

CHAPTER 114: CABLE TELECOMMUNICATIONS

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GENERAL PROVISIONS

§ 114.01 PURPOSE.

The city intends, through this chapter, to foster the development and continued operation of modern cable television and telecommunications systems within its jurisdiction. This chapter will contribute significantly to meeting the communications needs and requirements of residents, commercial enterprises and institutions within the city. It will foster economic growth by encouraging the deployment of advanced telecommunications infrastructure within the city.

(Ord. passed 5-11-99)

§ 114.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCESS. Any programming or channel designated for use by any person other than the company.

ACCESS FACILITIES. Any channel capacity, facilities or equipment designated for public, educational or governmental use and facilities and equipment for the use of such channel capacity.

BASIC SERVICE. Any service tier which includes the retransmission of local television broadcast signals and any public, educational and governmental programs required to be carried on the basic tier.

CABLE TELECOMMUNICATIONS. Cable television and telecommunications.

CABLE TELECOMMUNICATIONS SERVICE. The provision of improved television reception or telecommunications intelligence or entertainment service or any lawful telecommunications services to the public for distributing the same by wire or fiber optic cable or other wireless means.

CABLE TELECOMMUNICATIONS SYSTEM. A system of antennas, cable, fiber optics, wires, lines, towers, wave guides or other conductors, converters, equipment or facilities designated and constructed for the purpose of producing, originating, amplifying and distributing any type of lawful telecommunications service, including, but not limited to, audio, video and other forms of electronic, digital or electronic signals.

CHANNEL. A six MHz band of frequencies in the electromagnetic spectrum (or any other means of transmission, including, but not limited to optical fibers, which is capable of carrying the equivalent signal or signals), and includes uses of all or any portion of such bands of frequencies.

CONSTRUCTION COMPLETION DATE. The date, after receiving a request from the franchisee, on which the city or its designee issues a certificate of completion to a franchisee. That certificate shall not be unreasonably withheld.

FCC. The Federal Communications Commission or any successor agency.

FRANCHISE. Any authorization granted pursuant to federal and state law and this chapter in terms of a franchise privilege, permit, license or otherwise to construct, or have constructed, operate and maintain a cable telecommunications system. Any such authorization, in whatever term granted, and the fees charged thereunder shall neither supersede nor take the place of any license, license fee or permit authorization which might otherwise be required for the privilege of transacting and carrying on cable telecommunications service under any other city ordinance licensing or regulating business within such areas.

GRANTEE or FRANCHISEE or COMPANY. The person, firm or corporation to whom a franchise, as defined in this section, is granted by the City Council under this chapter, and the lawful successor, transferee or assignee of the person, firm or corporation.

GROSS REVENUES. All revenue derived from or attributable to the sale of cable television video or audio program services, videotext services and video games provided by Grantee within the city or derived from the operation within the city of its system, including, but not limited to, fees charged to subscribers for basic cable service; fees charged to subscribers for an optional video or audio service; fees charged to subscribers for any tier of video or audio program service other than basic cable service, installation, disconnection and reconnection fees for the provision of video or audio program services; leased channel fees, video or audio program service; equipment rentals; revenues received by Grantee from home shopping channels, marketing, launch and carriage revenues from advertising sold by Grantee or its agents and the sale of surplus equipment. This sum shall be the basis for computing the fee imposed pursuant to § 114.24. This term, GROSS REVENUES, does not include: converter or other equipment deposits; bad debts; any sales, excise or any other taxes collected by Grantee on behalf of any state, city or other governmental unit; refunds to subscribers by Grantee; reimbursement for expenses (including returned check fees, copy expenses and similar items); or items excluded by local, state or federal law. Notwithstanding the foregoing, revenues received for the provision of

data transmission, point-to-point telecommunications, telephone or telephone services shall be included in gross revenues only to the extent permitted by law.

STREET. The surface of and the space above and below any publicly-owned or maintained property or right-of-way, street, road, highway, freeway, land, path, alley, court, sidewalk, parkway or drive, now or hereafter existing as such within the city.

SUBSCRIBER or CUSTOMER. Any person or entity lawfully receiving any portion of the cable telecommunications service provided by a Grantee pursuant to a franchise granted in accordance with this chapter.

(Ord. passed 5-11-99)

§ 114.03 ADDITIONAL CITY RIGHTS IN FRANCHISE.

(A) The city may add to or modify or delete provisions of this chapter as it shall deem necessary in the exercise of its regulatory powers, provided that such additions or revisions are reasonable and in keeping with the public interest and welfare. The additions or revisions shall be made only after a public hearing for which franchisees shall have received written notice at least 30 days prior to the hearing. In the event of a conflict between any provision of this chapter (or amendment to it) and a franchise granted pursuant hereto, the provisions of the franchise shall control.

(B) In the event of the failure by the Grantee to complete any work required in § 114.26 or any work required by city law or ordinance within the time established and to the satisfaction of the city, the city may cause such work to be done and the Grantee shall reimburse the city the costs thereof within 30 days after receipt of an itemized list of such cost.

(C) The city reserves the right, in the event of an emergency or disaster, to require the Grantee to make available to the City Manager or his or her appointee, at his or her request, Grantee's facilities at no cost, for emergency use during the emergency or disaster period.

(D) The city reserves the right during the life of any franchise granted hereunder to have access at all reasonable hours to the Grantee's plans, contracts and engineering, accounting, financial, statistical, customer and service records relating to the property and the operations of the Grantee and to all other records required to be kept hereunder upon reasonable request.

(E) The city reserves the right during the life of any franchise granted hereunder to install and maintain free from charge upon the poles and conduits of the Grantee any wire and pole fixture necessary for municipal networks such as police and fire on the condition that the installations and maintenance thereof do not interfere with the operations of the Grantee.

(F) The city reserves the right during the life of any franchise granted hereunder to reasonably inspect and supervise at the Grantee's cost all construction or installation work performed subject to the provisions of this chapter to ensure compliance with the terms of this chapter. The city may also perform measurements upon and randomly inspect any portion of a Grantee's system to ensure compliance with the technical standards under which the Grantee is authorized to operate. Upon the city's request, the Grantee will perform the tests, submitting the results to the city.

(G) The city reserves the right during the life of any franchise granted hereunder, upon 90-days notice, to hold a public hearing for the express purpose of reviewing the general and specific performance of the Grantee with regard to all franchise provisions contained herein or in the future adopted by the city.

(H) Neither the granting of any franchise nor any governing provision of such franchise shall constitute a waiver or bar to the exercise of any governmental right or power of the city.

(I) Nothing in this chapter shall in any way or to any extent be construed to waive, modify or abridge the city's right of eminent domain in respect to a Franchisee.

(J) Any right or power in or duty impressed upon any officer, employee, department or board of the city shall be subject to transfer by the City Council by law to any other officer, employee, department or board. The city reserves the rights not specifically granted herein, and the enumeration of the rights herein shall not be construed to be a limitation of any right or power the city may otherwise have.

(K) The city shall have the authority to order a hearing every five years on the provision of additional channel capacity if, after a hearing, the city determines:

(1) That a requirement for additional capacity exists; and

(2) That consideration has been made or will be made for adequate rates to allow the company a fair rate of return on its additional investment.

(L) Any expanding or hybrid fiber-coaxial cable rebuild of the cable telecommunications system shall use fiber optic cable to the greatest extent possible to provide the highest quality of service and reduce the number of cascaded amplifiers.

(M) With respect to institutional network capacity, a minimum of two six-MHz data channels and two forward and two reverse data paths shall be reserved by the Grantee on its cable telecom-munications system for use by the city, unless otherwise provided in the franchise agreement. The Grantee shall provide these data channels without charge to the city. These data channel circuits shall be coordinated so as to provide error free data transmission within and between the hybrid fiber and coaxial cable segments.

(N) As a condition of the franchise, the Grantee shall provide television and data service to all city governmental facilities and provide television service to all public school facilities.

(O) Within one year of obtaining all necessary permits to begin construction, all franchises shall offer service to 40% of residences within 350 feet of the cable system and to all residences within 350 feet of the cable system prior to the end of the second year following the issuance of construction permits. Residences within the franchise territory of the Grantee shall be given the option to pay the pro rata share of the costs of extending service to their residences if the extension exceeds 350 feet.

(P) No Franchisee or other multi-channel video programming distributor shall enter into or enforce an exclusive contract for the provision of cable service or other multi-channel video programming with any person, or demand the exclusive right to serve a person or location, as a condition of extending service to that or any other person or location.

(Q) No Franchisee or other multi-channel video programming distributor shall engage in acts that have the purpose or effect of limiting compensation for the provision of cable

service or services similar to cable service in the city, except for such actions as are expressly authorized by law.

(Ord. passed 5-11-99) Penalty, see § 10.99

§ 114.04 SERVICE AREA.

The Franchisee of any franchise hereunder is empowered to provide service to all potential subscribers now or in the future who are located within such portion or portions of the city as provided by the franchise agreement.

(Ord. passed 5-11-99)

§ 114.05 EMERGENCY ALERT OVERRIDE SYSTEM.

The Grantee shall install and maintain an emergency alert system pursuant to the FCC's rules and the North Carolina Emergency Alert System Plan. The emergency alert system shall be activated by the Grantee pursuant to the North Carolina Emergency Alert System Plan, Section VI(B), as amended.

(Ord. passed 5-11-99) Penalty, see § 10.99

§ 114.06 INTERCONNECTION.

The company shall interconnect its cable system with any or all other cable systems in nearby areas upon the directive of the city. To accomplish this requirement, the company shall familiarize itself with the technical demands necessary to cause such interconnection. Interconnection shall be performed in accordance with the following conditions:

(A) Interconnection of the systems may be achieved by direct fiber/coaxial cable connection, microwave link, satellite or other appropriate method.

(B) Upon receiving a directive from the city to interconnect, the company shall immediately initiate negotiations with the other affected system or systems to enter into an agreement whereby interconnection costs are shared equitably among cable companies. The costs include both construction and operation expenses of the interconnection link(s). The interconnection shall be made within the time limit established by the city.

(C) The company may be granted reasonable extensions of the time to interconnect or the city may rescind its order to interconnect upon petition by the company to the city. The city shall grant the request, if it finds the company has negotiated in good faith and has failed to obtain approval from the other affected systems or the cost of interconnection would cause an unreasonable or unacceptable increase in subscriber rates.

(D) The company shall cooperate with any interconnection corporation, regional interconnection authority or city, state and federal regulatory agency established for the purpose of regulating, financing or otherwise providing for the interconnection of cable systems beyond the boundaries of the city. Further, the company will cooperate with other cable telecommunications system operators in an attempt to standardize the number of channels likely to be interconnected, to standardize a suitable frequency plan that would be compatible with existing microwave coverage in the area that would permit the maximum number of systems to interconnect and to standardize the actual channel assignments.

(E) The company shall design and operate the system so as to facilitate interconnection as stated in this section.

(Ord. passed 5-11-99) Penalty, see § 10.99

§ 114.07 PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS.

(A) The city shall have the right to establish an authority or commission to administer for the city all community media (access) activities. The city may establish, consistent with federal and state law, requirements in franchises with respect to the designation and use of

channel capacity on a franchisee's cable telecommunications system for public, education and government access television program telecasts on the basic tier.

(B) The city shall have the right to establish a relationship with the Grantee to collect fees from customers to support the annual operating and capital requirements of a community media (access) operation and related access facilities. The fee shall be collected and remitted to the city for deposit in a special revenue fund designated for this purpose.

(Ord. passed 5-11-99)

§ 114.08 CHANNELS, NEW DEVELOPMENTS AND ACCESS UTILIZATION.

The city shall have the authority to order a public hearing from time to time on the provision of channel capacity for public bandwidth on the network. If after a hearing the city determines that:

- (A) There exists a reasonable demand for additional channel bandwidth; and
- (B) Provisions have been made to allow the company a fair rate of return on its investments;

the city shall order the company to provide such additional capacity within a reasonable amount of time. If the city finds that additional public channel bandwidth is necessary, the company shall, within three months from receipt of written notice from the city, make additional channel bandwidth available.

(Ord. passed 5-11-99) Penalty, see § 10.99

§ 114.09 RIGHTS OF INDIVIDUALS.

(A) Grantees shall not deny service or otherwise discriminate against subscribers or citizens on the basis of race, color, religion, national origin, age, gender, disability, family status, marital status, veteran status or sexual orientation.

(B) Grantees shall not exclude any high-cost area, any rural location or anyone based on that person's income.

(C) Grantees shall comply at all times with all other applicable federal, state and local laws relating to nondiscrimination with respect to the provision of goods and services.

(D) Grantees shall adhere to applicable equal employment opportunity requirements of federal and state law.

(E) In the course of providing their services, Grantees shall take reasonable steps to prevent the invasion of a subscriber's right of privacy as such right is defined by applicable federal and state law.

(Ord. passed 5-11-99)

§ 114.10 LIABILITY AND INDEMNIFICATION.

(A) It shall be expressly understood and agreed by and between the city, employees and officials and any Grantee hereunder that the Grantee shall save the city, its employees and officials harmless and indemnify it and them from all loss sustained by the city, its employees and officials on account of any suit, judgment, execution, claim or demand whatsoever, including, but not limited to copyright infringement and all other damages arising out of the award of a franchise or the installation or operation or maintenance of the cable telecommunications system authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this chapter and any franchise granted hereunder.

(B) By its acceptance of a franchise granted hereunder, the Grantee agrees to pay all expenses incurred by the city, employees and officials in defending itself with regard to all damages and penalties mentioned in division (A) of this section. These expenses shall include all reasonable out-of-pocket expenses, such as consultant or attorney fees, and shall also include the reasonable value of any services rendered by the City Attorney or his or her staff or any other employees of the city.

(Ord. passed 5-11-99)

§ 114.11 FILING AND COMMUNICATIONS WITH REGULATORY AGENCIES.

The Grantee shall simultaneously file and maintain with the City Council copies of all petitions, applications and communications, relative to any franchise granted pursuant to this chapter transmitted by the Grantee to, or received by the Grantee from all federal and state regulatory commissions or agencies having competent jurisdiction to regulate the operations of any broadband telecommunications network authorized hereunder.

(Ord. passed 5-11-99)

§ 114.12 MISCELLANEOUS PROVISIONS.

(A) Compliance with laws. The Grantee agrees to comply fully with local ordinances, state and federal laws and with all rules issued by regulatory agencies now or hereafter in existence.

(B) Severability. If any section, sentence, clause or phrase of this chapter is held invalid or unconstitutional, the invalidity or unconstitutionality shall not affect the validity of the remainder of this chapter and any portions in conflict are hereby repealed. Provided, however, that in the event that the FCC declares any section invalid, then the section will be renegotiated by the city and the Grantee.

(C) Captions. The captions to sections are inserted solely for information and shall not affect the meaning or interpretation of the chapter.

(D) No recourse against the city. The Grantee shall have no recourse whatsoever against the city or its officers, boards, commissioners, agents or employees for any loss, cost, expense or damage arising out of any provision or requirement of this chapter or because of its enforcement.

(E) Nonenforcement. The Grantee shall not be relieved of its obligation to comply promptly with any of the provisions of the franchise by any failure of the city to enforce prompt compliance.

(F) Disputes. This chapter and any disputes arising from its adoption, or from any franchise granted pursuant thereto, shall be governed by the laws of the state of North Carolina and the city consistent with applicable FCC rules and regulations required to be observed in the enforcement of this chapter.

(G) Conflict. This chapter shall not be deemed conclusive as to the terms and conditions of any franchise hereinafter issued hereunder. The final terms and conditions of the franchise shall be determined by the franchise ordinance.

(H) Franchise required. It shall be unlawful for any person, firm or corporation to construct, operate or maintain a cable telecommunications system in the city without a franchise.

(I) New franchises. The provisions of this chapter shall apply only to franchises issued after the effective date of this chapter. Any previously existing franchise shall comply with the ordinance in effect at the time the franchise was granted.

(Ord. passed 5-11-99) Penalty, see § 10.99

FRANCHISES

§ 114.20 CABLE TELEVISION FRANCHISE.

(A) Cable television franchise. No person may operate a cable telecommunications system in the city without first obtaining a franchise as provided in this chapter.

(B) Franchise application. Any person that desires a cable television franchise shall file an application, in a format provided by the city, which shall include not less than:

(1) The identity of the franchise applicant, including all affiliates of the applicant.

(2) A description of the cable service that will be offered or provided by the franchise applicant over its existing or proposed facilities.

(3) A description of the transmission media that will be used by the Franchisee to offer or provide such cable service.

(4) A map with sufficient detail to identify:
(a) The location and area the applicant's proposed cable telecommunications system shall serve; and

(b) The route(s), if any, for interconnection with cable telecommunications system of other providers and PEG access origination facilities.

(5) A preliminary construction schedule, construction completion date and anticipated system activation date.

(6) Acknowledgment that the applicant's traffic control plan shall conform with NCDOT's manual on uniform traffic control procedures as related to public safety issues regarding lane closures and construction in the public way.

(7) Financial statements prepared in accordance with generally accepted accounting principles, demonstrating the applicant's financial ability to construct, operate, maintain, relocate and remove the facilities.

(8) Information in sufficient detail to establish the applicant's technical qualifications, experience and ability to provide the cable telecommunications system and services described in its application.

(9) Information to establish that the applicant has obtained all other governmental approvals and permits to construct, operate and offer cable telecommunications services.

(10) An accurate map showing the location of any existing telecommunication facilities in the city that the applicant intends to lease.

(11) A description of the services or facilities that the applicant will offer the city and other public, educational and governmental institutions.

(12) A description of the applicant's commercial customer and residential subscriber line extension policies. These policies shall conform to the provision contained within § 114.24.

(13) All fees, deposits or charges required pursuant to § 114.21.

(14) Such other and further information as may be requested by the City Administrator.

(C) Determination by the city.

(1) Within 120 days following receipt of a completed application, the city shall issue written determination granting or denying the application in whole or in part. In reviewing an application, the city shall consider the following factors:

(a) The legal, character, financial and technical qualifications of the applicant.

(b) The construction arrangements proposed by the applicant.

(c) Whether the services that the applicant proposes to offer satisfy the community's need for cable television services.

(d) The deleterious effect, if any, on public health, safety and welfare if the franchise requested is granted.

(e) Whether the applicant is providing adequate public, educational and governmental access, channel capacity, facilities and financial support.

(f) Applicable federal and state telecommunications laws, regulations and policies.

(g) Such other factors as may demonstrate that the grant to use the public ways may or may not serve the community's interest.

(2) If the City Council finds the application is in compliance with this chapter and is satisfied with the ability of the applicant to perform and that the community's interests shall be served, the city shall grant the applicant a franchise. If the application is denied, the written determination shall include the reasons for denial.

(D) Nonexclusive grant. No franchise granted under this section shall confer any exclusive right, privilege or franchise.

(E) Term of grant. The term of a franchise granted pursuant to this chapter shall not be more than 20 years.

(F) Rights granted. No franchise granted under this section shall convey any right, title or interest in the public ways, but shall be deemed a franchise only to use and occupy the

public ways for the limited purposes and term stated in the grant. Further, no franchise shall be construed as any warranty of title.

(G) Additional franchises. The Grantor specifically reserves the right to grant such additional Franchises as it deems appropriate, subject to applicable state and federal law.

(Ord. passed 5-11-99) Penalty, see § 10.99

§ 114.21 APPLICATION FEE.

Applicants for a franchise hereunder shall pay an application fee to the city of \$3,000, which shall be due and payable to the city upon submission to the city of an application for a franchise. The city may waive the fee for an incumbent operator seeking a franchise renewal pursuant to the informal rules provided in the Cable Communications Policy Act of 1984, § 626, being 47 USC 521, 546.

(Ord. passed 5-11-99)

§ 114.22 TERMINATION AND EXPIRATION OF FRANCHISE.

(A) The city reserves the right to terminate, at any time, any franchise granted hereunder, and rescind all rights and privileges associated therewith in the event that:

(1) The Grantee has not complied in some material respect with any provision of this chapter or of any supplemental written agreement entered into by and between the city and the Grantee or in some material respect with any terms or conditions of any franchise or permit issued hereunder;

(2) A Grantee has made a material false statement in the application for the franchise, knowing it to be false;

(3) The Grantee, contrary to the best interest of public convenience and welfare, is not providing subscribers with regular, adequate and proper service, consistent with the terms of any franchise granted hereunder;

(4) The Grantee becomes insolvent, enters into receivership or liquidation, files for bankruptcy or for composition of creditors, is unable or unwilling to pay his or her debts as they mature or is in financial difficulty of sufficient consequence so as to jeopardize the continued operation of the cable telecommunications system, unless the Grantee is in the process of contesting such debts; or

(5) The Grantee violates any FCC order or ruling or the order or ruling of any other governmental body having jurisdiction over the Grantee, unless the Grantee is lawfully contesting the legality or applicability of such order.

(B) In the event that the city shall decide to terminate for cause a franchise granted hereunder, it shall give the Grantee 60-days written notice of its intention to terminate and stipulate the cause. If, during the 60-day period, the cause shall be cured to the satisfaction of the city, the city shall declare the notice to be null and void. In any event, before a franchise may be terminated, the Grantee must be provided with an opportunity to be heard before the City Council in accordance with due process procedures. If a Grantee's franchise is terminated, the decision shall be subject to judicial review as provided by law.

(C) In the event that operation of the cable telecommunications system is discontinued for any reason for a continuous period of 30 days, or the franchise held by a Grantee to construct, operate or maintain a cable telecommunications system is terminated by the City Council, pursuant to the terms of this chapter and all negotiations to settle the differences between the parties have failed (provided, however, that such negotiations shall not be required), the City

Council may advertise and seek another to operate the system. If a franchise is granted to another person, the terminated Franchisee may be required to sell the cable telecommunications system to the new Franchisee at a price to be determined by three competent, independent appraisers, one each appointed by the terminated Franchisee, the new Franchisee and the City Council. The appraisers to be appointed shall use the then-best methods of appraising to determine this value. The appraisers' fees shall be shared equally by the terminated Franchisee and the new Franchisee. The terminated Franchisee shall execute such deeds, bills of sale and other documents as may be necessary to effectuate this sale. The terminated Franchisee shall fully cooperate with these appraisers.

(D) In the event of the early termination of the franchise as herein provided, the city shall have the option of purchasing the cable business for the fair market value of the capital improvements. The city may also require the Grantee to sell any capital improvements as provided in this section to any successor Grantee as set forth in division (C) of this section. In any event, the city may require the Grantee to continue to provide service for a reasonable period not to exceed six months in order to assure uninterrupted service to subscribers.

(E) The city shall provide the Franchisee notice of its intent to exercise the option to purchase at least 180 days prior to the expiration of the term of this franchise and/or such renewals thereof as are authorized. If the franchise is terminated or expires, notice of intent to exercise the option to purchase shall be contained in the notice of intention to terminate.

(F) (1) Should the Grantee's franchise be terminated or expire, and not purchased as above provided, and at such times as the successor is ready to provide service, but no later than six months from termination or expiration, the Grantee shall begin removal of its property within the public way, unless permitted by the city to abandon the property in place. In so removing the plants, structures and equipment, the Grantee shall refill, at its own expense, any excavations made by it, and shall leave such public and private places in as good condition as that prevailing prior to the company's installation of its equipment and appliances without affecting, altering or disturbing in any way the electric distribution or telephone, cable, wire or attachments or any poles. The City Council or other officer or his or her appointee shall inspect and approve the condition of the public ways and public places and cables, wire attachments and poles after removal. Liability insurance and indemnity provided for herein shall continue in full force and effect during the entire period of removal.

(2) In the event of any such removal, the Grantee shall restore the public right-of-way to a condition satisfactory to the city. Upon abandonment, which shall only be done as the city directs, the Grantee shall transfer ownership of all such abandoned property to the city, and submit to the city an instrument in writing, subject to the approval of the City Attorney, effecting such transfer.

(3) If the city or the state is forced to remove the system, the work shall be performed at the expense of the terminated Grantee.

(Ord. passed 5-11-99)

§ 114.23 TRANSFER OR ASSIGNMENT OF CABLE TELECOMMUNICATIONS SYSTEM.

(A) No transfer of control of a franchise or assignment of a franchise to operate a cable telecommunications system other than a pro forma transfer or assignment to a parent or wholly-owned subsidiary corporation or other form of organization shall take place, whether by force or voluntary sale, lease, mortgage, assignment, encumbrance, foreclosure, attachment, merger or other form of disposition, without prior notice to and approval by the City Council. The notice shall include filing particulars of the proposed transaction. The City Council shall act by

resolution. The City Council shall have 120 days after the receipt of the notice and all supporting documents within which to approve or disapprove a transfer of control or assignment of the franchise; if the proposed transfer or assignment is not acted upon within 120 days, approval shall be deemed to have been given.

(B) Notice of any such proposed transfer or assignment, together with copies of all documents pertaining thereto, shall be in writing filed with the City Clerk. The proposed transferee or assignee shall agree in writing to comply with all provisions of this chapter and other provisions and requirements as the City Council might order.

(C) For the purpose of this section, the term "control" is not limited to majority stock ownership, but includes actual working control in whatever manner exercised. A transfer of control shall be deemed to have occurred upon the acquisition or accumulation by any person or group of persons of 10% of the voting shares of the company.

(D) In the absence of extraordinary circumstances, the City Council shall not approve any transfer or assignment of the franchise before completion of initial construction of the energized system or within the first two years of operation thereafter.

(Ord. passed 5-11-99)

§ 114.24 FRANCHISE AND OTHER FEES.

(A) (1) Within 60 days after each quarter of its fiscal year, after acceptance of a franchise, the Grantee shall pay to the City Council for constructing, operating and maintaining the cable telecom-munications system as defined herein, and for the privilege of providing the cable telecommunications service as defined herein during the ensuing fiscal year, sum equal to 5% of its gross revenue for its preceding quarter.

(2) The payment of this fee is in addition to any privilege or use tax or ad valorem taxes which the city may levy. At any time the City Council, its employees or other designated representative shall have the right to inspect all financial documents related to the calculation of the franchise fee. In the event of holding over after expiration or other termination of any franchise granted hereunder, without the consent of the city, the Grantee shall pay to the city reasonable compensation and damages, of not less than 100% of its total gross profits during said period.

(B) (1) The 5% franchise fee provided for herein shall be reviewed every five years during the term of this franchise, and the franchise fee, at the sole option of the City Council, shall be adjusted upward if the City Council determines that an upward adjustment is necessary in order to maintain the franchise fee consistent with:

- (a) Franchise fees being paid by cable telecommunications companies operating under similar conditions;
- (b) The costs incurred by the city to administer this franchise;
- (c) The value of the company's right to use city public ground, highways, roads, streets, alleys, sidewalks, public ways and utility easements as may be available; and
- (d) Any applicable statutes, laws, rules and regulations.

(2) If the franchise fee is adjusted, the adjustment shall be effective at the beginning of the next immediate full quarter of the company's fiscal year during which such adjustment is made. The city may unilaterally adjust the franchise fee upward only after giving notice to the company and holding a hearing.

(C) The Grantee shall provide the city an annual financial statement within 60 days of the close of the calendar year, certified by an official of the Franchisee responsible for the system's financial statements, reflecting the total amounts of gross revenues as defined herein and all payments and computations for the previous calendar year. Upon ten-days prior written notice, the city shall have the right to conduct an independent audit of the Franchisee's records. If, after resolving any dispute arising from such audits, the Franchisee has made a franchise fee underpayment of 3% or more, the Franchisee shall assume all reasonable costs of such audits. In other events, the city shall bear all costs associated with such audit.

(D) As otherwise provided by law, 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 under this chapter or any franchise agreement ordinance or for the performance of any other obligation of the franchise.

(Ord. passed 5-11-99)

§ 114.25 LIMITATIONS ON FRANCHISE.

(A) In addition to the limitations otherwise herein appearing, the franchise is subject to the following limitations. Franchisees shall at all times during the life of a franchise hereunder be subject to all lawful exercise of the police power by the city and other duly authorized regulatory state and federal bodies, and shall comply with any and all ordinances which the city has adopted or shall adopt applying to the public generally, and shall be subject to all laws of the state of North Carolina and the United States.

(B) Time shall be of the essence of any franchise granted hereunder. Franchisees shall not be relieved of their obligations to comply promptly with a provision of this chapter by the failure of the city to enforce prompt compliance. Failure of the city to enforce any breach by the Franchisee shall not constitute a waiver by the city.

(C) Any franchise hereunder shall not relieve a Franchisee of any obligations under any preexisting pole or conduit use agreements it may have with the city, a utility company or others maintaining poles or conduits in the streets of the city.

(D) Any poles, cable, electronic equipment or other appurtenances of a Franchisee to be installed in, under, over, along, across or upon a street shall be so located as to cause minimum interference with the public use of the street and to cause minimum interference with the rights of other users of the streets or of property owners who adjoin any of the streets. All such installments in or upon property owned or controlled by the city shall be subject to the prior approval of the city.

(E) In the event of disturbance of any public or private property by a Franchisee, it shall, at its own expense and in a manner approved by the city, replace and restore public and private property in no less than the same condition as before the work which caused such disturbance was done.

(F) Franchisees shall construct, maintain and operate their cable telecommunications systems so as to cause minimum inconvenience to the general public. All excavations shall be

properly guarded and protected. At Franchisee's sole cost and expense, the street shall be restored upon completion of all work.

(G) A Grantee shall, upon reasonable notice from any person holding a building moving permit issued by the city or state of North Carolina, temporarily alter their facilities to permit the moving of such building. The actual cost of such altering shall be borne by the person requesting the altering, and franchisees shall have the right to request payment in advance. For the purposes of this chapter, reasonable notice shall be construed to mean written notice received by the Franchisee at least 72 hours prior to the move.

(H) If at any time in case of fire or disaster in the city it shall become necessary in the judgment of the City Manager or the Chief of the Fire Department or their designee to cut or move any of the wires, cables, amplifiers, appliances or appurtenances thereto of a franchise, such cutting or moving may be done and any repairs rendered necessarily thereby shall be made by Franchisee at no expense to the city.

(Ord. passed 5-11-99)

§ 114.26 LOCATION OF FACILITIES.

All facilities shall be constructed, installed and located in accordance with the following terms and conditions, unless otherwise specified in a franchise agreement:

(A) Without cost to the city, the Grantee may be required by the city to locate and identify its cable television facilities within the public rights-of-way.

(B) The city reserves the right, upon reasonable notice, to require the Grantee at its expense to protect, support, temporarily disconnect, relocate or remove from the city's street any property of the Grantee by reason of traffic conditions, public safety, street construction or excavation, change or establishment of street grades, installation of sewers, drains, water pipes, power or communication lines, tracts or other types of structure or improvements by governmental agencies or any structures of public improvement. Reasonable notice for this provision shall mean 90 days. In emergencies, no specific notice period shall be required. The city shall endeavor to notify and seek comment from the Grantee, with respect to minimizing disruption to the cable system, where public projects may affect the Grantee's cable system.

(C) Cable television facilities shall be installed within existing underground duct banks or conduits whenever excess capacity exists.

(D) A Franchisee with permission to install overhead facilities shall attach its cable telecom-munications system on utility poles only when pole space is available.

(E) Whenever any existing electric utilities, cable facilities or telecommunications systems are located underground within a public way of the city, a Grantee with permission to occupy the same public way must also locate its cable television facilities underground at no cost to the city.

(F) Whenever any new or existing electric utilities, cable or telecommunications systems are located or relocated underground within a public way, a Grantee that currently occupies the same public way shall relocate its facilities, without cost to the state or city, underground within a reasonable period of time, which shall not be later than one year from the date of notification. Absent extraordinary circumstances or undue hardship as determined by the City Manager, such relocation shall be made concurrently to minimize the disruption of the public ways.

(G) Whenever a public way exists to accommodate the Grantee's system, the Grantee shall not locate its facilities off the public right-of-way, unless to serve customers, and shall make every effort to locate its cable telecommunications system within the public way before seeking private easements within the city. The Grantee shall, at no cost to the city, relocate its facilities and appliances which are in conflict with city projects to upgrade or construct roadways.

(H) The Grantee shall locate, place and construct its cable telecommunications system so as not to interfere with the construction, location and maintenance of sewer or water mains, lines or connections. The Grantee shall implement preventive measures to protect existing facilities within the public rights-of-way.

(I) The Grantee shall restore and replace landscaped areas, pavement, pedestrian lighting, sidewalks, curbs, gutters or other facilities damaged by the Grantee or its contractors with like material to their former condition at the Grantee's expense and shall thereafter, from time to time, but no longer than one year from the completion of the job, readjust, fill and finish the same as may be necessary due to settling of the earth associated with the Grantee's disruption of the public way.

(J) Whenever new cable telecommunications system will exhaust the capacity of a public street or utility easement to reasonably accommodate future cable telecommunications carriers or facilities, the Grantee shall provide additional ducts, conduits, manholes and other facilities for nondiscriminatory access to future carriers.

(K) The Grantee shall adhere to all federal, state and local regulations regarding the location, construction and maintenance of its cable telecommunication system within the public right-of-way.

(L) All franchisees are required to obtain construction permits for the erection of a cable telecommunications system. Nothing in this section shall prohibit the city and a Franchisee from agreeing to an alternative plan review process, alternate permit and construction procedures. Such alternative procedures must be stated in the franchise agreement.
(Ord. passed 5-11-99)

§ 114.27 UNLAWFUL CONNECTIONS AND THEFT OF SERVICE.

(A) It shall be unlawful for any person, firm or corporation to attach or maintain an electronic, mechanical or other connection to any cable, wire, decoder, converter, descrambler, device or equipment of a cable telecommunication system, or to remove, tamper with, modify or alter any cable, wire, decoder, converter, descrambler, device or equipment of a cable telecommunication system for the purpose of intercepting or receiving any programming or service transmitted by such cable telecommunications system for which the person, firm or corporation has not been authorized by the cable telecommunication system to receive.

(B) It shall be unlawful for any person, firm or corporation without the authorization of a cable telecommunications system to distribute, sell, attempt to sell or possess for sale any converter, decoder, descrambler, device or kit or other equipment that is designated to decode or descramble any encoded or scrambled signal transmitted by the cable telecommunication system.
(Ord. passed 5-11-99) Penalty, see § 10.99