

# Ordinance Number 206

## Section 1 SHORT TITLE

This Ordinance shall be known and may be cited as the "CABLE TELECOMMUNICATIONS FRANCHISE ORDINANCE" granting a non exclusive franchise to Eastern Iowa Cablevision and setting forth terms and conditions pertaining thereto.

## Section 2 DEFINITIONS

The following words and phrases, when used in this ordinance, shall, for the purposes of this ordinance, have the meanings ascribed to them in this section:

1. "ADDITIONAL SERVICE" shall mean a subscriber service provided by the Grantee for which a special charge is made based on program or service content, time or spectrum usage and which provides services beyond "basic service" as set forth herein.

2. "BASIC SERVICE" shall include but not be limited to WHBF, WOC, WQAD, KIIN, WGN (Satellite), a local readable community events channel, plus at least three additional channels for future use either for local use or other TV channels for basic service, including Heritage Communications Channel if an when ordered.

3. "CABLE TELECOMMUNICATIONS NETWORK" or "NETWORK" shall mean any network of cables, optical, electrical, or electronic equipment, including cable television, used for the purpose of transmission of electrical impulses of television, radio and other intelligences, either analog or digital for sale or use by the inhabitants of the City.

4. "CITY" shall mean the City of Buffalo, its council, officials, boards, commissions, agents and employees unless otherwise specifically designated, and the area within the present and future territorial city limits of the City of Buffalo.

5. "COMMISSION" shall mean the Buffalo Cable Communications Advisory Commission.

6. "COUNCIL" shall mean the present governing body of the City of Buffalo or any legally appointed or elected successor or agency constituting the governing body of the City.

7. "FCC" shall mean the Federal Communications Commission and any legally appointed or elected successor.

8. "GRANTEE" shall mean the person, firm, corporation or other entity granted a franchise in accordance with the provision of this Ordinance.

9. "SHALL" and "WILL" each is mandatory, "MAY" is permissive.

10. "STREET" shall include all streets, roadways, highways, avenues, lanes, alleys, courts, places, squares, curbs, sidewalks, boulevards, easements, rights-of-way, bridges or other public ways and all extensions and additions

thereto established and maintained under public authority of the City which have been or may be hereafter dedicated to public use.

11. "SUBSCRIBER" shall mean any person, firm, corporation or entity receiving reception service from the Grantee.

12. "CHANNEL" the term "Channel" shall mean the segment of the electro-magnetic spectrum to which a source of television transmission is assigned.

13. "FRANCHISE" the term "Franchise" shall mean the rights, privileges, authority granted by the City to the Grantee hereunder and shall include all of the terms and conditions of this ordinance.

14. "PERSON" the term "person" shall mean any individual, or any corporation, business, firm, or other entity, and shall be construed as singular or plural, or masculine, feminine or neuter, as the context may require.

15. "PRIVATE PROPERTY" the term "private property" shall mean all property, real, personal, or mixed, owned by a private person, including property owned by a public utility not owned or operated by the City.

16. "PROPERTY OF THE GRANTEE" the term "Property of the Grantee" shall mean all property, real, personal or mixed owned or used by the Grantee however arising from or related to or connected with the franchise.

17. "PUBLIC PROPERTY" the term "Public Property" shall mean all property, real, personal or mixed, owned or used by the City, including property owned or used by a public utility owned or operated by the City, and any easements granted to the public or the City by private property owners.

### Section 3 THE CABLE TELECOMMUNICATIONS NETWORK FRANCHISE

1. Authority Granted - This ordinance shall give to the Grantee the right and privilege to construct, erect, operate, modify and maintain, in, upon, along, above, over and under the streets, as defined in Section 2, which are or may be dedicated to public use in the City, any towers, antennas, poles, cables, electronic equipment or other appurtenant equipment necessary for the operation of a Cable Telecommunications Network in the City. The grantee is hereby designated as a public utility for purposes of the use of easements dedicated for use by the public utilities and by the City.

2. Duration of Franchise - Upon filing by the Grantee of the proper acceptance, security and insurance, the franchise shall take effect and continue in full force and effect for a period of fifteen (15) years.

3. Franchise Nonexclusive - This franchise shall not be exclusive.

4. Franchise Amendable - Any franchise granted pursuant to this ordinance shall be deemed amendable to allow the Grantee to innovate and implement new services and developments, provided, however, that no such services or developments in conflict or inconsistent with the franchise be implemented without the expressed prior approval of the Council.

5. Transfer of Franchise - The franchise shall be a privilege to be held for the benefit of the public by the Grantee. The franchise cannot, in any event, be sold, transferred, leased, assigned or disposed of in whole or part, either by forced or voluntary sale, merger, consolidation, mortgage, trust, receivership or any other means without the prior consent of the City and then only under such conditions as the City may establish. Such consent shall not be unreasonably withheld.

6. Contravention of Franchise - In the event a valid law, rule or regulation of any governing authority or agency having jurisdiction contravenes a provision of this ordinance after its adoption, the applicable provision of this Ordinance shall be superseded to the extent it is in conflict and contrary to such law, rule or regulation.

7. Pole Use Agreements Required - ~~The franchise shall not relieve the Grantee of any obligation involved in obtaining pole or conduit use agreements from the power and telephone utilities or other agencies maintaining poles or conduits in the rights-of-ways of the City, whenever the Grantee finds it necessary to make use of said poles or conduits.~~

#### Section 4 OPERATION OF THE FRANCHISE

1. Availability of Grantee - Grantee shall at all times maintain one (1) listed "Toll Free" Telephone number on a 24 hour availability schedule so that complaints and requests for repairs or adjustments may be made at any time.

2. Subscriber's Antennas - The Grantee shall not require the removal or offer to remove any potential or existing subscriber's antenna as a condition or provision of service.

3. Antenna Switch - The Grantee, upon request from any subscriber, shall install an antenna switching device so as to permit continued use of the subscriber's television antenna, at a charge equal to the material cost of said switch to the Grantee.

4. Compliance with Regulations - Grantee agrees to comply with all applicable City ordinances, resolutions, standards and specifications in effect as of the passage of this ordinance and any amendments or additions to ordinances, resolutions, standards and specifications which may be in force throughout the period of the franchise.

5. Taxes - The Grantee shall pay all real estate taxes, special assessments, personal property taxes, license fees, permit fees and other charges of a like nature which may be taxed, charged, assessed, levied, or imposed upon the property of the Grantee and upon any services rendered by the Grantee.

6. Assignment - Except for the purpose of obtaining financing, the Grantee shall not assign or transfer the franchise, nor any part of the rights, privileges and authority granted thereunder, without the written consent of the City.

7. Subscriber Privacy - In order to protect the privacy of Subscribers, the Franchisee shall:

a. Be constantly alert to possible abuses of the right of privacy or any other legal rights of any Subscriber, programmer or other persons resulting from any device or signal associated with the System.

b. Discuss the possibility of such abuse at every scheduled review session.

c. Provide devices such as electronic locks, scramblers and warning lights as problems are identified, as the technology becomes available and as reasonable financial arrangements can be made.

d. Keep only such records of viewing and purchasing by Subscribers as may be necessary for billing purposes.

e. Not monitor or tabulate any test results in any manner which would reveal the economic status, commercial product preferences or opinions of Subscribers or their families.

f. Not maintain or tabulate any data on the political, religious, moral or social preferences or opinions of Subscribers or their families.

g. Not market or otherwise distribute to advertising, marketing or bulk mailing organizations the names and addresses of Subscribers or other related information.

h. Install any cable, line, wire, amplifier, converter or other piece of equipment owned by the Franchisee without first securing the written permission of the owner, leasee, or tenant of the property involved.

#### Section 5 RIGHTS RESERVED TO THE CITY

1. Grantee Agrees to City's Rights - The City reserves every right and power which is required to be reserved or provided by an ordinance of the City, and the Grantee, by its acceptance of the franchise, agrees to be bound thereby and to comply with any action or requirement of the City in its exercise of such rights or powers which have been or will be enacted or established.

2. City's Right of Intervention - The City shall have the right to petition to intervene and the Grantee specifically agrees by its acceptance of the franchise not to oppose such intervention by the City in any suit or proceeding to which the Grantee is a party.

3. City's Right of Inspection - The City reserves the right, during the term of the franchise, to inspect all construction or installation work performed under provisions of franchise or this Ordinance and to perform measurements of system operation to insure compliance with franchise technical requirements and City Specifications.

#### Section 6 VALIDATION AND ACCEPTANCE OF FRANCHISE

1. Effective Date - This ordinance shall be in full force and effect from and after its final passage by the City Council of the City of Buffalo and after publication of said ordinance as required by Iowa law and after a Special

Election confirms that a majority of voters voting desire that the City enter into a non-exclusive franchise agreement, whichever is the last to occur, and grantee shall within 45 days thereafter comply with the following:

- (a) Statement of Acceptance - A statement by the Grantee of unconditional acceptance of the franchise, its terms, provisions and requirements, shall be submitted in writing to the Council.
- (b) Certificate of Insurance - A certificate of insurance with coverages and amounts as specified in this ordinance shall be provided to the City by the Grantee.
- (c) Performance Bond - Grantee shall execute a performance bond or equivalent security as set forth in this ordinance.
- (d) Reimbursement of Costs - Grantee shall reimburse to the City all franchise related costs including but not limited to costs of elections, including publication fees, and City legal services.

2. Failure to Comply - Should the Grantee fail to comply with the requirements of subsection (a) above, it shall have abandoned its application and shall acquire no rights or privileges under this Ordinance and the amount of the performance Bond shall be forfeited in full to the City as liquidated damages.

#### Section 7 TERMINATION OF FRANCHISE

1. Grounds for Revocation - The City reserves the right to revoke any franchise and rescind all rights and privileges associated with the franchise in the following circumstances:

- (a) If the Grantee should default in the performance of any of its obligations under the franchise and fails to rectify the default within thirty (30) days after receipt of written notice of the default from the City, except that the Grantee shall not be responsible for delay caused by strike, inavailability of materials, or other matters beyond the control of Grantee.
- (b) If the Grantee should fail to maintain the liability and indemnification coverages and the performance bond as required in this Ordinance.
- (c) If the Grantee should become insolvent, be declared a bankrupt, or the property of the Grantee shall come into the possession of any receiver, assignee, or other officer acting under an order of Court, and any such receiver, assignee, or other such officer shall not be discharged within sixty (60) days after taking possession of such property.
- (d) If the Grantee should for a period of thirty (30) days violate any order or ruling of the City or any regulatory body having jurisdiction over the Grantee unless the Grantee is lawfully

contesting the legality of such order or ruling or is taking appropriate steps to bring itself within compliance.

- (e) If the Grantee arbitrarily ceases to provide service over the Network.

2. Procedure for Revocation - Following occurrence of any of the events listed above, the Council shall provide written notice to the Grantee of said violations and shall advise the Grantee of the reasons alleged to constitute cause for revocation and shall establish a date of public hearing concerning said violations. Such hearing shall be set within sixty (60) days of notification of the parties. If, during this period the cause shall be cured to the satisfaction of the City, the City may declare any such notice to be null and void. The City may, at such hearing, establish a reasonable time for the Grantee to remedy such cause and may, if remedy has not occurred within such additional time, revoke the franchise without further hearing.

3. Filing Complaints - Nothing in this Section shall prohibit the City from filing complaints with the Grantee for lesser violations of this Franchise Ordinance and requesting correction of the same.

#### Section 8 EXPIRATION OF FRANCHISE

1. Review of Franchise Prior to Expiration - At least nine (9) months prior to the expiration of the Franchise, the Council shall schedule a public meeting or meetings with the Grantee to review the performance of the Grantee. The Council may require the Grantee to provide specified records and information for this purpose and may inquire in particular whether the Grantee is supplying a level and variety of services equivalent to those being generally offered at that time in the industry in comparable market situations. The Council shall provide its findings and recommendations to Grantee at least six (6) months prior to termination of said franchise.

2. Determination on Reissue of Franchise - The Council shall, within ninety (90) days thereafter determine whether a franchise shall be reissued, and if so, shall establish the public proceedings leading to such issuance.

#### Section 9 PROCEDURE FOLLOWING EXPIRATION OR TERMINATION OF FRANCHISE

1. Disposition of Facilities - In the event this franchise expires and is not renewed or is revoked the Grantee may, at its option, sell its Network to the City of Buffalo or any duly constituted franchisee of the City of Buffalo at a price mutually agreeable between the parties, or may remove the same. In the event Grantee elects to remove its Network it shall do so immediately, but in any event within at least sixty (60) days from cessation of operation.

2. Restoration of Property - If Network removal is required, the Grantee shall return such public and private property to the owner thereof in the same condition as when the property of the Grantee was placed thereon, excepting conditions of ordinary and unrelated wear and tear.

3. Restoration by City, Reimbursement of Costs - In the event of a failure by the Grantee to complete any work required in Subsection 2 above, or of any work required by law or ordinance not completed in a timely or

satisfactory manner, the City may cause such work to be completed for which Grantee shall reimburse the City.

4. Expiration, Extended Operation - Upon the expiration of a franchise, the City may, on its own motion or by request of the Grantee, require the Grantee to operate the Network for an extended period not to exceed six (6) months from the date of any such expiration. All Ordinance provisions shall continue in force during said extension.

#### Section 10 REPORTS AND RECORDS

1. Annual Facilities Report - The Grantee shall file annually with the City Clerk, within three (3) months of the close of each fiscal year, a total facilities report indicating the total number of subscribers and detailing the total physical miles of plant constructed, rebuilt or in operation during the fiscal year. Such report shall also describe any revisions to the Network "as built" maps which shall be filed with the City. Also, if requested by the City, progress reports on Network construction or rebuild shall be supplied at such intervals as may be established by the City.

2. City's Access to Records - The City shall have the right to access during all normal business hours and upon the giving of reasonable notice, to the Grantee's contracts, engineering plans, accounting, financial data, and service records relating to the franchised property and operations of the Grantee.

#### Section 11 FRANCHISE PAYMENT

1. Annual Franchise Payment - The Grantee shall pay to the City, during the term of the franchise, three (3%) percent of its annual gross subscriber revenues to be utilized by the City to offset its annual regulatory and administrative costs associated with the franchise. "Gross subscriber revenues" shall mean all revenues received by the Grantee from provision of basic service and all additional services, to all subscribers within the City and to those subscribers located outside the City but within two miles of the corporate limits thereof. "Gross subscriber revenues" shall not include revenues from sales and other taxes levied directly and collected by the grantee.

2. Payment of Franchise Payment - Grantee shall make all payments due and owing as a franchise fee under Section 11, subsection 1, on a semi-annual basis and such payments shall be paid within thirty (30) days after the end of each such period.

3. Rights of Recomputation - No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee or for the performance of any other obligation of the Grantee.

#### Section 12 SUBSCRIBER RATES AND SERVICE AGREEMENTS

1. Subscriber Rates and Charges - Except as otherwise provided in the franchise, the grantee shall have the right, privilege, and authority to charge the rates and charges fixed in this section to its subscribers for its services.

At turn-on, single-user rates and charges may be as follows:

SERVICE	PER MONTH	INSTALLATION
Basic	\$4.00	\$15.00
Satellite	\$5.00	\$10.00
		Service requires a converter - \$25.00 deposit.
Premium	\$9.00	FREE when ordered with Satellite Service. If ordered separately, \$25.00 charge.
Cinemax	\$9.00	
Extra Outlet	\$2.00	FREE if ordered with any other service. Otherwise, an installation charge of \$25.00.
Stereo FM	\$2.00	FREE if ordered with any other service. Otherwise, an installation charge of \$25.00.

Multi-user rates and charges may be negotiated between the Grantee and subscriber, but in no event shall the multi-user rates and charges for any subscriber exceed the aggregate of rates and charges which would be charged to the multi-user if computed on the basis of single-user rates and charges.

Any commercial or industrial business which wishes to become a subscriber will be served subject to negotiation of installation fees and monthly service shall be agreeable to and negotiated by Grantee and commercial or industrial user.

Disconnection of any or all services shall be at no charge to the subscriber.

2. Basic Service to Public Buildings - Churches, Public Schools, Public Libraries, The Fire Station and Municipal Buildings, including Municipal Recreation Buildings, shall receive free monthly service. The Grantee shall furnish said buildings with one hook-up without any installation charge, and public schools shall have the right at their own expense to create additional outlets within said Public School Buildings.

3. Change of Subscriber Rates and Charges.

(a) Grantee's rates and charges presently in effect for installation, moving of equipment and for basic monthly cable television service are hereby

approved by the City. A current schedule of rates will be kept on file with the City Clerk.

(b) For the purposes of this section, "basic monthly cable television service" is the provision of television broadcast signals and access and origination channels, if any, and does not include advertising services, rental of studios or equipment, provision of program production services, per-channel or per-program charges to subscribers ("pay cable"), rental of channel, or any other services of the system, the rates and charges for which shall not require approval of the City.

(c) Grantee shall have the right to change the rates for basic monthly cable television service, in the following manner:

1. For the purposes of this Section CPI shall mean the Consumer Price Index of the Department of Labor for the previous year.
2. For the purposes of this section the words "year" and "years" shall mean the calendar year commencing January 1st of each year and ending on the 31st day of December of each year.
3. For the purposes of this section, the first yearly period for determining CPI shall mean the year commencing January 1, 1982 and ending December 31, 1982.
4. Grantee may increase the monthly rates in any one year charged for the basic monthly cable television service in an amount less than or equal to the percentage of increase of the CPI, or in an amount of 8%, whichever amount is the smaller; without obtaining permission of the Council.
5. In the event that Grantee does not desire to raise its rates in any one calendar year it shall be allowed to accumulate the amount of CPI increase, or an amount of 8% whichever is the smaller, as a carry forward as an allowable additional rate increase for any subsequent years, except that Grantee shall not increase the charge for the basic monthly cable television service in any one year by an amount in excess of 16% of the total monthly basic cable television rate.
6. This rate section does not apply to rates to be charged any commercial or industrial business and does not apply to "pay" or "premium" cable, which rates are set at the sole discretion of the Grantee.
7. Said rates may be increased in percentages larger than set forth in this section upon application by Grantee and acceptance of the proposed increased rates by the Council.

(d) Before instituting an increase equal to or less than said Consumer Price Index increase, Grantee will furnish to the Council a copy of the new rates and charges, as well as information regarding Bureau of Labor Statistics

figures on said Consumer Price Index. Such notification shall precede any increase by not less than thirty (30) days and not more than sixty (60) days.

4. Service Rules and Regulations. The Grantee shall have the right to prescribe reasonable service rules and regulations and operating rules for the conduct of its business. Such rules and regulations shall be consistent with the terms and conditions of the franchise. The Grantee shall file such rules and regulations, and all amendments thereto, with the City.

5. Service Agreements. The Grantee shall have the right to prescribe a reasonable form of service agreement for use between the Grantee and its subscribers. Such service agreement shall be consistent with the terms and conditions of this franchise.

### Section 13 INSURANCE; INDEMNIFICATION; PERFORMANCE BOND

1. The Grantee shall, at all times during the term of the franchise, carry and require their contractors to carry:

(a) Insurance in such forms and in such companies as shall be approved by the City to protect the City and Grantee from and against any and all claims, injury or damage to persons or property, both real and personal, caused by the construction, erection, operation and maintenance of any structure, equipment or appliance. The amount of such insurance shall not be less than \$500,000 as to any one occurrence for injury or death to persons, and \$500,000 for damages to property. In addition thereto, Grantee shall carry an umbrella coverage in an amount not less than \$1,000,000. At each five year interval during the term of this franchise, the City shall have the right to review the minimum coverages as specified in this subsection, and may require the Grantee to secure and maintain such additional amounts of coverage as the City deems to be necessary for the protection of the public health and welfare.

(b) Workmen's Compensation Insurance as provided by the laws of the State of Iowa as amended.

(c) Automobile insurance with limits of not less than \$500,00 in liability coverage. In addition thereto, Grantee shall carry an umbrella coverage in an amount not less than \$1,000,000. At each five year interval during the term of this franchise, the City shall have the right to review the minimum coverages as specified in this subsection, and may require the Grantee to secure and maintain such additional amounts of coverage as the City deems to be necessary for the protection of the public health and welfare.

2. All of said insurance coverage shall provide for a ten (10) day notice to the City in the event of material alteration or cancellation of any coverage afforded in said policies prior to the date said material alteration or cancellation shall become effective.

3. The Grantee shall at all times defend, indemnify, protect and hold harmless the City from and against any and all liability, losses and damage to property or bodily injury or death to any person, including payments made under workmen's compensation laws, which may arise out of or be caused by the erection, construction, replacement, removal, maintenance or operation of Grantee's network and caused by any act or failure to act on the part of the

Grantee, its agents, officers, servants or employees. Grantee shall hold the City harmless against any damages resulting from legal action which may be brought against it in connection with the establishment or operation of Grantee's network in the City and shall defend at its own expense any action brought against the City by reason of the erection, construction, replacement, removal, maintenance or operation of Grantee's network.

4. The Grantee shall secure and furnish to the City and maintain at all times throughout the term of the franchise a performance surety bond in favor of the City of Buffalo in the amount of \$25,000 conditioned upon the faithful performance of the Grantee of all the provisions contained in this franchise ordinance, and said bond shall be approved by the City of Buffalo's attorney. A certified copy thereof shall be filed and maintained with the City Clerk.

#### Section 14 CABLE COMMUNICATIONS ADVISORY COMMISSION

1. Upon the granting of a franchise, there shall be appointed the Cable Communications Advisory Commission.

2. The Commission shall consist of five members appointed by the Council. Each member shall serve a term of five years except that initial appointments shall be for one, two, three, four and five years respectively. Vacancies shall be filled by the Council. The Mayor shall serve as a non-voting member of the Commission.

3. The Commission shall perform the following functions:

(a) Advise the Council on all matters regarding this Ordinance.

(b) Monitor Grantee operations--construction, operation and maintenance.

(c) Attempt to resolve conflicts between the Grantee and public or private users.

(d) Determine the general policy regarding access channels with the view toward maximizing usefulness to the community.

(e) Conduct a public meeting at least annually for public input regarding the operation of the franchise.

(f) Meet at least quarterly with the Grantee in an effort to maintain effective communications.

(g) Report to the Council the results of all Commission meetings.

(h) Make recommendations to the Council for amendments to this Ordinance.

#### Section 15 NETWORK DESCRIPTION

1. Network bandwidth capacity. The network required hereunder shall have a minimum initial forward bandwidth capability of 300 megahertz (Mhz).

Provision shall be made for increasing channel capacity when all available channels are in use and there exists an economically reasonable justification for meeting additional capacity demand. The network shall have at least thirty-five (35) channel capabilities and a converter will be used immediately upon completion of the system. Additional channels will be made available when said channels become available and are of interest to the Buffalo viewers.

2. Network reverse capacity. The network required hereunder shall have a minimum reverse bandwidth capability of 30 Mhz, although activation of such reverse capability shall not be required unless and until there exists an economically reasonable justification for meeting the reverse capability demand.

#### Section 16 RESERVATION OF CHANNELS.

1. Education and government access channels. The Grantee shall reserve for future dedication, a minimum of one channel of network bandwidth, for use by the City and by the School District. This channel shall be made available upon demand, and at the then comparable and competitive lease rate, at such time as the City and/or the School District are prepared to utilize said channel.

2. All channels emergency alert. The Grantee shall, in the event of any emergency or disaster, make its entire system available to the City or to a Civil Defense Agency. The system shall be engineered to provide an audio alert system to allow authorized officials to override the audio signal on all channels and transmit emergency information.

3. Closed caption emergency warnings. The Grantee shall as technology permits install its system so as to have the capability of providing "closed caption" emergency warnings.

#### Section 17 SERVICE AREA.

1. Initial geographic coverage. The Grantee shall design and construct its network so as to initially pass and provide tap off facilities to every single-family dwelling unit, multiple-family dwelling unit, agency and business establishment within the area of the City outlined in the attached zoning map which shall be incorporated as part of this ordinance.

2. Conditions of required extension. The Grantee shall, at its expense, extend its network where there are sufficient potential subscriber dwelling units so as to yield an average of twenty (20) dwelling units per linear mile from the nearest cable terminal point to any newly annexed or developed areas of the City not then served by a Cable Telecommunications Network or to any resident dwelling within the City limits and within two hundred (200) feet of the existing network trunk line. The grantee may negotiate an installation charge independent of that prescribed in Section 12 (1) for any extension not required by this section.

3. Extension policy. The Grantee shall file with the City Clerk a copy of its extension policy for potential subscribers for whom the provision of service is not required pursuant to Sections 17 (1) and 17 (2) above. Such policy must be approved by the City and the Grantee shall not make, or refuse to make, any extension except as permitted by the approved policy.

Section 18 TIME FOR PERFORMANCE.

1. Permit application. Within thirty (30) days of the effective date of a franchise granted hereunder, the Grantee shall file all applications necessary to permit commencement of construction and operation of the network and shall thereafter diligently pursue all such applications. The City may, at its discretion, provide assistance to insure the scheduled construction of the network. If the City determines to acquire necessary rights and easements by condemnation, the Grantee shall bear all such related costs.

2. Commencement timetable. Upon granting of the franchise for the network the Grantee shall commence engineering and/or construction of the network. Completion shall be pursued with reasonable diligence. The Grantee shall provide a copy of its construction plans to the City Engineer prior to commencing construction.

3. Completion of construction. Within twelve (12) months of the effective date of awarding the franchise, the Grantee shall have placed in use sufficient distribution facilities so as to permit the offering of basic subscriber services to one hundred percent (100%) of the area defined in Section 17 (1), except for those areas where right-of-way for service installation cannot be obtained.

4. Delays and extension of time. The City may, in its discretion, extend the time for the Grantee, if acting in good faith, to perform in such cases as the Grantee is being subjected to delay or interruption due to circumstances reasonably beyond its control.

5. Liquidated damages. Subject to the provisions of Sections 7 (1) (a) and 18 (4), Grantee shall pay to the City, the sum of \$100 per day as liquidated damages until Grantee has completed performance as required hereunder.

Section 19 CONDITIONS OF STREET OCCUPANCY.

1. Installation of cables and equipment. All installations shall be underground in those areas of the City where both existing telephone and electric services are underground at the time of network construction. In areas where either telephone or electric utility facilities are installed aerially at the time of construction, the Grantee may install its facilities aerially with the understanding that at such time as both the telephone and electric facilities are required to be placed underground by the City, the Grantee shall likewise place its services underground without additional cost to the residents of the City.

2. Excavation permits. The Grantee shall not disturb or open the surface of any street, sidewalk, driveway or public place for any purpose without having first obtained any necessary permit as may be required by the City.

3. Restoration of ground surface. In case of any disturbance of pavement, sidewalk, driveway or other ground surface, whether on public or private property, the Grantee shall, at its own expense, and in a manner

approved by the City or the property owner, replace and restore said surface to the same conditions as before such work was commenced.

4. Changes required by public improvements. The Grantee shall, at its expense, protect, support, temporarily disconnect, relocate or remove from the street or other public place, any property of the Grantee when required by the City by reason of modifications or improvements undertaken by the City or its agents.

5. Temporary removal of cables. The Grantee shall, upon the request of any person holding a valid building or equipment moving permit issued by the City, temporarily raise or lower its cable to permit such movement. The expense of such temporary removal shall be borne by the person requesting same and the Grantee shall have the authority to request payment in advance. The Grantee shall be given not less than five (5) days advance notice of any such move to arrange for said temporary cable changes.

6. Authority to trim trees. The Grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and public places of the City so as to prevent the limbs of such trees from contacting the cables and equipment of the Grantee. All trimming shall be done at the expense of the Grantee. The City may, at its discretion, require such additional trimmings as it deems necessary to preserve the symmetrical appearance of the tree.

7. Office and records in City. The Grantee shall make and keep at all times in the City Hall a full and complete set of plans showing the exact location of all network equipment installed on or in the streets and other public places of the City. The Grantee shall also provide to the City Clerk a set of network "as built" maps drawn to scale showing all network facilities installed in the City. Subscriber drops need not be shown.

8. Grantee to locate buried services. Grantee shall upon request of the City for the convenience of contractors or its residents designate the exact location of buried services by visible markings within twenty-four (24) hours of said request.

9. Depth of buried services. Grantee shall install all buried services at least twelve (12) inches below the ground surface.

#### Section 20 NETWORK TECHNICAL REQUIREMENTS.

1. General requirements. Each broadband telecommunications network must be so designed, installed and operated as to meet the following general requirements :

(a) Capable of continuous twenty-four (24) hours daily operation.

(b) Capable of operating over an outdoor temperature range of -40 degrees F. to +140 degrees F. without catastrophic failure or irreversible performance changes over variations in supply voltages from 105 to 130 volts AC.

(c) Capable of meeting all specifications set forth herein over an outdoor temperature range of -20 degrees F. to +100 degrees F. over variations in supply voltages from 105 to 130 volts AC.

(d) Operated in such a manner as to avoid causing interference with reception of off-the-air signals by nonsubscribers to the network.

(e) Designed, installed and operated so as to comply with all applicable rules and regulations promulgated by the Federal Communications Commission.

(f) Designed, installed and operated so as to assure the delivery of all subscribers of standard color and monochrome signals on the FCC-designated Class I television channels without noticeable picture degradation or visible evidence of color distortion or other forms of interference directly attributable to the performance of the Broadband Telecommunications Network.

2. Class I Channel performance requirements. The following requirements apply to network performance on the FCC-designated Class I television channels as measured at any subscriber terminal with a matched termination:

(a) The signal level as measured at the visual carrier frequency for each television channel shall average 2000 UV (microvolts) and not be less than 1000 UV (microvolts) across a 75 ohm terminating impedance. The aural carrier level shall be maintained between 13 and 17 decibels below its associated visual carrier level.

(b) The video carrier signal level on each television channel shall not exceed:

- + A maximum level such that signal degradation due to overload in the subscriber receiver does not occur.
- + Two (2) decibels of the signal level of the video carrier of any adjacent channel.
- + Twelve (12) decibels of the video carrier signal level on any other television channel.

(c) Broadband Telecommunications Network frequency response as measured at any subscriber terminal shall not vary more than + two decibels from one (1) Mhz below the video carrier frequency to four (4) Mhz above the video carrier frequency of any television channel containing color programming.

(d) The corrected ration of visual signal; level to network noise shall not be less than forty (40) decibels in accordance with NCTA standard 005-0069.

(e) Cross-modulation as measured at any visual carrier frequency from the network input to any trunk amplifier station or to any subscriber terminal will be maintained at least fifty-seven (57) db below the desired signal carrier level at any point on the trunk and will be a minimum of fifty-two (52) db below the desired signal; carrier level at any subscriber terminal. (NCTA standard 002.0267).

(f) The ratio of visual carrier signal level to the RMS amplitude of

any coherent disturbances such as inter-modulation products, network generated of induced co-channel signals or discrete frequency interfering signals shall not be less than forty-six (46) decibels except for officially assigned offset carriers for which it shall not be less than thirty-six (36) decibels.

(g) The terminal isolation between subscribers shall not be less than twenty-five (25) decibels except that the isolation between multi-terminals of one subscriber shall not be less than eighteen (18) decibels.

(h) The hum and low-frequency disturbance level shall not exceed four percent (4%) peak-to-peak modulation at maximum. NCTA standard.

(i) Radiation from the Broadband Telecommunications Network shall be in accordance with the limits set forth in Part 76, Section 76.605 (a) (12) of the FCC Rules and Regulations.

3. Standards modified where necessary. Notwithstanding the fact that the network may be in compliance with all the standards set forth herein, the City may require a higher level of performance in any area to resolve signal quality or interference problems.

4. Specifications for additional channels to be submitted. Proposed specifications for FCC designated Class II, III and IV channels shall be submitted by the Grantee to the City as the use of these channels is implemented.

#### Section 21 PERFORMANCE MEASUREMENTS.

1. General requirements. Test procedures used in verification of the performance criteria set forth herein shall be in accordance with criteria set forth herein and shall be in accordance with good engineering practice. The test procedures specified in Section 21 (2) are designed as a guide and should be made under conditions which reflect network performance during normal operation. As there is more than one technically acceptable method for performing many of the measurements, the technique and equipment utilized in each case, if different from those set forth below, shall be fully described in the annual certificate filed with the City.

2. Measurements procedures. At such time as substantial completion of construction has been achieved and at regular intervals not to exceed one (1) year, Grantee shall conduct a "proof of performance" measurement of the Broadband Telecommunications Network to at least three (3) subscriber locations, at least two (2) of which shall be "worst case" locations at the network extremity. Measurements shall be made from the head end of the network in each community served. The measurements may be made as follows:

(a) Network frequency response measurements may be made with a calibrated sweep frequency generator, variable attenuator and a quality grade of spectrum analyzer. All television signals except for ALC, AGC, or ASC pilot carriers may be disconnected during this test. With all automatic gain control amplifiers in the section under test set to their normal operating mode, the sweep generator shall be connected to the input of the Broadband Telecommunications Network and set for a full bank 300 Mhz sweep at a signal level equal to the approximate average video signal level of normal programming

normally present at the input of the Network. With the spectrum analyzer set to 75 ohms termination and connected at the subscriber terminal under test, the full band spectral display of the analyzer shall be still photographed. The photograph should contain sufficient resolution to permit easy interpretation by trained persons. Measurements shall then be made and recorded for all video carrier frequencies normally carried on the network.

(b) Network signal-to-noise measurements may be made in accordance with NCTA Standard 005.0669.

(c) The network cross-modulation measurement may be performed in accordance with NCTA Standard 002.0267.

(d) The amplitude of the discrete frequency interferences within a television channel may be determined with a frequency selective voltmeter, calibrated for adequate accuracy.

(e) The terminal isolation between any two subscriber terminals may be measured by applying a signal of predetermined amplitude from a signal generator to one terminal in the reverse direction and measuring the amplitude of that signal at the other terminal with a frequency selective voltmeter.

(f) The network hum modulation may be measured at each visual carrier frequency on the network using a calibrated signal generator, a detector and an oscilloscope. The signal generator shall be connected, and the level and frequency set at a predetermined mode with all other channels set at their normal levels. With the detector and oscilloscope connected to the subscriber terminal, the average level of the detected signal and the peak-to-peak AC hum will be indicated on the oscilloscope.

(g) Radiation measurements may be made in accordance with the procedures established in Part 76, Section 76.609(h) (1) - (h) (5) if the FCC Rules and Regulations.

3. Additional tests and inspection. The City reserves the right to:

(a) Require additional tests at specific terminal locations in the event of particular problems in the network.

(b) Conduct its own inspections of the Broadband Telecommunications Network on its own motion at any time during normal business hours upon the provision of reasonable notice. The Grantee shall have a representative available during such inspection.

4. Report of measurements combined. To the extent that the report of measurements as required above may be combined with any reports of measurements required by the FCC or other regulatory agencies, the City shall accept such combined reports, provided that all standards and measurements herein or hereafter established by the City are satisfied.

Section 22 SERVICE STANDARDS.

1. Grantee shall at all times provide and maintain within the City a service technician who shall be a resident of the City, so that subscriber complaints and requests for repairs or adjustments can be resolved within 24 hours during normal business days and if at all possible within the same day reported. Individual home failures during the night shall be resolved during the following day.

2. In such cases where a network problem has caused loss of service to more than one subscriber, the response time for such problem shall be immediate, but in no event exceed two (2) hours.

Section 23 UNAUTHORIZED CONNECTIONS OR MODIFICATIONS A CRIME.

1. Injury to property of the Grantee. It shall be unlawful for any person to wrongfully or unlawfully injure the property of the Grantee or to deliberately interfere with the dissemination of cable television, and any person so doing shall be deemed to be guilty of a misdemeanor and punishable under Section 23 (3) of this ordinance.

2. Intercepting signals of the Grantee. It shall be unlawful for any person to intercept or receive the signals of the Grantee without having subscribed for said services and entered into an agreement to pay for said services, and any person so doing shall be deemed to be guilty of a misdemeanor and punishable under Section 23 (3) of this ordinance.

3. Penalty. Any person violating any of the provisions of Sections 23 (1) or 23 (2) of this ordinance shall, upon conviction, be subject to a fine of not to exceed One Hundred Dollars (\$100) and/or imprisonment not exceeding thirty (30) days.

Section 24 INTERCONNECTION.

1. No prohibition of interconnection. Nothing in this ordinance shall be construed so as to prohibit the Grantee from interconnecting its network with other cable telecommunication networks in the City, other municipalities, counties or states.

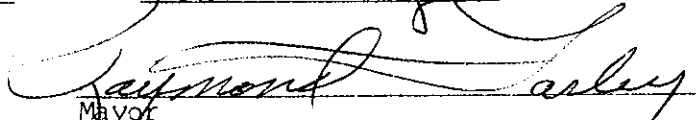
Section 25 PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED.

1. Services to be equally available. The Grantee shall not, in making available the services or facilities of its network, or in its rules or regulations, or in any other respect, make or grant preferences or advantages to any subscriber or potential subscriber to the network and shall not subject any person to any prejudice or disadvantage. This provision shall not prohibit promotional campaigns to stimulate subscriptions to the network or other legitimate uses thereof; nor shall it prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming

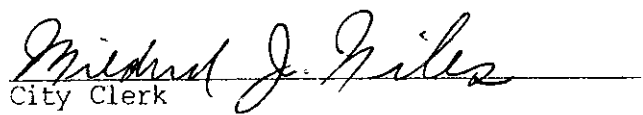
within such classification shall be entitled.

2. Fairness of accessibility. The entire network shall be operated in a manner consistent with the principle of fairness and equal accessibility of its facilities, equipment, channels, studios, and other services to all citizens, businesses, public agencies, or others entitled having a legitimate use for the network, and no one shall be arbitrarily excluded from its use.

Passed and approved this 5 day of January, 1981

  
\_\_\_\_\_  
Mayor

Attest:

  
\_\_\_\_\_  
City Clerk