

- (2) Evidence that the applicant has applied to the city for all applicable right-of-way utilization permits, including the payment of all applicable fees, if any.
- (3) Evidence that all aspects of the applicant's cable communications system comply with applicable zoning laws of the city.
- (4) A map or maps of a scale of not less than one inch equaling 100 feet showing the precise geographic area for which applicant seeks a franchise.
- (5) Evidence that the applicant has applied to the city for building and electrical code review and approval of the plans and construction of the entire cable communications system within the franchise area, including the payment of all applicable fees, if any.
- (6) Evidence of financial responsibility in the form of an irrevocable performance letter of credit or bond conforming to the requirements of this chapter or other form of guarantee acceptable to the city.
- (7) A schedule of construction, as established by the applicant and reflected upon the map provided pursuant to subsection (b)(4) of this section, showing by a logical geographic progression which streets within the franchise area upon which cable communications systems shall be constructed by the applicant within each calendar quarter during the period of construction.
- (8) Detailed plans and specifications for the cable communications system which is proposed by the applicant.
- (9) A detailed statement describing the equipment and operational standards proposed by the applicant.
- (10) A detailed statement setting forth in its entirety any and all agreements and understandings, whether formal, informal, written, oral or implied, and copies of such agreements existing or proposed to exist between the applicant and any person which may affect control or operation of the system contrary to this chapter or the franchise agreement, including but not limited to any agreements whereby any other entity shall have the right to assume ownership or control of applicant's proposed cable communications system for any reason.
- (11) A copy of any agreement covering the franchise area, if existing between the applicant and any public utility providing for the use of any facilities of the public utility, including but not limited to poles, lines or conduits.
- (12) True and exact copies, if filed, of the last and most current FCC Cable TV Information Report, FCC form 325, as submitted to the FCC. If none have been filed, a detailed written explanation of why such form has not been filed.
- (13) A certificate of insurance verifying workers' compensation, general liability and property damage insurance coverage or proof of self-insuring status which demonstrates adequate financial resources to defend and cover claims, in compliance with the levels of coverage specified in this chapter.
- (14) The name of a registered agent and incumbency certificate of authorized officer to bind applicant.
- (15) The name and phone number of a representative of applicant or an agent who may be contacted in the event of an emergency.
- (16) Any other reasonable information which could materially affect the granting of the franchise as requested by the city.
- (d) All of the materials and information required by the applicant shall be submitted no later than 15 days prior to the scheduled first hearing on the request for a new franchise. Failure to do so shall preclude the matter from being heard at a public hearing.
- (e) Applications for renewal of a franchise shall include only such materials, information, and matters as the city may request and which are relevant to the renewal standards of state or

federal law and/or the grantee's use, maintenance, or activities in or affecting the city's streets and easements.

(f) In the event that an application for a franchise is granted, the grantee shall notify the city within 30 days of any material change in the contact information supplied on its application during the term of its franchise and any renewal thereof.

(Ord. No. 02-03, Art. II(5), 2-28-02)

Sec. 71-36. Grant procedure.

All cable communications franchise applications when filed shall be available for public inspection at places designated by the city. Within 90 days after filing a completed application and the conclusion of negotiations with the city on the terms of a franchise agreement containing such matters as provided for in section 71-32 above, a public hearing shall be held on the application. A decision shall be made by the city not later than 90 days after the conclusion of all such public hearings based upon an evaluation of the applications, the hearings and other information that the city may deem relevant. The city may grant a franchise or may decline to grant any franchise.

(Ord. No. 02-03, Art. II(6), 2-28-02)

Sec. 71-37. Duration.

The term of any new cable communications franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be set forth in the franchise agreement, but in no event shall exceed ten years and may be terminated sooner than the expiration of the term granted as provided in this chapter or in any franchise agreement.

(Ord. No. 02-03, Art. II(7), 2-28-02)

Sec. 71-38. Bond.

(a) A grantee shall exercise none of the rights granted by this chapter until evidence of compliance with the following bonding and preceding insurance requirements has been filed with the city. Should a grantee fail to comply with said

requirements, its franchise shall be subject to revocation consistent with the procedures established in this chapter.

(1) *Bond.* Every operator of a cable communication system shall be required to obtain a franchise performance bond to be in effect throughout the term of its franchise in the amount of \$100,000.00, which amount shall increase by \$25,000.00 on January 1, 2007, and by a like amount every five years thereafter. Such bond may be called on by the city in the event of a grantee's failure to pay to the city any money due under the requirements of its franchise. In addition, the city may require a bond in connection with an initial build, any substantial rebuild, upgrade or extension of its facility, or when construction plans show that there would be more than 1,000 feet of open trenching in the streets of the city at any given time. Such additional bond shall be in such amount as required by the city in light of the nature of the work to be performed and shall be consistent with that required of other cable franchisees performing similar work in the city not to exceed the greater of \$500,000.00 or 125 percent of the estimated cost of restoration of any impacted rights-of-way and any improvements located therein; provided, however, that in the event that city has adopted an ordinance of general applicability to all users of city rights-of-way (other than those with respect to whom the city is preempted from regulating) which ordinance contains bonding requirements less than those contained herein, such other limits shall control so long as they remain in effect. All bonds shall be in form reasonably acceptable to the city attorney.

(2) *Notice.* The performance bonds required pursuant to this section shall require 30 days notice prior written notice to the city and the grantee of an intention of non-renewal, alteration or cancellation. The grantee shall, in the event of any such intended cancellation notice, obtain, pay all premiums for, and file replacement

bonds or policies within 30 days following receipt by the city or the grantee of any notice of intended cancellation.

(Ord. No. 02-03, Art. II(8), 2-28-02)

Sec. 71-39. Indemnification by grantee.

(a) Each cable communications franchise grantee shall, at the grantee's sole cost and expense, fully indemnify, defend and hold harmless the city and, in their capacity as such, the officers, agents, boards, commissioners, consultants and employees of the city from and against any and all claims, suits, actions, proceedings, liabilities and judgments for damages or otherwise:

- (1) For actual or alleged injury to persons or property, including loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed, in any way arising from or through or alleged to arise from or through the acts or omissions of the grantee or its officers, agents, employees or contractors;
- (2) Arising from or alleged to arise from any claim for damages for invasion of the right of privacy, defamation of any person or the violation or infringement of any copyright, trademark, trade name, service mark or patent or of any other right of any person resulting from or alleged to result from the operation of the cable communications system in the city; and
- (3) Arising from or alleged to arise from the grantee's failure to comply with the provisions of any statute, regulation or ordinance of the United States, State of Florida, city or any local agency applicable to the grantee in its business.

(b) Indemnification expenses shall include but not be limited to all out-of-pocket expenses, such as attorneys' fees, and shall include the reasonable value of any services rendered by the city attorney or his assistants or any consultants, agents and employees of the city. The city shall have the right to reasonable prior approval of any and all attorneys retained by a grantee in discharge of a grantee's indemnification obligations hereunder. Nothing in this section shall be deemed to prevent the parties indemnified and held harm-

less in this section from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve the grantee from the grantee's duty of defense against liability or of paying any judgment entered against such party. (Ord. No. 02-03, Art. II(9), 2-28-02)

Sec. 71-40. Grantee insurance.

(a) As a part of the indemnification provided in section 71-39, but without limiting the indemnification, each cable communications franchise grantee shall file with the application and at all times thereafter maintain in full force and effect at the grantee's sole expense an acceptable policy of liability insurance, including comprehensive general liability insurance products/completed operations liability, personal injury liability, owners and contractors protective liability, broad form property damage, contractual liability, and automobile liability (owned; nonowned and hired automobiles). The policy shall name as primary insured the city and, in their capacity as such, the city's officers, agents and employees. The grantee and city and city officers, agents and employees shall be named as co-insureds, and the policy shall contain \$5,000,000.00 per occurrence. The insurance policy shall contain contractual liability insurance naming the grantee and shall insure against the types of liabilities covered by the indemnification and hold harmless provisions of section 71-39.

(b) The insurer shall be authorized to write the required insurance, approved by the state insurance commissioner and subject to the reasonable approval of the city. The form and substance of the policy of insurance shall also be subject to approval by the city. All insurance shall be from a responsible company duly authorized to do business in the State of Florida and having a financial rating in Best's Insurance Guide of B+, Class VI or better, and a claims paying ability rating of A+ or better.

(c) A grantee shall maintain and by its acceptance of any franchise granted hereunder, specifically agrees that it will maintain throughout the term of the franchise and any work required to be performed hereunder by grantee after termina-

tion or expiration of any franchise, workers' compensation, employer liability insurance valid in the State of Florida in the minimum amounts of the statutory limit for workers' compensation and \$500,000.00 for employer's liability for each accident, for each disease accident, and for each disease each employee.

(d) The policies of insurance shall be maintained by each grantee in full force and effect during the entire term of the franchise. Proof of insurance shall be provided by the grantee to the city upon commencement of a franchise, upon any change in the terms of an insurance policy, and upon the reasonable request of the city. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium or otherwise and whether at the request of the grantee or for other reasons, except after 30 calendar days' advance written notice mailed by the insurer to the city clerk.

(Ord. No. 02-03, Art. II(10), 2-28-02)

Sec. 71-41. Transfers.

(a) *Applicability of section.* The restrictions, requirements and procedures contained in this section apply equally whether the transaction proposed is an assignment of the franchise and license to a separate legal entity or a transfer of control or operation of the grantee resulting from changes in voting interests or the leasing of the cable system. The terms "assignor" and "assignee" and "lessor" and "lessee", respectively, should be used in lieu of "transferor" and "transferee" as used herein if the transaction proposed is an assignment or lease of license or franchise.

(b) *Prior consent required.* Any franchise approval and license granted under this chapter shall be a privilege to be held by the grantee for the benefit of the public subject to city, state and federal regulation. The franchise and license cannot under any circumstances be assigned, nor the control thereof transferred as set forth herein, by any means whatsoever, including but not limited to voluntary or involuntary sale, lease, merger, consolidation, foreclosure, receivership or other

means without the prior written consent of the city which consent shall not be unreasonably withheld.

(c) *Control.*

(1) The word "control" as used in this section shall not be limited to majority stock ownership, or controlling partners, but includes and is not limited to actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred or will occur shall arise upon the acquisition by any person or group of persons of ten percent of the issued voting shares of the grantee unless a single and the same person or group of persons holds more than 50 percent of the voting interests both before and after the transfer. A rebuttable presumption that transfer of control has occurred or will occur shall arise when a change in a general partner has occurred or will occur. Any leasing of the cable system, or portion thereof whereby a person or entity other than grantee is primarily responsible for maintaining the system facilities in the streets of the city or providing cable service to residents in the city shall be a presumptive transfer of control. The term "control" as used in this section shall not include:

- a. A pledge, hypothecation or mortgage, or similar instrument transferring conditional ownership of all or part of the grantee's assets within the franchise area to a lender or creditor in the ordinary course of business so long as the lender does not thereby acquire any right to control or materially affect the grantee's operation, and no such transfer of conditional title can be made absolute without prior approval of the city; or
 - b. The disposition of facilities or equipment no longer required in the conduct of the business.
- (2) For purposes of this subsection, "group of persons" shall include persons who by

agreement, whether oral or written, act in concert for purposes of exercising control over the grantee. It shall not include proxy agreements in publicly held corporations. It shall include all immediate members of a family.

- (3) For purposes of this subsection, the establishment of a management agreement whereby the responsibility for the operation of the system is transferred in its entirety to an entity unaffiliated with the grantee shall be considered a transfer of control under this subsection.
- (4) Upon the filing of an action for bankruptcy, foreclosure or the appointment of a receiver, by or against the grantee, the grantee shall forthwith send a copy of the initial and all subsequent pleadings to the city clerk. The city shall have the right to intervene in any such action, and any mortgage or pledge of the grantee which could have the effect of transferring control shall set forth this right to intervene. Whether the city intervenes or not, any involuntary transfer shall require the consent of the city.

(d) The consent or approval of the city to any transfer of the franchise shall not constitute a waiver or release of the rights of the city in and to the streets, and upon any transfer a transferee shall be subject to the terms and conditions of a franchise.

(e) In the absence of extraordinary circumstances, the city will not approve any transfer or assignment of a franchise prior to substantial completion of construction of the proposed system.

(f) A transfer of ownership shall not be approved without the successor in interest becoming a signatory to the franchise agreement.

(Ord. No. 02-03, Art. II(11), 2-28-02)

Sec. 71-42. Renewal.

(a) Franchise renewal procedures shall be in accordance with federal law, including but not limited to the provisions of 47 U.S.C § 546 as may be amended from time to time.

(b) If the city does not renew a franchise or a franchise is terminated as provided in this chapter, the city shall have the option to either:

- (1) Acquire at fair market value all the assets of the grantee's operations within the city;
 - (2) Require the sale at fair market value of all such assets to a succeeding grantee;
 - (3) Require the removal, in accordance with the provisions of this chapter, of all grantee's property located within the public ways of the city. Furthermore, in removing its plant, structures and equipment, the grantee shall refill, at its own expense, any excavation that shall be made by the grantee and shall leave all public ways and places in as good condition as that prevailing prior to the grantee's removal of equipment and appliances, without affecting the electric, telephone, or other users' cables, wires or attachments. The city shall inspect and approve the conditions of the public ways and public places and cables, wires, attachments and poles after removal. The liability insurance, indemnity and performance bond provided in this article shall continue in full force and effect during the period of removal; or
- (4) Require the grantee to abandon in place any property which, in the city's opinion, would be too disruptive to the public rights-of-way to be removed.

(Ord. No. 02-03, Art. II(12), 2-28-02)

Sec. 71-43. Appraisal for purchase by city.

If the city upon revocation of a franchise or termination of a franchise without right of renewal, elects to purchase a grantee's cable television system and the value therefor cannot be agreed upon by the city and grantee within 90 days of the city's election, the value shall be determined by a panel of professional appraisers in accordance with federal law. The panel shall be composed of one appraiser chosen and compensated by the city, one appraiser chosen and compensated by the grantee and a third appraiser chosen by the first two appraisers and compensated one-half by the city and one-half by the

grantee. The appraisal hearing shall take place in the city, unless otherwise agreed to by the parties in writing. In the event that the appraisers are unable to agree upon a value, the value of the three appraisers shall be averaged to reach a fair market value. In those circumstances where the question of value has been submitted to an appraisal, the city may affirmatively accept the decision of the appraisers within 90 days after the rendering of the appraisers' decision. If the city affirmatively accepts the decision, closing shall occur within 180 days after the acceptance of the appraisal by the city at such time and place as designated by the city. However, if the city rejects the appraisers' decision or fails to accept or reject the appraisers' decision within the 90-day period, the rights of the city to purchase shall expire and the city's prior election to purchase shall be null and void without the need for further action by the city and the grantee shall be required to remove or abandon its property as directed by the city.

(Ord. No. 02-03, Art. II(13), 2-28-02)

Sec. 71-44. Procedure for remedying violations.

(a) If the city determines that a grantee has violated any material provision of its cable communications franchise or this chapter, the city may make a written demand on the grantee that it remedy such violation. Following written notice to the grantee by the city of a breach of any franchise granted under this chapter and subject to the limitation on cure periods in section 71-45(a) for certain violations and events set forth in section 71-45(a)(1) through (8) below, grantee shall have 30 days (or such longer time as the city and grantee agree is reasonably necessary) to demonstrate that there has been no breach or to cure such breach. In the event that grantee fails to cure such breach within said 30-day period (or such longer period as city has agreed to), city may, notwithstanding any other remedies provided in this chapter or otherwise available under law, elect one or more of the following remedies:

- (1) Make such correction itself and charge the cost of same to the grantee;

- (2) Secure the proceeds from any financial performance instrument posted by the grantee; or
- (3) Declare grantee in material default and act to terminate grantee's franchise and the rights granted under this chapter as provided for in section 71-45 below.

Notwithstanding the preceding provisions of this section 71-44, the 30 day or longer cure period provided above to a grantee above shall not apply and no cure period shall exist with respect to the third and all subsequent violations of the same provision of this chapter or a franchise agreement within a 12-month period after the occurrence of the first such violation before the city may elect and impose one or more of the remedies set forth above.

(Ord. No. 02-03, Art. II(14), 2-28-02)

Sec. 71-45. Forfeiture of franchise.

(a) In addition to all other rights and powers pertaining to the city by virtue of this chapter or otherwise and notwithstanding any other provision of this chapter to the contrary, the city reserves the right to terminate and cancel any franchise granted and all rights and privileges of a grantee hereunder in the event that the grantee:

- (1) Becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt;
- (2) Practices any fraud or intentional misrepresentation upon the city;
- (3) Materially misrepresents any material fact in the application for or during negotiation of the franchise or any extension or renewal;
- (4) Voluntarily ceases to operate its cable communication system for any reason without written approval of the city, including but not limited to upon the voluntary filing of a petition of bankruptcy;
- (5) Fails to fully comply with a pole use agreement or other appropriate agreement with the city for usage of poles or other appropriate facilities necessary to the satisfactory operation of the cable

- television system and fails to cure any such violation within any applicable cure period of such agreement;
- (6) Knowingly and willfully refuses to comply with any lawful orders or rulings of any regulatory body applicable to the grantee relating to its performance under the terms of its franchise or this chapter within ten business days of receipt of notice of such order or ruling from the city; or
- (7) Is convicted by a court of competent jurisdiction of any fraud or deceit upon the city, fraud or deceit on a cable subscriber, or fraud or deceit on any class or group of subscribers (e.g. senior citizens, basic subscribers, premium subscribers, etc.).
- (8) Violates any provision of this chapter which violation results in the death of any person or the damage or destruction of any property within the city exceeding \$50,000.00 in value in any one incident.
- (9) Violates any other material provision of this chapter or of any franchise agreement entered into hereunder, or any rule, order or determination of the city or city commission made pursuant to this chapter and fails to cure any such violation after any applicable cure period provided in this chapter or the grantee's franchise agreement, including but not limited to the cure period provided in section 71-44 above;
- The general right to cure violations of this chapter and franchise agreements provided to grantees in section 71-44 of this chapter shall not apply to the events listed in numbers (1) through (8) above for which no cure period is provided to a grantee prior to the city's ability to implement proceedings for termination of a franchise or other remedies under this chapter.
- (b) Such termination and cancellation shall in no way affect any of the city's rights under this chapter or any provisions of law. In the event that such termination and cancellation depends upon a finding of fact, such finding of fact as made by

the city commission or its representative shall be conclusive; provided, however, that before any franchise granted under this chapter may be terminated and cancelled under this section, the grantee must be provided with notice and an opportunity to be heard before the city commission.

(c) Unless otherwise ordered by a regulatory body or court having jurisdiction, pending litigation or any appeal to any regulatory body or court having jurisdiction over the grantee shall not excuse the grantee from the performance of its obligations under this chapter or any franchise agreement. The failure of the grantee to perform such obligations because of pending litigation or petition may result in forfeiture or revocation pursuant to the provisions of this section.

(d) Procedure prior to forfeiture.

(1) City shall provide a grantee written notice of any and all violations of requirements, limitations, terms, conditions, rules or regulations deemed cause for termination and forfeiture of the grantee's franchise. Upon the expiration of any applicable cure period, if any, without cure, the city may place its request for termination and forfeiture of the franchise upon a regular city commission meeting agenda. The city shall cause to be served upon such grantee at least 14 days prior to the date of such commission meeting a written notice of this intent to request termination and forfeiture and the time and place of the meeting, notice of which shall be published by the city clerk at least once, seven days before such meeting in a newspaper of general circulation within the city.

(2) The city commission shall hear any persons interested therein, and shall determine, whether or not any failure, refusal or neglect by the grantee was with just cause.

(3) If such failure, refusal or neglect by the grantee was with just cause, the city commission shall direct the grantee to comply within such time and manner and

upon such terms and conditions as are reasonable in the city commission's determination.

- (4) If the city commission shall determine such failure, refusal, or neglect by the grantee was without just cause, then the city commission may, by resolution take one or more of the following actions:
- a. Issue a citation setting forth the grantee's failure or breach and warning that future similar misconduct may result in termination of grantee's franchise;
 - b. Declare that the franchise of the grantee shall be forfeited and terminated; or
 - c. Declare that the franchise of the grantee shall be forfeited and terminated, unless corrective action is undertaken and completed by the grantee within a fixed period of time.

(Ord. No. 02-03, Art. II(15), 2-28-02)

Sec. 71-46. Fines.

(a) Notwithstanding and in addition to any other rights or remedies available to city, including but not limited to the rights set forth in sections 71-44 and 71-45 above and under the city's code enforcement citation program set forth in chapter 2 of the City Code of Ordinances, a grantee shall be subject to fine in the following amounts for the following actions:

- (1) For failure to complete system construction or reconstruction in accordance with the provisions of article IV within 30 days after receipt of written notice of such failure from the city unless the city commission specifically approves the delay by motion or resolution due to the occurrence of conditions beyond the grantee's control, a grantee shall pay \$500.00 per day for each day or part thereof that such deficiency continues; provided, however, that in the event that grantee has been notified pursuant to this provision of a previous failure to complete construction or reconstruction which prior notification was received by the grantee within 12 months

of the first day of a subsequent failure hereunder, the amount of the fine for such subsequent failure shall be \$1,000.00 per day or part thereof each violation occurs or continues and the city shall not be required to provide notice of violation or a 30 day opportunity to cure prior to imposition of a fine.

- (2) For failure to provide upon written request data, documents, reports, information required to be provided hereunder within 30 days after receipt of notice of such failure from the city, a grantee shall pay \$100.00 per day for each day or part thereof that such deficiency continues; provided, however, that in the event that grantee has been notified pursuant to this provision of a previous failure to provide information which prior notification was received by the grantee within 12 months of the first day of a subsequent failure hereunder, the amount of the fine for such subsequent failure shall be \$200.00 per day or part thereof each violation occurs or continues and the city shall not be required to provide notice of violation or a 30 day opportunity to cure prior to imposition of a fine.
- (3) For action or inaction by the grantee resulting in violation of any other provision of this chapter, a franchise agreement or any rule or regulation lawfully adopted under this chapter, which violation is not cured within three days after receipt of written notice of such failure from the city, a grantee shall pay to the city \$100.00 per day for each day or part thereof that such violation continues; provided, however, that in the event that grantee has been notified pursuant to this provision of a previous violation which prior notification occurred within 12 months of the first day of a subsequent violation hereunder, the amount of the fine for such subsequent violation shall be \$200.00 per day or part thereof each violation occurs or continues and the city