (iv) Any fee imposed under Title 17, United States Code.

"Franchise service area" or "service area" means the entire geographic area of the City as it is now constituted, or may in the future be constituted, unless otherwise specified in the ordinance or resolution granting a franchise, or in a franchise agreement.

"Grantee" means any person that is awarded a

franchise in accordance with this title, and that person's lawful successor, transferee, or assignee.

"Gross annual cable service revenues" means the annual gross revenues received by a Grantee from all operations of its cable television system within the City, excluding uncollected bad debt, refundable deposits, rebates or credits, and further excluding any sales, excise, or other taxes or charges that are required to be collected for direct pass-through to the local, state or federal government. Revenues identified and collected from subscribers as franchise fees may not be excluded from a Grantee's gross annual cable service revenues, unless otherwise provided by federal law.

"Gross annual telecommunications service revenues" means the annual revenues received by a Grantee from the operation of a cable system or an open video system to provide telecommunications services other than video programming services.

"Multichannel video programming distributor" or "video programming distributor" means a person such as, but not limited to, a cable system operator, an open video system operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available multiple channels of video programming for purchase by subscribers or customers.

"Open video system" means a facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service, including video programming, and that is provided to multiple subscribers within the City, provided that the FCC has certified that such system complies with 47 CFR 1500 et seq., entitled "Open Video Systems."

"Open video system operator" means any person or group of persons who provides cable service over an open video system and directly or through one or more affiliates owns a significant interest in that open video system, or otherwise controls or is responsible for the management and operation of that open video system.

"Person" means an individual, partnership, limited liability company, 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:

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

(ii) Facilities and equipment for the use of that channel capacity.

"Subscriber" or "customer" or "consumer" means any person who, for any purpose, subscribes to the services provided by a multichannel video programming distributor and who pays the charges for those services.

"Street" or "public way" means each of the following that has been dedicated to the public and maintained under public authority or by others and is located within the City limits: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way, and similar public property that the City from time to time authorizes to be included within the definition of a street.

"Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

"Telecommunications equipment" means equipment, other than customer premises equipment, used by a telecommunications service provider to provide telecommunications service, including software that is integral to that equipment.

"Telecommunications service" means the offering of telecommunications directly to the public for a fee, or to such classes of users as to be effectively available directly to the public, regardless of the equipment or facilities that are used.

"Telecommunications service provider" means any provider of telecommunications service.

"____ U.S.C. ____" means the United States Code. Thus, the citation of "47 U.S.C. 153" refers to Title 47, section 153, of the United States Code.

"Video programming provider" means any person or group of persons who has the right under the federal copyright laws to select and to contract for the carriage of specific video programming on a cable system or an open video system.

"Video provider" means any person, company, or service that provides one or more channels of video programming to a residence, including a home, multi-family dwelling complex, congregate-living complex, condominium, apartment, or mobilehome, where some fee is paid for that service, whether directly or as included in dues or rental charges, and whether or not public

rights-of-way are used in the delivery of that video programming.

A "video provider" includes, without limitation, providers of cable television service, open video system service, master antenna television, satellite master antenna television, direct broadcast satellite, multipoint distribution services, and other providers of video programming, whatever their technology.

B. Unless otherwise expressly stated, words, terms, and phrases not defined in this Chapter 18.10 will be given their meaning as used in Title 47 of the United States Code, as amended, and, if not defined in that Code, their meaning as used in Title 47 of the Code of Federal Regulations.

CHAPTER 18.12. VIOLATIONS; SEVERABILITY

18.12.010 Violations; Enforcement

A. Any person who violates any provision of this title is guilty of a misdemeanor and is punishable as provided for in Chapter 1.24 of Title 1 of this Code.

B. The misdemeanor penalty specified above in paragraph (A) is not applicable to a violation of any provision of this title for which another sanction or penalty may be imposed under any franchise, license, lease, or similar written agreement between the City and a multichannel video programming distributor or telecommunications service provider.

C. The City may initiate a civil action in any court of competent jurisdiction to enjoin any violation of this title.

18.12.020 Severability

If any provision of this title is determined by any court of competent jurisdiction, or by any federal or state agency having jurisdiction over its subject matter, to be invalid and in conflict with any paramount federal or state law or regulation now or hereafter in effect, or is determined by that court or agency to require modification in order to conform to the requirements of that paramount law or regulation, then that provision will be deemed a separate, distinct, and independent part of this title, and such determination will not affect the validity and enforceability of any other provisions. If that paramount federal or state law or regulation is subsequently repealed or amended so that the provision of this title determined to be invalid or subject to modification is no longer in conflict with that law or regulation, then that provision will again become effective and will thereafter be binding on the City and any affected telecommunications service provider; provided, however, that the City must give the affected telecommunications service provider thirty (30) days written notice of that change before requiring compliance with that provision, or such longer

period of time as may be reasonably required for the telecommunications service provider to comply with that provision."

Section 3 The City Clerk is directed to certify the adoption of this ordinance and to cause it to be published by title and summary.

Section 4 This ordinance will become effective upon the expiration of 30 days from its publication.

Signed and approved this ____ day of _____, 2000.

Bill Bogaard
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Pasadena at its meeting held the ____ day of _____, 2000, by the following vote:

Ayes:

Noes:

Absent:

Abstain:

Published:

Jane L. Rodriguez
City Clerk

APPROVED AS TO FORM:

Michelle Beal Bay
City Attorney