

EXHIBIT "A"

Sec. 1. Purpose.

The City Council has determined it is in the best interest of and consistent with the convenience and necessity of the City of Abilene to grant franchises to companies desiring to provide cable communications services within the confines of the City of Abilene and on the terms and conditions hereinafter set forth, and as may be further described in each franchise agreement.

The City Council has identified the purpose of this Ordinance to be as follows:

A. To provide a procedure for the granting of nonexclusive franchises for providing cable communications in the City of Abilene;

B. To regulate the erection, construction, reconstruction, installation, operation, maintenance, dismantling, testing, repair and use of cable communications systems in, upon, along, across, above, over or under or in any manner connected with the streets, public ways or public places within the jurisdiction of the City of Abilene as it now or in the future may exist;

C. To provide for the payment of certain franchise fees and other valuable considerations to the City which, among other purposes, may be used to regulate the construction and operation, use and development of such a system within the City;

D. To provide conditions under which such franchised system or systems will serve present and future needs of government, public institutions, commercial enterprises, public and private organizations, and the citizens and general public of the City; and

E. To provide remedies and prescribed penalties and liquidated damages for any violation of this Ordinance and the terms and conditions of franchises granted pursuant thereto.

Sec. 2. Definitions.

For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, words used in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The

words "shall" and "will" are mandatory and the word "may" is permissive. Words not defined shall be given their common and ordinary meaning.

A. "Access channel" shall mean a single channel dedicated in whole or in part for local programming which is not originated by a Grantee.

B. "Basic service" shall mean any or all of the different combinations of basic program services as described in a Grantee's proposal, including the delivery of broadcast signals, satellite signals, local origination, and access signals covered by the regular monthly charges paid by subscribers, excluding the optional premium and extended basic services for which separate charges are made.

C. "Cable Communications System," "Cable Television System," or "CATV System," shall mean a system of antennas, cables, wires, lines, towers, waveguides, or other conductors, converters, equipment, or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing, audio, video, and other forms of electronic or electrical signals, located in the City. Said definition shall not include any such facility that serves or will serve only subscribers in one or more multiple unit dwellings under common ownership, control, or management, and does not use City right-of-way.

D. "City" is the City of Abilene, Texas, in its present incorporated form or as it may be changed by annexation.

E. "Construction." The terms "completion of construction," "complete system construction," "satisfactorily complete and fully activate" shall mean that strand has been put up and all necessary cable (including trunk and feeder cable) has been lashed--or, for underground construction, that all cable has been laid and trenches refilled, all road services restored and, except as prevented by weather conditions or delayed because of seasons, landscaping restored; that all amplifier housings and modules have been installed (including modules for return path signals); that power supplies have been installed and all bonding and grounding has been completed; that all necessary connectors, splitters, and taps have been installed; that construction of the headends or hubs have been completed and all necessary processing equipment has been installed; and that any and all other construction necessary for the system to be ready to deliver cable service to subscribers has been completed. Proof of performance tests shall have been conducted on each otherwise completed segment of the cable system before direct marketing of that segment begins. It is expected that segments of less than the entire system will be activated and proofed when completed. Construction of any segment or of the entire system will not be

considered complete until proof of performance tests have been conducted on such segment (or in the case of the entire system, on all segments of the cable system) and any problems found during testing have been corrected. The term "completion of construction" does not include marketing and installation of subscriber service.

F. "Council" shall mean the governing body of the City of Abilene.

G. "Dedicate" shall mean to make available channel space or equipment for exclusive use of the designated user, subject to the authority of the City Council to authorize reassignments of channels.

H. "Educational institution" shall mean any primary or secondary school accredited by the Texas Education Agency, or any college or university accredited by the Southern Association of Colleges and Universities, which is located within the city limits of Abilene, Texas.

I. "Grantee" or "Company" is the party or parties to which a franchise under this Ordinance is granted by the Council, and its or their lawful successors and assigns.

J. "Gross revenues" shall mean all cash, credits, property, or other consideration, of any kind or nature, received directly or indirectly by a Grantee, its affiliates, subsidiaries, parent, and any person in which Grantee has a financial interest, or from any source whatsoever, arising from or attributable to the sale or exchange of cable communications services by Grantee within the City or in any way derived from the operation of its system, including, but not limited to, basic service, monthly fees, optional service or pay cable fees, installation and re-connection fees, leased channel fees, converter rentals or sales, studio rental, and advertising revenues. These gross revenues shall not be reduced for any purposes other than provided herein, and shall be the basis for computing the fee imposed pursuant to Section 14. These gross revenues shall not include any taxes on services furnished by Grantee imposed upon any subscriber or user by the State, City, or other governmental unit and collected by Grantee on behalf of said governmental unit, converter deposits, or refunds to subscribers by the Grantee.

K. "Initial activation of service" or "initially providing cable communication service" shall mean with respect to a particular segment, group of segments, or the entire cable system, as the case may be, that: all proposed services and system capabilities, as stated in the application, are available and/or in place; construction has been completed (see definition of construction); and the completed segment or segments in

question or the entire cable system has been activated.

L. "Original programming" shall mean programming locally produced by a user of any access channel dedicated under Section 16 of this Ordinance.

M. "Proposal" or "Application" refers to a formal proposal or application by a qualified cable company to provide cable communications services to residents, businesses, industries, and institutions in the City of Abilene.

N. "State-of-the-art" means the most current technology which is economically feasible and has been performance-tested to the satisfaction of the City.

O. "Subscriber" is a lawful recipient of cable communications services.

P. "Two-way communications" means the transmission of telecommunications signals from subscriber locations or other points throughout the system back to the system's control center, as well as transmission of signals from the control center to subscriber locations.

Q. "User" means a party utilizing a cable communication system channel for purposes of production or transmission of material to subscribers, as contrasted with receipt in a subscriber capacity.

R. The terms "will be available," "will be equipped," "will use," "will be designed," "will perform," "will be utilized," "will permit," "will allow," "will be activated," "will be initially connected," "will be capable," "will provide," "will include," "will employ," "will be established," "will be able," "will be implemented," "will be delivered," "will utilize," and other similar uses of terms in a company's application denoting the activation of cable service or the delivery of equipment, facilities, or services, shall be interpreted to mean delivery or accomplishment at a date no later than the initial activation of service (see definition), unless otherwise expressly and clearly stated or qualified in the Company's application to mean a more specific or different time.

S. "Institutional Loop" shall mean a cable system connecting various facilities designated by the City. Such system may be either a separate and discrete cable system or a modification of any existing system, which allows for two-way data and video transmission.

Sec. 3. Applications for franchise.

A. Content. In order to construct, install, operate, or

maintain any cable communications system within the City of Abilene, a valid franchise from the City is required. To be considered for the granting or renewal of a franchise, an application must be filed with the City Secretary. The application shall be in a form containing the following information:

- (1) The name, address, and telephone number of the applicant;
- (2) A detailed statement of the corporate or business entity organization of the applicant, including but not limited to the following and to whatever extent required by the City:
 - (a) the names, residence, and business addresses of all officers and directors of the applicant;
 - (b) the names, residence, and business addresses of all officers, persons, and entities having any share of the ownership of the applicant and the respective ownership share of each such person or entity;
 - (c) the names and addresses of any parent or subsidiary of the applicant, a statement describing the nature of any such parent or subsidiary business entity, including but not limited to cable communications systems owned or controlled by the applicant, its parent and subsidiary and the areas served thereby;
 - (d) a detailed description of all previous experience of the applicant in providing cable television system service and in related or similar fields;
 - (e) a detailed and complete financial statement of the applicant, or a statement from an independent certified public accountant, certifying that the applicant has available sufficient free, net, and uncommitted cash resources to construct and operate the proposed system in this City; and
 - (f) a detailed financial plan (pro forma) describing for each year of the franchise: the projected number of subscribers, rates, all revenues, operating expenses, and capital expenditures. All information is to be presented in the format required by the City.

- (3) A detailed description of the proposed plan of operation of the applicant which shall include, but not be limited to, the following:
 - (a) a detailed map indicating all areas currently served;
 - (b) a detailed map indicating all areas proposed to be served during the franchise period and a proposed time schedule for installation of equipment necessary to provide such service;
 - (c) a statement or schedule setting forth classifications of rates and charges to be made against subscribers and all rates and charges as to each of said classifications, including installation charges and service charges;
 - (d) a statement describing the actual equipment and operational standards proposed by the applicant and that such standards of operations are in compliance with or exceed those contained in the Rules and Regulations of the Federal Communications Commission; and
 - (e) a copy of the form of any agreement, undertaking, or other instrument proposed to be entered into between the applicant and any subscriber.
- (4) A copy of any agreement existing between the applicant and any municipal utility or public utility, subject to regulation by the Texas Public Utilities Commission providing for the use of any facilities of the public utility including, but not limited to, poles, lines, or conduits.
- (5) Any other details, statements, information or references pertinent to the subject matter of such application which shall be required or requested by the Council, or by any other provision of law.

Sec. 4. Application fees.

A. Amount. Notwithstanding any other requirement of this Ordinance, each applicant must furnish with its proposal a non-refundable filing fee in the amount of Six Thousand Dollars (\$6,000.00) by certified or cashier's check made payable to the City of Abilene. No proposal for a franchise shall be considered without receipt of said check.

B. Deposit and Use. All checks received will be deposited to an account of the City and will serve to recover expenses incurred by the City in the evaluation and processing of a potential franchise, preparation and granting of a franchise, and the execution and regulation of a franchise pursuant to this Ordinance. Said expenses shall include, but not be limited to, any and all administrative, engineering, publication, or legal costs, and consultant's expenses incurred in connection with the processing, evaluation, and preparation of documents relating to the franchise.

C. Additional Fee. In the event that actual expenses exceed the total amount of filing fees collected from the applicants, an applicant awarded a franchise shall pay to the City all actual expenses and costs within sixty (60) days after the City has provided written itemization of said expenses.

Sec. 5. Selection of Grantee.

A. Solicitation of Proposals. The Council may, by advertisement or any other means, solicit and call for applications for cable communication system franchises; and may determine and fix any date upon or after which the same shall be received by the City, or the date before which the same must be received, or the date after which the same shall be received; and may make any other determinations and specify any other times, terms, conditions, or limitations respecting the soliciting, calling for, making, and receiving of such applications. The terms and conditions for application shall be described in a document called "Request for Proposals".

B. Referral to City Manager. Upon receipt of any application for franchise, the City Secretary shall refer the same to the City Manager who shall prepare or cause to be prepared a report, including recommendations respecting such application, and cause the same to be completed and filed with the Council.

C. Public Comment. Every Ordinance granting, renewing, extending, or amending a franchise shall be read and passed at two (2) regular meetings of the Council, which shall be at least one week apart. A public hearing shall be called and held on such Ordinance before final passage.

D. Determination. The Council shall make one of the following determinations:

- (1) That such application be denied, which determination shall be final and conclusive; or

- (2) That such franchise be granted and establish the terms and conditions of said franchise. No such Ordinance shall become effective until thirty (30) days after its second and final passage.

E. Additional Information. The City Manager or the City Council may at any time require that applicants provide supplementary, additional, or other information which is deemed reasonably necessary to determine whether the requested franchise should be granted.

Sec. 6. Grant of authority.

A. Successful applicants chosen by the City Council will be granted the right and privilege to construct, erect, operate, and maintain in, upon, along, across, above, over, and under the streets, highways, alleys, public ways, and public places now laid out or dedicated, and all extensions thereof and additions thereto, in the City, poles, wires, cables, underground conduits, manholes, and other cable conductors and fixtures necessary for the maintenance and operation in the City of Abilene of a cable communications system to be used for the sale and distribution of cable services to the residents of the City.

Provided, however, the Grantee shall utilize to the extent practical the communication zones of the existing utility pole installations through agreement with the City of Abilene and other utility companies, provided a reasonable and practical agreement can be reached. Any poles erected by the Grantee shall be of sound material, reasonably straight, and shall be so set that they will not interfere with the flow of water in any gutter or drain and so that they will not interfere with ordinary travel upon any street, alley, highway, bridge, public way, or other public place. The location and route of all poles, studs, guys, anchors, conduits, cables, or other electronic signal equipment to be placed or constructed by the Grantee in the City of Abilene shall conform to the local codes and standards. The City hereby retains all of its power and control for regulation of its streets, highways, alleys, bridges, public ways, and other public places granted or which may hereafter be granted to it under the Constitution of the State of Texas, the Home Rules Statutes, and its Charter.

B. City assumes no responsibility for securing any franchises, rights-of-way, permits, or easements which the City does not already own; but Grantee assumes the duty and responsibility of securing the same. The permission granted herein is likewise subject to laws, ordinances, and regulations now in force or which may hereafter be enacted or promulgated by any governmental body or agency having jurisdiction. City shall in no way be responsible for the construction, operation, maintenance, performance, or any other activity of a Grantee or

its system or any part thereof.

C. A Grantee must agree to take any necessary precautions, by the installation of protective equipment, or otherwise to protect all persons and property against injury or damage that may result from Grantee's installations or operations. If, in the City's opinion, a Grantee has not taken such necessary precautions, within a reasonable time after City has so notified Grantee, City shall have the right, by written notice to Grantee, to terminate the franchise as hereafter provided in Section 27. City shall not, however, be considered in any way responsible for the adequacy or inadequacy of such precautions of a Grantee.

Sec. 7. Duration of franchise; renewal.

A. The duration of the rights, privileges and authorizations granted in a franchise agreement shall be ten (10) years from the date a franchise is awarded. A franchise may be renewed by the City upon application of the Grantee pursuant to the procedure established in Subsection B of this Section and in accordance with the then applicable law.

B. Renewal:

- (1) Upon receipt of Grantee's notice of intent to renew the franchise, the City may give public notice and proceed to determine whether the Grantee has complied with the conditions of, and performed its obligations under, the franchise agreement to the satisfaction of the City and its subscribers. In making this determination, the City may consider technical developments, performance of the system, programming, other services offered, cost of service, and any other particular requirements set forth in the ordinance; also, the City may consider the Grantee's proposal, its annual reports made to the City and the FCC, industry performance, and current technology in broadband communications on a national basis. Provision may be made for public comment. Grantee shall pay any reasonable costs incurred by the City in analyzing and evaluating Grantee's performance and its proposal for renewal of the franchise.
- (2) If, based upon Grantee's performance during its franchise term, the Grantee's new proposal, and report thereon, and the public hearings, Council finds a renewal of the franchise with Grantee within the public interest, Council may enter into a renewal of the franchise with Grantee for an additional franchise period under such terms and

conditions as the City may determine.

- (3) In the event the Grantee is determined by the City to have performed unsatisfactorily, or Grantee's proposal for renewal is not satisfactory or in keeping with the state-of-the-art, new applications may be sought and evaluated and new franchise awards may be made by the City.

Sec. 8. Franchise territory.

A. The territory granted for the franchise is the present area designated on the service area map filed with the City Secretary on the effective date of the franchise, any additional area within the present territorial limits of the City of Abilene, and any area henceforth annexed during the franchise term for which said Grantee has continuous cable plant from the headend existing at the time of the annexation.

B. Construction of new cable plant site areas not presently served or designated on said service map are subject to the provisions of this Ordinance.

Sec. 9. Service availability and record request.

A. The Grantee shall provide cable communication services throughout the entire franchise pursuant to the provisions of this Ordinance and Franchise Agreement and shall keep a current file of all written service complaints received by the Grantee for at least the three (3) most recent years. This record shall be maintained and be available for public inspection at the local office of the Grantee during regular office hours.

B. The Grantee shall conduct a survey every two (2) years or as requested by the City which shall include but not be limited to:

- (1) Subscriber viewing preferences;
- (2) Subscriber recommendations on service improvements.

The results of such surveys shall be kept on record in the office of the Grantee for three (3) years following the completion of such surveys. The City shall retain the right to inspect the records of said surveys.

Sec. 10. CATV system construction.

A. Map and Plan. Grantee shall submit a construction plan

or reconstruction plan which shall be incorporated by reference and made a part of the Franchise Agreement.

The plan shall consist of a map of the entire franchise area and shall clearly delineate the following:

- (1) The areas within the franchise area where the cable television system will be initially available to subscribers (i.e. service areas). Service areas may be added, but no service area shall be removed without approval of the City Council.
- (2) A schedule of construction or reconstruction for each year of such activity.

B. Early Construction and Extension. Nothing in this section shall prevent the Grantee from constructing or reconstructing the system earlier than planned. However, any delay in the system construction or reconstruction beyond the times specified in the report timetable plan shall require application to and consent by the Council.

C. Delay in Construction Timetable. Any delay beyond the terms of the construction or reconstruction timetable, unless approved by the Council, will be considered a violation of this Ordinance.

D. Commencement of Construction. Construction in accordance with the plan submitted by Grantee shall commence as soon after the grant and acceptance of the City Council as is reasonably possible. Failure to proceed expeditiously shall be grounds for revocation of a franchise as provided in Section 27. Failure to proceed expeditiously shall be presumed in the event construction is not commenced within twelve (12) months of the grant and acceptance of the construction plan.

E. Underground and Overhead Construction. In all sections of the City where all the cables, wires, or other like facilities of public utilities are placed underground, the Grantee shall place its cables, wires, or other like facilities underground to the maximum extent that the existing technology reasonably permits the Grantee to do so. If at any time the City determines that existing wires, cables, or other like facilities of public utilities anywhere in the City shall be changed from an overhead to an underground installation, the Grantee shall also, at Grantee's sole expense, convert its system to an underground installation.

In areas of the City where electrical telephone systems are installed on poles above ground, the Grantee shall have the option of installing the system in like manner above or

underground.

F. Line Extension Policy. The following guidelines will apply in line extensions:

- (1) The Grantee shall, upon request for service, serve every business and/or residence now or in the future located within the service areas defined on the map referenced in Section 3.A(3)(a),(b) and Section 10.A(1)(a),(b), within a reasonable time after said requests are received. Service shall be made available, without an additional charge for plant extensions (other than the customer drop charges hereinafter described), to all residences now or hereafter located within the above described areas. Notwithstanding the above, nothing contained herein shall require Grantee to service a business located more than 150 feet from an existing service line.
- (2) When requested to provide service to areas within the City or newly annexed to the City but outside the service areas defined on the map referenced in Section 3.A(3)(a),(b) and Section 10.A(1)(a),(b), Grantee shall serve the businesses and/or residences requesting service without an additional charge for plant extensions (other than customer drop charges hereinafter described) where the average number of occupied residences passed by the cable plant necessary to serve such businesses or residences (i.e., the average density) is at least fifty (50) per mile. Businesses shall not be considered in calculating the average density.

The following example illustrates the calculation of average density:

EXAMPLE: If service is requested three miles from the nearest service point, and there are ten (10) occupied businesses and ten (10) occupied residences in mile one, twenty (20) occupied residences in mile two, and sixty (60) occupied residences in mile three, then there is an average density of thirty (30).

- (3) When requested to provide service to areas within the City or newly annexed to the City but outside the serviceable areas defined on the map referenced in Section 3.A(3)(a), (b) and Section 10.A(1)(a), (b), where the average density is less than fifty (50) occupied residences per mile,

Grantee shall serve the businesses and/or residences requesting service with the cost for the cable plant extension to be shared as follows:

- (a) Grantee shall solely bear the first ten percent (10%) of the cost per mile of extending the cable plant. The remaining ninety percent (90%) of the cost shall be shared by Grantee and potential subscribers as follows: Grantee shall also bear a fractional share of the remaining ninety percent (90%), with the numerator of the fraction being the average density of the cable plant extension and the denominator being 50. The potential subscribers shall bear the remainder.
- (b) Grantee may require potential subscribers to deposit their pro rata share or may offer subscribers a time payment contract through which payments can be made on regular bills for cable service.
- (c) For a period of three (3) years after the completion of a requested extension for which subscribers pay a portion of the cost of extension under this Section, each new cable subscriber along such extension or each new subscriber to an extension which builds on such prior extension shall pay an adjusted proportionate share of the extension cost. All existing subscribers who, at the time of the new subscription or extension, have previously paid or are paying a portion of the cost of the prior extension shall receive prorated refunds from Grantee. Provided that if the effect of recalculating proportionate costs for subscribers would be to increase the proportionate share of subscribers in a prior extension, the recalculation formula under this Subsection shall be ignored.

The following examples illustrate the calculation of prorated refunds:

EXAMPLE 1: Assume in year one that there are 60 subscribers along a

recently completed three mile extension of the cable plant. Assume that the average density of the extension was 40 businesses or residences and that the cost per mile of extension was \$10,000 for a total of \$30,000. Grantee initially paid 10% of \$30,000 (\$3,000) plus $40/50 \times (90\% \text{ of } \$30,000)$ which equals \$21,600. The 60 subscribers each paid \$140 to make up the remaining cost (\$8,400) of the extension. If in year three, there are additional 20 subscribers, the new subscribers would pay a prorated share of \$105 for a total of \$2100. The \$2,100 would be refunded in equal shares to the original 60 subscribers (\$35 each). The refund of \$35 each to the original subscribers would have the effect of reducing their respective shares to \$105, the same as paid by the new subscribers.

EXAMPLE 2: Assume the basic facts as in Example 1: There are 60 initial subscribers on a 3 mile extension with each subscriber paying \$140. Assume that in year 3, the cable plant is extended another 2 miles in the same direction at the same cost of \$10,000 per mile. The average density of the new extension is 45 homes and there are 40 new subscribers. Since the new extension builds on the prior extension that occurred within 3 years, the proportionate share for all subscribers is recalculated as follows: Total cost for the 5 mile extension (original 3 mile extension plus new 2 mile extension) is \$50,000. The average density for the 5 mile extension is 42. Grantee pays the first 10% or \$5,000 for the 5 mile extension. Of the remaining 90% (\$45,000), Grantee pays \$37,800 ($42/50 \times \$45,000$) leaving \$7,200 to be paid by 100 subscribers. The 40 new subscribers pay \$72 each for a total of \$2,880. Since Grantee has previously collected \$8,400 from the original 60 subscribers but is now entitled to a total contribution of only \$7,200, the difference of \$1,200 ($\$8,400 - 7,200$) plus the \$2,880 collected from the 40 new

subscribers is refunded equally to the original 60 subscribers. The original 60 subscribers' contributions are thus reduced to the \$72/per subscriber paid by the 40 new subscribers (\$4,080 divided by 60 = \$68; \$140-68 = \$72).

- (4) Grantee, at its sole option, may waive collection of adjusted proportionate shares from new subscribers but, if it does so, it shall nevertheless be responsible for reimbursement of subscribers who have previously paid or are currently paying a proportionate share of extension costs under the provisions of this Section. Such reimbursement shall be in an amount equal to the prorated refund such subscribers would otherwise have received.
- (5) Grantee shall be responsible for maintaining appropriate records and administering all refunds authorized in this section. The City shall have the right to inspect such records.
- (6) Notwithstanding the provisions in this Section, Grantee may, with the prior consent of the City, propose an alternative extension cost formula to potential subscribers, provided the cost to new subscribers does not exceed the amount payable under the formulas in this Section.
- (7) Grantee shall handle all extension requests in good faith. Grantee shall determine distances, cable plant costs, the number of occupied homes and/or businesses, and perform other calculations, in accordance with industry standards.

G. New Development Underground. In cases of new construction or property development where utilities are to be placed underground, the developer/property owner shall give Grantee at least ten (10) days notice of such construction or development, and of the particular date on which open trenching will be available for Grantee's installation of conduit and/or cable. Grantee shall provide specifications as needed for trenching.

Costs of trenching and easements required to bring service to the development shall be born by the developer/property owner; except that if Grantee fails to install its conduit and/or cable within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five (5) day period, and the cost of new trenching is to be borne by

Grantee. Except for the notice of the particular date on which trenching will be available to Grantee, any notice provided to Grantee by City of a preliminary plat request shall satisfy the requirement of reasonable notice if sent to the local general manager or system engineer of Grantee prior to approval of the preliminary plat request.

H. Aerial Drops Exceeding 150 feet. Where areas require aerial construction, all aerial drop installation of not more than 150 feet shall be at the cost of Grantee. Connections in excess of 150 feet shall be at the expense of a subscriber at Grantee's actual cost.

I. Underground Drops Exceeding 150 Feet. Where areas require underground construction, all underground drop installation of not more than 150 feet shall be at the cost of Grantee. Connections in excess of 150 feet shall be the expense of a subscriber at Grantee's actual cost.

Sec. 11. Construction and technical standards.

A. Compliance With Construction and Technical Standards. Grantee shall construct, install, operate, and maintain its system in a manner consistent with all laws, ordinances, construction standards, governmental requirements, FCC technical standards, and detailed standards submitted by Grantee as part of its application, which standards are incorporated by reference in the franchise agreement. In addition, Grantee shall provide the City, upon request, with a written report of the results of Grantee's annual proof of performance tests conducted pursuant to FCC standards and requirements. If City in its opinion has determined Grantee has not met the technical standards, it may schedule a public hearing to review the results of Grantee's performance tests. Such public hearing shall be conducted after the City has provided 14 days written notice of the same to Grantee and published notice of said public hearing in a local newspaper at least once. Grantee shall pay the costs incurred by the City for any technical assistance deemed necessary by the City, in its reasonable judgement, for obtaining independent verification of technical compliance with all standards.

B. Additional Specifications. Construction, installation, and maintenance of the cable communications system shall be performed in an orderly and workmanlike manner. All cables and wires shall be installed, where possible, parallel with and in the same manner as electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations. Underground installations shall be in conformance with applicable codes. The Grantee's cables, wires, and appliances, in each and every location, shall be maintained in accordance with the requirements and specifications of the City, and in compliance with any rules

or ordinances of the City now or hereafter placed in effect by the City or other authority having jurisdiction. In any event, the system shall not endanger or interfere with the safety of persons or property in the franchise area or other areas where the Grantee may have equipment located.

Grantee shall at all times comply with:

- (1) National Electrical Safety Code (National Bureau of Standards);
- (2) National Electrical Code (National Bureau of Fire Underwriters);
- (3) Bell System Code of Pole Line Construction; and
- (4) Applicable FCC or other federal, state and local ordinances and regulations.

Sec. 12. Transfers and assignments.

A. A franchise, in whole or in part, shall not be assigned, transferred, leased, sublet, or mortgaged in any manner; nor shall title thereto, whether legal or equitable, or any right, interest, or property therein, pass to or vest in any person without the prior written consent of the City. The proposed assignee must show technical ability, financial capability, legal qualifications, and general character qualifications as determined by the City, and must agree to comply with all provisions of the franchise. City shall be deemed to have consented to a proposed transfer or assignment in the event its refusal to consent is not communicated in writing to Grantee within ninety (90) days following receipt of written notice of the proposed transfer or assignment. Such consent shall not be withheld without good cause shown.

B. The Grantee shall promptly notify the City of any actual or proposed change in control of the Grantee. This shall include, but not be limited to, transfers of the Grantee or acquisitions of the Grantee by any other party. The word "control," as used herein, is not limited to major stockholders but includes actual working control in whatever manner exercised. Every change, transfer, or acquisition of control of the Grantee shall make the franchise subject to cancellation unless and until the City shall have consented thereto, which consent will not be withheld without good cause shown. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the City may inquire into the qualifications of the prospective controlling party and the Grantee shall assist the City in any such inquiry.

C. A rebuttable presumption that a transfer of control has

occurred shall arise upon the acquisition or accumulation by any person or group of persons of ten percent (10%) of the voting interest of the Grantee.

D. The consent or approval of the City Council to any transfer of the franchise shall not constitute a waiver or release of the rights of the City in and to the streets and public rights-of-way; and any transfer, shall by its terms, be expressly subordinate to the terms and conditions of a franchise.

E. In the absence of extraordinary circumstances, the City may not approve any transfer or assignment of a franchise prior to substantial completion of construction or reconstruction of a proposed system.

F. The City reserves the right of "first refusal" to purchase all or a substantial part of a cable communications system at any sale thereof.

G. The City reserves the right to review the purchase price of any transfer or assignment of a cable system. Any assignee to a franchise shall expressly agree that any negotiable sale value, which the Council (acting upon professional advice) deems unreasonable, will not be considered in the rate base for any subsequent request for rate increases.

H. In no event shall a transfer of ownership or control be approved without the successor in interest becoming a signatory to the franchise agreement.

Sec. 13. Subscriber service rates.

A. Initial Rates:

- (1) The Grantee shall establish initial rates for its services in accordance with the rates contained in Grantee's application for a franchise.
- (2) Initial basic rates shall be effective until one (1) year following completion of construction.

B. Minimum Timing of Requests. The Grantee may initiate a rate change at any time after above-stated period; provided not more than one (1) request may be made by the Grantee in any twelve (12) month period.

C. Rates Subject to Review. The Council reserves the right to review and approve the following rates, fees, and charges:

- (1) Rates for the provision of basic service to

subscribers, whether residential or commercial.

- (2) Rates for the connection, installation, and reinstatement (including converters) of basic and extended basic service, whether residential or commercial.
- (3) Rates for installation, connection, and reinstatement of basic service where unusual circumstances exist, such as remote or inaccessible subscriber locations or subscriber requested underground service drops.

D. The Grantee may petition the Council for a change in rates by filing a proposed rate schedule with the City Secretary which petition shall include the justification(s) for the proposed schedule. Said petition shall be filed at least thirty (30) days prior to the requested implementation date of the rate change. One (1) copy of the petition shall remain on file with the City Secretary and be open for public inspection.

E. Within thirty (30) days of the filing of the petition for rate change, the Council may either choose not to review, and thereby deregulate rate regulation for a period not to exceed three (3) years, or hold a public hearing to consider the proposed rate change, at which hearing all persons desiring to be heard, including Grantee, shall be heard on any matter, including but not limited to, Grantee's performance, service, and proposed new rates.

If the Council chooses to deregulate rates, the duration of the deregulation shall not last more than three (3) years. At the end of each three (3) year period, Council may elect to continue deregulation for another three (3) years or initiate the formal rate regulation proceedings of this ordinance.

F. Upon notice of any public hearing as provided in Subsection (E), the Grantee shall notify its subscribers of the time, place, and subject matter of the public hearing by announcement on at least one (1) channel of its system between the hours of 7:00 p.m. and 9:00 p.m., for at least ten (10) consecutive days prior to the hearing. In addition, notice of any public hearing shall be published in a newspaper of local general circulation at least once but not less than seven (7) days before the public hearing. Notice shall also be given by Grantee to all subscribers by direct mail. Direct mail notice

may be given as a special mailing or attached to, or as a part of, the monthly bill.

G. Within sixty (60) days after said hearing, the Council shall render a written decision on the Grantee's petition, either

accepting, rejecting, modifying, or deferring the same and reciting the basis of its decision. The Council shall consider, inter alia, the following factors in approving or disapproving the petition:

- (1) The ability of the Grantee to render system services and to derive a reasonable profit therefrom under the existing rate schedule and under the proposed rate schedule;
- (2) The revenues and profits derived from system services;
- (3) The efficiency of the Grantee;
- (4) The quality of the service offered by the Grantee;
- (5) The original cost of the system less depreciation;
- (6) A fair rate of return with respect to the cost of borrowing and the rates of return on investments having familiar risks to that of cable TV;
- (7) The extent to which the Grantee has adhered to the terms of this ordinance and the franchise agreement; and
- (8) Fairness to City residents, subscribers, and users.

All costs incurred by the City in analyzing and evaluating the Grantee's rate request examining the above information shall be paid by the Grantee.

The Council shall not consider any valuation based upon a franchise or the Grantor's goodwill and these items of value shall neither be amortized as an expense nor shall a return be paid on them.

H. If the Council fails to render a written decision either accepting, rejecting, modifying, or deferring Grantee's petition within thirty (30) days after said hearings, the Grantee shall thereafter be entitled to put its proposed new rates into effect on a provisional basis; provided that it shall keep a full and accurate accounting of all income resulting from said provisional rates and shall be obliged for a period of thirty (30) days thereafter to refund the amount of which said provisional rates exceed the rates ultimately established by the Council. Upon request by the Council, the Grantee shall provide a bond or other reasonable surety to insure that possible refunds due under this Subsection shall be promptly made. The bond or surety shall be in an amount not to exceed the difference between

the amount of revenues generated in thirty (30) days at the previously existing rates and the amount of revenues expected to be generated in thirty (30) days at the provisional rates.

I. If no final decision on the Grantee's petition has been rendered by the Council within sixty (60) days of the hearing, the Grantee's petition will be deemed approved.

J. The Grantee's petition for a rate increase shall include, but not be limited to, the following financial reports, which shall reflect the operations in the City of Abilene:

- (1) Balance Sheet;
- (2) Income Statement;
- (3) Cash Flow Statement;
- (4) Statement of Sources and Applications of Funds;
- (5) Detailed Supporting Schedules of Expenses, Assets and other items as may be required;
- (6) Statement of Current and Projected Subscribers and Penetration.

The Grantee's account records applicable to this system shall be available for inspection by the City at all reasonable times. The City shall have access to records of financial transactions for the purpose of verifying burden rates or other indirect costs prorated to this particular operation. The documents listed above shall include sufficient detail and/or footnotes as may be necessary to provide the City with the information needed to make accurate determinations as to the financial condition of the system. All financial statements shall be certified as accurate by an officer of Grantee.

Sec. 14. Payment of franchise fee.

A. For the reason that the streets to be used by the Grantee, in the operation of its system within the boundaries of the City, are valuable public properties acquired and maintained by the City at great expense to its taxpayers; and that the grant to Grantee of the use of said streets is a valuable property right, without which the Grantee would be required to invest substantial capital in right-of-way costs and acquisitions, and because the City will incur costs in regulating and administering the franchise, the City may make available a portion of the franchise fee, at the option of the Council, to further the development of public and community uses of cable TV, and Grantee shall pay to the City five percent (5%) of Grantee's gross annual revenue from all sources attributable to the operations of the

Grantee within the confines of the City of Abilene. The City reserves the right to increase the amount of the franchise fee to the extent permitted by law.

B. The franchise fee and any other costs or penalties assessed shall be payable quarterly to the Office of the Treasurer. The Grantee shall file a complete and accurate verified statement of all collected gross revenues within the City during the period for which said quarterly payment is made. Said payment shall be made to the City not later than thirty (30) days after the expiration of the quarter for which payment is due.

C. The City shall have the right to inspect the Grantee's income records and the right to audit and to recompute any amounts determined to be payable under this ordinance; provided, however, that such audit shall take place within thirty-six (36) months following the close of each of the Grantee's fiscal years. Any additional amount due to the City as a result of the audit shall be paid within thirty (30) days following written notice to the Grantee by the City which notice shall include a copy of the audit report.

D. In the event that any franchise payment or recomputed amount, cost or penalty, is not made on or before the applicable dates heretofore specified, interest shall be charged daily from such date at the annual rate equivalent to an average of the existing prime rate of local banking institutions in the City of Abilene, Texas.

Sec. 15. Required services and facilities.

A. The Grantee shall provide all services and facilities as set forth by this Ordinance, and as required by the City Council.

B. The Grantee shall include in its proposed plan of operation a description of the system design and a description of programming and services being offered, including optional premium services.

C. In the event a program originator ceases providing a service, or in the event the Grantee determines that other programming or cable services may be more attractive to subscribers or other users, the Grantee may, in accordance with the following procedures, substitute services. The system, after the incorporation of such substitute services, shall maintain a diversity of public service and entertainment programs and other cable services, and an overall quality level of programming that is equal to or higher than the programming level before the substitution. The City Council shall have the right to review any substitution of service that the Grantee has made and may require a change therein if it so determines, after due hearing

on notice, that the above standards have not been met. Nothing in a franchise or contract shall be construed as obligating the Grantee itself to produce substitute programming to replace programming deleted because the originator or supplier has ceased producing the service where an alternative comparable service is not available on a comparable basis from a different third party.

Sec. 16. Public, educational, and government channels.

A. Educational Channels: The Grantee shall provide and maintain at its own expense the necessary microwave hardware, consisting of one (1) transmitter and one (1) receiver, or other available signal transportation means of equal or greater quality transmission, to all qualifying educational institutions, for each channel dedicated primarily for educational or other community programs. In order for an educational institution to qualify for such microwave hardware, the institution must have a studio of sufficient size for live cablecasts and must conform to local origination, technical, and equipment standards equal to or greater than the industry average. Grantee shall not be responsible for providing or maintaining additional equipment, e.g., a tower or platform, to enable line-of-sight communications for the microwave hardware, the cost of which additional equipment shall be borne by the user.

- (1) Any channel dedicated under this provision shall be made available, at a place to be designated by the City, within six (6) months of notice or request by a user to the City.
- (2) All educational institutions located within or partly within the city limits of Abilene, Texas, shall have access to any channel dedicated under this Section, unless such channel has been dedicated for use by the City.
- (3) The City reserves the right of control over any channel set aside under this provision. This shall include, but not be limited to, the right to: allocate time, designate uses, designate users, use the channel for City programming, or appoint administrators for the use of the channel.

B. Channel Time: The Grantee shall provide channel time upon request to the general public for video tape playback of educational or community programs. The Grantee may charge a reasonable user's fee based on national industry-wide rates for channel time, and requests for channel time shall be accommodated according to availability of such time. The City shall be exempt from any user's fee for such channel time.

C. City Channels: The Grantee shall also provide to the City and maintain at its own expense the necessary microwave hardware, consisting of one (1) transmitter and one (1) receiver or other available signal transportation means, of equal or greater quality transmission, for each channel to be dedicated for City use. Any channel dedicated under this provision shall be made available upon six (6) months notice by the City. Grantee shall not be responsible for providing or maintaining additional equipment, e.g., a tower or platform, to enable line-of-sight communications for the microwave hardware, the cost of which additional equipment shall be borne by the user.

D. New Channels: Any user may make a written request to the City for an additional channel to be dedicated for community or educational use. In evaluating such request, the City shall consider the number of hours of original programming on any channel existing under this Section, and any other information submitted in written form by either a user or the Grantee. The City shall have the right to have additional channels dedicated for public, community, educational, or City purposes upon giving six (6) months notice to Grantee. Nothing in this Section shall require Grantee to add additional channel capacity to the CATV system.

E. Rights of the City: The City shall have the right to use any channel or channel time set aside under this or any other Section of this Ordinance, regardless of whether that channel is or has been set aside for other users. The City shall not be required to share said channel with other users. Whenever in the opinion of the City Council any access channel is under-utilized, the City may order or permit different or additional uses for said channel.

F. Required Channels: Under this Section the Grantee shall be required to provide no more than a total of four (4) channels for public, governmental, educational or City uses. Only two (2) channels set aside for public, governmental, or educational uses shall be required to be provided by Grantee out of its basic cable service. The City reserves the right to specify that all governmental channels be located on the basic tier of cable service.

G. Obscene Material: Nothing in this Section or this Ordinance shall be construed as prohibiting the City or the Grantee from specifying, in a franchise or renewal thereof, that certain cable services shall not be provided or shall be provided subject to conditions, if such cable services are obscene or are otherwise unprotected by the Constitution of the United States, or other federal or state laws.

H. Institutional Loop: To the full extent permitted by law, the City reserves the right to require Grantee to install

and maintain, without cost to the City, an institutional loop at locations designated by the City. City will allow Grantee a reasonable time to install the institutional loop.

I. Equipment and Personnel: Nothing within this Section shall require Grantee to provide equipment or personnel, except as specifically provided herein.

Sec. 17. Use of streets.

A. All transmission and distribution structures, lines, and equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said streets.

B. The Grantee shall notify the City in writing at least five (5) days before the disturbance of any street easement or paved area or other property. In case of disturbance of any street easement or paved area or other property, the Grantee shall, at its own cost and expense and in a manner approved by the City, replace and restore such street easement or paved area or other property in as good a condition as before the work involving such disturbance was done.

C. If at any time during the period of a franchise the City shall lawfully elect to alter or change the grade of any street, the Grantee, upon reasonable notice by the City, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense.

Any poles or other fixtures placed in or adjacent to any street by the Grantee shall be placed in such manner as to comply with all requirements of the City.

D. The Grantee shall, at the request of any person holding a moving permit issued by the City, temporarily remove, raise, or lower its wires to permit the moving of a building. The expense of such temporary removal, or raising or lowering of wires, shall be paid by the person requesting the same; and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given no less than forty-eight (48) hours notice to arrange for such temporary wire changes.

E. The Grantee shall have the authority to trim trees so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee. The City shall have the option to perform, supervise, and direct such trimming. Any trimming shall be at the expense of the Grantee.

F. At the expiration of the term for which a franchise is granted, or upon its termination and cancellation as provided for

herein, City shall have the right to require Grantee to remove, at its own expense, aerial plant and all visible facilities attached to underground plant from all portions of the cable television system located in all streets, alleys, and easements within the City.

Sec. 18. Indemnification and insurance.

No cable television franchise shall be installed, repaired, or operated unless the Grantee, during all periods of installation, repair, and operation, maintains on file with the City Secretary a current certificate evidencing public liability insurance in full force and effect with the minimum limits set by the City Council. No amendment or change effected by the City Council in indemnification or insurance requirements shall be deemed as a material alteration of the terms of the franchise agreement. Notwithstanding the above, breach of this provision by Grantee constitutes a basis for revocation under Section 27.

Sec. 19. Performance guaranty.

The Grantee shall secure and maintain for the term of a franchise a guaranty of faithful performance for all of the provisions within the franchise agreement. Said guaranty shall take the form of a Performance Bond, issued by a licensed corporate surety authorized to do business in the State of Texas and found to be acceptable by the City Attorney, or a letter of credit from a reputable financial institution.

This guaranty shall be used to insure the faithful performance by the Grantee of all provisions of the Ordinance, the franchise agreement, and compliance with all orders, permits, and directions of any agency of the City of Abilene having enforcement jurisdiction for provisions within this franchise agreement. The bond shall be in the amount set by the City.

Sec. 20. Construction bond.

A. A Construction Bond may be required for any proposed construction activities, exclusive of normal maintenance. Within thirty (30) days after the notification of a need for a construction bond, the Grantee shall obtain and maintain at its cost and expense, and file with the City Secretary, a corporate surety bond with a company authorized to do business in the State of Texas and found acceptable by the City Attorney, in the amount to be specified to guarantee the timely construction and/or reconstruction and full activation of the CATV system and the safeguarding of damage to private property and restoration of damages incurred with utilities.

B. The provisions of the Construction Bond shall be established by the City upon the notification to the Grantee of

the need to secure such bond. Grantee must provide written notice to the City of any substantial construction to be undertaken by Grantee on a cable system which is the subject of a franchise agreement with the City. Such written notice must be given to the City at least six (6) months before construction begins.

C. Any extension to the prescribed construction time limit must be authorized by the Council. Such extension shall be authorized only when the Council finds that such extension is necessary and appropriate due to causes beyond the control of a Grantee.

D. The Construction Bond shall be maintained in the amount to be specified but may be reduced as a ratio of unconstructed (or reconstructed) miles to total miles to be built (or rebuilt) within the City and shall be terminated only after the Council finds that a Grantee has satisfactorily completed construction and activation of the CATV system pursuant to the terms and conditions of this Ordinance and the franchise agreement.

E. The rights reserved to the City with respect to the construction bond are in addition to all other rights of the City, whether reserved by this Ordinance or authorized by law, and no action, proceeding or exercise of those rights with respect to such construction bond, shall affect any other rights the City may have.

Sec. 21. Service standards.

A. A Grantee shall put, keep, and maintain all parts of the system in good condition throughout the entire franchise period.

B. Upon termination of service to any subscriber, a Grantee shall promptly remove all its facilities and equipment from the premises of such subscriber upon subscriber's request.

C. Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use.

D. Grantee shall not allow its cable or other operations to interfere with television reception of persons not served by Grantee, nor shall the system interfere with, obstruct, or hinder in any manner, the operation of the various utilities serving the residents of the City.

E. A Grantee shall continue, through the term of the franchise, to maintain the technical, operational, and

maintenance standards and quality of service set forth in this Ordinance and franchise agreement. Should the City find, by public hearing process, that a Grantee has failed to maintain these standards and quality of service, the City may specify improvements to be made. Failure to make such improvements within three (3) months will constitute a breach of condition for which the remedy of Section 27 or 28 is applicable.

Sec. 22. Continuity of service mandatory.

A. It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to a Grantee are honored. In the event that a Grantee elects to overbuild, rebuild, modify, or sell the system, or the City gives notice of intent to terminate or fails to renew a franchise, the Grantee shall act so as to ensure, as far as practicable, that all subscribers receive continuous, uninterrupted service under the circumstances.

In the event of a change of Grantee, or in the event a new operator acquires the system, a Grantee shall cooperate with the City, new Grantee, or operator in maintaining continuity of service to all subscribers. During such period, Grantee shall be entitled to the revenues for any period during which it operates the system and shall be entitled to reasonable costs for its services when it no longer operates the system.

B. In the event a Grantee fails to operate the system for four (4) consecutive days without prior approval of the City or without just cause, as determined by the City, the City may, at its option, operate the system or designate an operator until such time as Grantee restores service under conditions acceptable to the City or a permanent operator is selected. If the City is required to fulfill this obligation for a Grantee, the Grantee shall reimburse the City for all reasonable costs or damages in excess of revenues from the system received by the City that are the result of the Grantee's failure to perform.

Sec. 23. Complaint procedure.

A. The City Manager or the City Manager's designee is specified by the City as having primary responsibility for the continuing administration of a franchise and implementation of complaint procedures.

B. The Grantee shall maintain a central office, which shall be open during all usual business hours, and have a publicly listed telephone and be so operated with adequate line capability that complaints and requests for repairs or service adjustments may be received between the hours of 9:00 a.m. until 5:00 p.m., Monday through Friday, and 9:00 a.m. until 12:00 noon on Saturday. Sufficient responsibility must be delegated locally

to permit the local system manager to make timely decisions.

C. Subject to constraints imposed by acts of God, or events over which the Grantee has no control, the Grantee shall maintain a repair and maintenance crew capable of responding to subscriber complaints or requests for service within twenty-four (24) hours after receipt of the complaint or request. No charge shall be made to the subscriber for this service unless such maintenance or repair is required as a result of damage caused by subscriber. The Grantee may charge for service calls to the subscribers' residence that are not the result of cable failure upon approval of a rate and an equitable procedure by the City.

D. A Grantee shall establish procedures for receiving, acting upon, and resolving subscriber complaints to the satisfaction of the City Manager's Office. A Grantee shall furnish a notice of such procedures to each subscriber at the time of initial subscription to the system. Upon request by a subscriber, the Grantee shall credit a subscriber's account on a pro rata basis for loss of service commencing forty-eight (48) hours after notification by the subscriber to Grantee, subject to constraints imposed by acts of God or events over which Grantee has no control.

E. A Grantee shall keep a maintenance service log which will indicate the nature of each service complaint, the date and time it was received, the disposition of said complaint and the time and date thereof. This log shall be made available for periodic inspection by representatives of the City Manager's Office. All maintenance service complaint entries shall be retained on file for a period consisting of the most recent three (3) years.

F. The City Manager may require that tests and analysis shall be supervised by a professional engineer not on the permanent staff of Grantee. Grantee shall pay all costs of such tests, analysis, and services of the engineer. The aforesaid engineer should sign all records of the special tests and forward to the City Manager such records with a report interpreting the results of the tests and recommending actions to be taken by a Grantee and the City. Such report shall be delivered to the City Manager no later than fourteen (14) days after the City Manager formally notifies the Grantee and shall include the following information: the nature of the complaints which precipitated the special tests; what system component was tested; the equipment used; the procedures employed in said testing; the results of such tests; and the method in which said complaints were resolved.

G. The City Manager's right under this section shall be limited to requiring tests, analyses, and reports covering specific subjects and characteristics based on said complaints or

other evidence when and under such circumstances as the City has reasonable grounds to believe that the complaints or other evidence require that tests be performed to protect the public against substandard cable service.

Sec. 24. Availability of books and records.

Grantee shall fully cooperate in making available at reasonable times, and the City Manager or his designee shall have the right to inspect, all books, records, maps, plans, and other materials of the Grantee applicable to the CATV system, at any time during normal business hours; provided when volume and convenience necessitate, Grantee may require inspection to take place on Grantee's premises. If records are maintained outside the City of Abilene, the Grantee is obligated to reimburse the City government any expenses incurred in making inspection of the books and records.

Sec. 25. Other petitions and applications.

Copies of all petitions, applications, communications, and reports submitted by a Grantee to the federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable television operations authorized pursuant to the franchise shall be provided upon request to the City Manager.

Sec. 26. Fiscal reports.

The Grantee shall file annually with the office of the City Secretary, no later than one hundred twenty (120) days after the end of the Grantee's fiscal year, a copy of a financial report applicable to the CATV system serving the City of Abilene, including an income statement applicable to its operations during the preceding twelve (12) month period, a balance sheet and a statement of its properties devoted to CATV system operations. These reports shall be certified as correct by an authorized officer of Grantee and there shall be submitted along with them such other reasonable information as the Council shall request.

Sec. 27. Forfeiture and termination.

A. In addition to all other rights and powers retained by the City under this Ordinance or otherwise, the City reserves the right to forfeit and terminate a franchise and all rights and privileges of a Grantee in the event of a material breach of its terms and conditions. A material breach by Grantee shall include, but shall not be limited to the following:

- (1) Violation of any material provision of the franchise or any material rule, order, regulation,

or determination of the City made pursuant to the franchise;

- (2) Attempt to evade any material provision of the franchise or practice any fraud or deceit upon the City or Grantee's subscribers or customers;
- (3) Failure to begin or complete system construction, reconstruction, or system extension as provided under the franchise;
- (4) Failure to provide the types of services promised;
- (5) Failure to restore service after ninety-six (96) consecutive hours of interrupted service, except when approval of such interruption is obtained from the City; or
- (6) Material misrepresentation of fact in the application for, or renegotiation of, the franchise.

B. The foregoing shall not constitute a material breach if the violation occurs but is not the fault of a Grantee or occurs as a result of circumstances beyond its control. Grantee shall not be excused by mere economic hardship or by misfeasance or malfeasance of its shareholders, directors, officers, or employees.

C. The City shall make a written demand that a Grantee comply with any such provision, rule, order, or determination under or pursuant to this ordinance and franchise agreement. If the violation by the Grantee continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the City may place the issue of termination of a franchise before the City Council. The City shall cause to be served upon Grantee, at least twenty (20) days prior to the date of such a Council meeting, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and issue which the Council is to consider.

D. The City Council shall hear and consider the issue and shall hear any person interested therein, including Grantee, and shall determine in its discretion whether or not any violation by the Grantee has occurred.

E. If the City Council shall determine that the violation by a Grantee was the fault of Grantee and within its control, the Council may, by resolution, declare that the franchise of the Grantee shall be forfeited and terminated unless there is

compliance within such period as the City Council may fix; such period not to be less than sixty (60) days, provided no opportunity for compliance need be granted for fraud or misrepresentation.

F. The issue of forfeiture and termination shall automatically be placed upon the Council agenda at the expiration of the time set by it for compliance. The Council then may terminate a franchise forthwith upon finding that Grantee has failed to achieve compliance or, in its discretion, may further extend the period.

G. In the event a forfeiture is declared or in case the Grantee shall cease business for any reason, the Grantee shall remove all its facilities and equipment, wires, cables, lines, conduits and other electronic signal devices, any appurtenances or attachments, poles, and other facilities, immediately forthwith, at its own expense, and under the supervision of the City.

Sec. 28. Liquidated damages.

By acceptance of the franchise granted by the City, a Grantee understands and agrees that failure to comply with any time and performance requirements as stipulated in this Ordinance and franchise agreement will result in damage to the City government, and that it is and will be impracticable to determine the actual amount of such damage in the event of delay or non-performance; and a Grantee therefore agrees that it will pay to the City government the following amounts which will be chargeable to the security fund:

A. For a material failure to provide data, documents, reports or information, or to cooperate with the City during an application process or CATV system review, a Grantee shall pay Fifty Dollars (\$50.00) per day, or part thereof, for each violation which occurs or continues.

B. In accordance with Section 21 in which it has been determined that there has been a failure of Grantee to materially comply with operational, maintenance or technical standards, grantee shall pay to the City Government Five Hundred Dollars (\$500.00) for each day, or part thereof, that such non-compliance continues beyond the three months period provided in Section 21.

Sec. 29. Rights of individuals.

A. A Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, or sex. A Grantee shall comply at all times with all

other applicable federal, state, and local laws and regulations, and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this Ordinance by reference.

B. A Grantee shall strictly adhere to the equal employment opportunity requirements of federal, state, and local regulations, and as amended from time to time.

C. No signals shall be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provision. The authorization shall be revocable at any time by the subscriber without penalty of any kind whatsoever. Such authorization is required for each type or classification of two-way cable communications activity planned; provided, however, that a Grantee shall be entitled to conduct system-wide or individually addressed "sweeps" for the purpose of verifying system integrity, controlling return-path transmission, or billing for pay services.

D. A Grantee, or any of its agents or employees, may, unless and until specifically notified in writing by the subscriber involved, sell, or otherwise make available to any party:

- (1) Lists of the names and addresses of such subscribers; and
- (2) Any list which identifies the individual viewing habits of subscribers.

A Grantee shall furnish notice of such fact and a means of written notification to each subscriber at the time of initial subscription.

Sec. 30. Foreclosure, judicial sale or receivership.

A. Upon the foreclosure or other judicial sale of all or a substantial part of the system, or upon the termination of any lease covering all or a substantial part of the system:

- (1) A Grantee shall notify the City of such fact and such notification shall be treated as a notification that a change in control of the Grantee has taken place, and the provisions of this Ordinance governing the consent of the City to such change in control of a Grantee shall apply; or

- (2) In such an instance, the City may serve notice of termination upon a Grantee and, if applicable, the successful bidder at such sale. In such event, the franchise shall cease and terminate thirty (30) days after service of such notice unless:
 - (a) The City shall have approved the transfer of a franchise and a prospective Grantee, as and in the manner of this Ordinance provided; and
 - (b) The successful bidder shall have covenanted and agreed with the City to assume and be bound by all the terms and conditions of the franchise.

B. The City shall have the right to revoke a franchise one hundred twenty (120) days after the appointment of a receiver, or trustee, to take over and conduct the business of a Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

- (1) Within one hundred twenty (120) days after the election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Ordinance and remedied all defaults thereunder; and
- (2) Such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement, duly approved by the Court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of the Ordinance and franchise agreement and of the franchise granted to a Grantee.

Sec. 31. Performance evaluation sessions.

A. The City may request to hold scheduled performance evaluation sessions within thirty (30) days of the first, second, third, sixth, and ninth anniversary dates of a Grantee's award of the franchise and as may be required by federal and state law. Should the City determine a need to hold a performance evaluation session, the Grantee shall be notified in writing thirty (30) days prior to the date of the evaluation.

B. Special evaluation sessions may be held at any time during the term of a franchise at the request of the City or the Grantee.

C. All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with legal notice. Grantee shall notify its subscribers of all evaluation sessions by announcement on at least one (1) channel of its system between the hours of 7:00 p.m. and 9:00 p.m., for ten (10) consecutive days preceding each session.

D. Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to, service rate structures; franchise fee; liquidated damages; free or discounted services; application of new technologies; system performance; services provided; programming offered; customer complaints; privacy; amendments to this Ordinance; judicial and FCC rulings; line extension policies; and Grantee or City rules.

Sec. 32. New developments.

A. The City Council shall have the authority to order a public hearing from time to time on the provision of additional channel capacity by Grantee or on the inclusion in the Grantee's CATV system of "state-of-the-art" technology or upgraded facilities.

B. If after such a hearing, the City Council determines: (1) that there exists a reasonable need and demand for additional channel capacity and/or state-of-the-art technology or upgraded facilities; and (2) that provision has been made or will be made for adequate rates which will allow Grantee a fair rate of return on its investment (including the investment required to provide the additional channels and/or the state-of-the-art technology or upgraded facilities) and will not result in economic waste for the Grantee; the City Council may order Grantee to provide a specified number of additional channels and/or specified state-of-the-art technology or upgraded facilities. Without implying any limitations as to other provisions of this Ordinance, this Section is deemed a material provision within the meaning of Section 27 of this Ordinance.

C. The Grantee shall make written reports every two (2) years to the City on "state-of-the-art" developments concerning the CATV system.

Sec. 33. Areawide interconnection of CATV systems.

A. A Grantee shall interconnect access channels of the cable system with any or all other CATV systems in adjacent areas, upon the directive of the City. Interconnection of systems may be done by direct cable connection, microwave link, satellite, or other appropriate method.

B. Upon receiving the directive of the City to interconnect, a Grantee shall immediately initiate negotiations with the other affected system or systems in order that all costs may be shared equally among cable companies for both construction and operation of the interconnection link.

C. A Grantee may be granted reasonable extensions of time to interconnect or the City may rescind its order to interconnect upon petition by the Grantee to the City. The City shall grant said request if it finds that a Grantee has negotiated in good faith and has failed to obtain an approval from the system or systems of the proposed interconnection, or that the cost of the interconnection would cause an unreasonable or unacceptable increase in subscriber rates.

D. A Grantee shall cooperate with any interconnection corporation, regional interconnection authority or city, county, state or federal regulatory agency which may be hereafter established for the purpose of regulating, financing, or otherwise providing for the interconnection of cable systems beyond the boundaries of the City.

Sec. 34. Acceptance and effective date of franchise.

A. No franchise agreement granted pursuant to the provisions of this Ordinance shall become effective unless and until all things required in this section are done and completed, all of such things being hereby declared to be conditions precedent to the effectiveness of any such franchise granted hereunder. In the event any of such things are not done and completed in the time and manner required, the Council may declare a franchise null and void.

B. Within thirty (30) days after the effective date of an ordinance awarding a franchise or within such extended period of time as the City Council in its discretion may authorize, a Grantee shall file with the City Secretary its written acceptance, in a form satisfactory to the City Attorney, of the franchise agreement, together with the insurance policies required by Section 18, and its agreement to be bound by and to comply with and to do all things required of Grantee by the provisions of this Ordinance and the franchise agreement. Such acceptance and agreement shall be acknowledged by the Grantee before a Notary Public and shall in form and content be satisfactory to and approved by the City Attorney.

Sec. 35. Violations.

From and after the effective date of this Ordinance, it shall be unlawful for any person to construct, install, or maintain within any public street in the City, or within any

other public property of the City, or within any privately-owned area within the City which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by the City Government, any equipment or facilities for the purpose of operating a cable television system unless a franchise authorizing such use of such street or property or area has first been obtained pursuant to the provisions of this Ordinance, and unless such franchise is in full force and effect.

Sec. 36. Incorporation of proposal by reference.

A. Upon award of a franchise pursuant to this Ordinance, a Grantee shall agree to be bound by all the terms and conditions contained herein.

B. Grantee also agrees to provide all services specifically set forth in its proposal, to provide cable television service within the confines of the City of Abilene and by its acceptance of a franchise, the Grantee specifically grants and agrees that its proposal is thereby incorporated by reference and made a part of the franchise agreement. In the event of a conflict between such proposal and the provisions of this Ordinance and the franchise agreement, that provision which provides the greatest benefit to the City, in the opinion of the Council, shall prevail; provided that, the City, having chosen or accepted one of the conflicting provisions, may not thereafter elect to require compliance with a different alternative of the conflicting provisions. Failure to provide services as promised in Grantee's application or proposal for renewal shall be deemed a breach of this Ordinance to which the provision of Section 27 of the Ordinance shall apply.

Sec. 37. Time is of the essence.

Whenever a franchise or contract shall set forth any time for an act to be performed by or on behalf of the Grantee, such time shall be deemed of the essence and any failure of the Grantee to perform within time allotted shall always be sufficient ground for the City to invoke liquidated damages or revocation of a franchise.

Sec. 38. No waiver of terms.

Grantee shall not be excused from complying with any of the terms and conditions of a franchise agreement or this Ordinance by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

Sec. 39. Amendment to Ordinance.

The City shall have the right to amend this Ordinance, and any amendment pursuant to this right shall be fully incorporated into any franchise agreement granted under this Ordinance. Except as otherwise provided herein, amendment of this Ordinance shall not materially alter the terms of Grantee's franchise agreement without Grantee's approval.

Sec. 40. Savings clause.

If any section, sentence, clause, or phrase of this Ordinance is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the Ordinance, and any portions in conflict are hereby repealed. Provided, however, that in the event that the state or federal government laws or regulations renders any section invalid, then such section or sections may be renegotiated by the City and a Grantee.

Sec. 41. Services and rates.

While the City has, under the current Federal Cable Communications Policy Act of 1984, only a limited right to regulate services and rates, should such Act be amended, repealed, or otherwise changed, wholly or in part, the City shall have the right to require and regulate services and rates to the extent permitted by law. All references to services or rates in this Ordinance are subject to this provision.

Sec. 42. Reservation of rights.

The City hereby reserves to itself all rights, privileges, and interests which it has or may hereafter acquire, and nothing in this ordinance shall be construed otherwise unless it is specifically set forth in this Ordinance.