

The extension shall be without prejudice to the rights of either party under the renewal provisions of the Cable Act. For example, and by way of illustration and not limitation, any rights Franchisee has already asserted properly under 47 U.S.C. §546 (a) need not be asserted again, and are not affected by the amendment. (Ord. No. 99-15, §§ 2, 3, 11-11-99)

II. Should the city be allowed to regulate rates for the provision of cable or other services, the city may institute such rate regulation in accordance with the act. The grantee shall have no vested, impairment-of-contract, or other right as against such rate regulation.

III. The grantee shall have the nonexclusive right to offer both "basic cable television service" and "expanded broadband communications service." "Basic cable television service" means any

service tier which includes the retransmission of local television broadcast signals. "Expanded broadband communications service" means the provision of such additional service as, for example (but not by way of limitation), pay television, alarm service, data retrieval and transmission services, meter reading service and home shopping service. Nothing contained herein shall obligate grantee to provide any form of expanded broadband communications service. The grantee agrees that the cable system shall have a capacity of at least 50 video channels. The basic cable television service provided by grantee shall provide for at least the minimum number of channels with programming as required under the Cable Television Consumer Protection and Competition Act of 1992. Grantee shall make reasonable efforts to provide more than the minimum number of basic tier channels. The grantee shall provide at least one educational and governmental access channel available to educational and governmental institutions within the city. In the event usage demand for this access channel during the hours of 6:00 p.m. through midnight on Mondays through Fridays exceeds 65 percent with unduplicated programming grantee shall provide a second channel for such access.

Section 4. [System expansion.]

I. System expansion, isolated subscribers.

- (a) The "designated service area" for this nonexclusive franchise is the incorporated area of the city.
- (b) Grantee's present construction is approved, and grantee shall extend cable television services to any isolated residence located within the designated service area at the standard rate if:
 - (1) The resident requests the service extension, and
 - (2) The service connection to the isolated residence would require no more than a standard 100-foot drop line.
- (c) Grantee shall extend cable television services to any isolated residence requiring more than a standard 100-foot drop line at a premium installation rate if such

service has been requested by the resident. The premium installation rate charged shall be the actual cost for the installation less the cost of installing a subscriber by means of a standard 100-foot drop line. Grantee may require advance payment for such installation. The grantee's installation charges and rates inside the city shall at no time be greater than the rates to be charged outside the city in West Orange County.

II. System expansion new or existing developments—Overhead cable construction.

- (a) Grantee shall extend its distribution facilities and cable television services to any area within the designated service area where there exists 20 dwelling units which have received a certificate of occupancy from the city for each strand-mile of cable extension required or portion thereof. Grantee shall have six months from the issuance of the certificates of occupancy for new dwelling units to substantially complete construction and provide service to the new dwelling units. The grantee's obligation to extend its distribution facilities and cable television services is contingent upon at least 20 residences or group of residences to be serviced having requested service in writing as provided in subparagraph V hereof.
- (b) Any development or group of residences not meeting any or all of the above requirements may be served at grantee's discretion.

III. System expansion for new developments—Existing underground.

- (a) Grantee shall extend underground energized or unenergized cable or conduit to all new residential developments which meet the requirements of section 4(II) as they are constructed. Costs of trenching, conduit, pedestals and/or vault and laterals as well as easements therefore required to bring service to the development shall be borne by the grantee.

- (b) All installations and construction related to cable television by any developers and/or landowners shall be to the specifications of the grantee. Grantee shall not be required to provide cable television services to such a development until such development has at least 20 residential dwelling units that have agreed in writing as provided in subparagraph V hereof to subscribe to receive cable services.
- (c)
 - (1) It shall be the responsibility of the grantee to obtain written permits and approvals from the city and all other governmental agencies and easement holders prior to beginning any installation. It shall be the responsibility of the grantee to coordinate the proposed installation with all governmental agencies, easement holders and beneficiaries, and any persons holding an interest in the property where the installation is proposed. It shall be the responsibility of the grantee to determine any conflicts of its proposed installation with the facilities or equipment of easement holders or beneficiaries. The grantee shall join and maintain a continuous membership in U.N.C.L.E. and use its services prior to each installation.
 - (2) The installations in easements shall be in accordance with the National Electrical Code. The pedestals and amplifiers installed or worked on by the grantee after December 31, 1992 shall be marked by the grantee with the name of the grantee. All pedestals and amplifiers of the grantee shall be marked within 18 months after December 31, 1992.
 - (3) Within 30 days of the completion of any installation in compatible easements, the grantee shall furnish to the city engineer a set of as-built plans and maps of the installation.

IV. Undergrounding of the system. For any system expansion, the grantee shall be required to place the cable system underground. For exist-

ing facilities, grantee shall replace aerial facilities with underground facilities concurrently and in cooperation with similar programs of the telephone and/or power utilities. Grantee may, at its option and its expense, choose to place its existing facilities underground regardless of whether telephone and power utilities are underground or aerial. Where undergrounding is required, the grantee shall have the option of sharing or not sharing utility trenches, so long as all other utilities using said trench consent to such in writing.

V. Credit status of new subscribers.

- (a) Notwithstanding anything to the contrary contained herein, the grantee may refuse to provide service to anyone who does not commit in writing to subscribe for at least a one-year period to the basic cable service offered by the grantee. In cases where, in the grantee's judgment, after conducting a reasonable inquiry with respect thereto, the credit standing of the prospective subscriber is poor, the grantee may require a nonrefundable deposit equal to one year's service charge for basic cable television service, which deposit shall be applied against the service provided during the first year.
- (b) In addition to the nonrefundable deposit for one year's service set forth in the preceding subparagraph (a) (or at grantee's discretion, as an alternative thereto), grantee may require a deposit from each subscriber whose service requires the use of subscriber terminal equipment ("the equipment deposit"). The amount of the equipment deposit shall not exceed the cost to grantee of purchasing new subscriber terminal equipment of similar kind and description to that used by it in providing such service plus the cost of installing same. The equipment deposit shall be refundable upon the termination of service provided that the subscriber shall have returned the subscriber terminal equipment to grantee in as good a condition as it was when it was installed in subscriber's home, reasonable wear and

tear excluded, and upon the payment to grantee by subscriber of all amounts due and owing to the grantee for services rendered as of the date of termination of service. Grantee shall have the right to waive the requirement for such a deposit for existing subscribers or for new subscribers who have demonstrated their credit worthiness to grantee in accordance with grantee's standards for determining same applied on a nondiscriminatory basis.

Section 5. [Standards for service.]

I. *Efficient telephone communication services.* The grantee shall render efficient telephone communication service and, at a minimum, meet the standards set forth below:

(a) *Customer service response.* The grantee shall have a customer service representative employed by the grantee available to handle customer calls from 9:00 a.m. to 6:30 p.m. Monday through Friday and from 9:00 a.m. to 1:00 p.m. on Saturdays excluding holidays. During all other times, each system must have a capable answering service for messages on repair service phone lines. Answering machines are not acceptable. The grantee shall maintain a log of calls made to the answering service, which shall be made available to the city clerk upon request by the city clerk.

(b) *Telephone system requirements.*

- (1) The grantee shall have a phone system with separate phone lines for customer service, repair, engineering and sales and these numbers shall be listed in the local telephone directory under the categories stated above. Corporate and administrative phone lines shall be separate from the above-listed categories and may be listed in the local telephone directory.
- (2) If the city clerk reviews the complaints and finds them to be inordinate, the city clerk will request the grantee to provide the city clerk with

a communication traffic study within 60 days of notice. The study will be conducted on all customer service trunk lines and must include information on the efficiency of the communication system measured from the telephone company's central office, as well as other performance information available from the grantee's communication equipment.

- (3) The specific standards which must be met are as follows:
 - A. Sixty percent of all calls will be answered within five rings.
 - B. Eighty percent of all calls will be answered within seven rings.
 - C. Sixty percent of all calls will not be on hold longer than two minutes.
 - D. Ninety percent of all calls will not be on hold longer than three minutes.
 - E. A customer on hold will be informed every 60 seconds that the call is being attended to.
 - F. Grade of service shall be equal to or better than P25 (no more than 25 calls out of each 100 calls will receive a busy signal).
- (4) The study must provide information that confirms that the grantee's communications system is properly trunked and staffed to meet the telephone system standards set out under paragraph (1) above, using generally accepted telephonic engineering methods.
- (c) *Remedy.* In the event that a deficiency has been determined to exist within grantee's communication system, in that the grantee fails to meet the standards set out under subsection (a) above, and further fails to meet the requirements set out under subsection (b) above, the grantee shall have a three-month period from notification of such deficiency to cure the same.

- (d) *Reservation.* The city commission has the right to modify the requirements herein as it reasonably deems appropriate to serve the public benefit, after notice to and input from grantee.

II. Maintenance repairs, interruptions. The grantee shall maintain all parts of the system in good, safe and operable condition throughout the entire franchise period. The grantee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during period of minimum system use.

III. System compliance tests.

- (a) *Conformity with FCC rules and regulations.* The grantee shall be responsible for ensuring that the cable system operated in the city by the grantee is designed, installed and operated in a manner that fully conforms with all FCC's rules and regulations governing cable television. The grantee shall be fully prepared to demonstrate, on request by an authorized representative of the city, that the system does, in fact, comply with such rules and regulations.
- (b) *Listing of channels.* The grantee shall maintain at its local office a current listing of the cable television channels which the grantee delivers to its subscribers.
- (c) *Special tests.* The city may require or perform performance tests, including tests involving a specific subscriber's terminal to determine system performance. Requests for such tests will be made only on the basis of complaints received or other evidence indicating an unresolved controversy or significant noncompliance, and such tests shall be limited to the particular matter in controversy. The city shall endeavor to so arrange its request for such tests so as to minimize hardship or inconvenience to the grantee.
- (d) *Subscriber terminal test requests.* The grantee shall, upon reasonable request or complaint by a subscriber, perform such

tests as necessary at the subscriber's terminal to establish whether a signal of requisite quality is being delivered to the subscriber's premises.

- (e) *Recordkeeping and reports.* All requested system compliance test reports, maintenance and outage logs, subscriber terminal test reports, and all leakage and interference logs, together with all data obtained in connection therewith, shall be preserved in the files of the grantee for three years. Copies of all such tests, reports and test data shall be furnished to the city clerk upon request.

IV. Complaint procedure, records. The grantee shall maintain a payment center conveniently located in the city, which shall be open during all normal business hours and, have a publicly listed telephone, in accordance with section 5(I). The grantee shall maintain an office and service center conveniently located as determined in the city's discretion, which offices shall be open during all normal business hours, have a publicly listed telephone number, in accordance with section 5(I) and receive complaints and requests for repairs on a 24-hour seven-day-a-week basis. The grantee shall have a sufficient number of qualified technicians on call on a 24-hour basis to answer all service complaints. During the hours when a grantee service representative is not on duty to receive calls, an answering service shall call a standby qualified technician upon the answering service's receipt of each service complaint or request. Upon receipt of a service complaint involving an outage or other severe reception problem during normal working hours, the grantee shall respond by correcting the service complaint within four hours or by contacting the complainant and indicating why it cannot be corrected within the time period and when the situation will be remedied. The grantee shall respond to service complaints involving an outage or severe reception problem received during nonnormal hours by correcting the service complaint within 12 hours or by contacting the complainant within the same time period to indicate why it cannot be corrected in that time period and when the situation will be remedied. Complaints not involving an outage or severe reception problem shall be

corrected within 24 hours except for matters outside of the control of the grantee. The grantee shall schedule service calls with subscribers to the extent reasonably practicable. The scheduling shall, at a minimum, be in timeframes of visitation of no more than four hours. If the appointment cannot be kept, the grantee shall notify the subscriber. In the event service to any subscriber is interrupted for 24 hours or more through the fault of the grantee, the grantee shall provide such subscriber with a pro rata rebate or credit. In calculating the rebate or credit, the time of outage shall be calculated from the time the outage is reported to the grantee. The grantee shall maintain records of the time of the complaint, nature of complaint, and any corrective action taken. These records shall be held by the grantee for two years and shall be made available to the city clerk upon request. The grantee may establish by rule a format for the annual summary. The grantee shall notify subscribers, at the time of initial subscription to the system, of the procedure for reporting and resolving complaints by delivering to each subscriber a written notice in a form approved by the city clerk, including a statement that unresolved complaints may be reported to the city clerk. A copy of every written complaint filed with the grantee shall be provided to the city clerk within 14 days after grantee's receipt of such complaint. A copy of every written complaint filed with the city shall be provided to the grantee within 14 days of receipt by city.

Section 6. [Fees.]

I. Fees—Generally.

(a) *Payment to the city of franchise consideration.* The grantee shall pay to the city a franchise fee of five percent of its gross annual revenues for each year of the term of the franchise. The portion of the fee set forth herein for public, educational and governmental access channels shall not be construed as a public, educational and governmental access channel fee restricted in its use to capital costs by the act. The franchise fee shall be in addition to all other fees and assessments which are required to be paid to the city and all other entities, and which do not consti-

tute a franchise fee under the act. The franchise fee may be increased to the maximum amount permitted by law, including fees for capital costs associated with public, educational and governmental services, as the city commission deems appropriate, at an advertised public hearing after 15 days' notice by certified mail to the grantee.

(b) *Time of payment.*

- (1) Monthly franchise fee payments based upon that pro rata portion of the gross annual revenues for the month for which the monthly franchise fee payment is to be made shall be paid not later than 20 days after the end of each monthly period. All amounts which are not paid when due hereunder shall bear interest at the legal rate, as defined by state law, until paid. An adjustment shall be made at the end of the fiscal period, if necessary to correct the total amount of franchise fees due. In the event it is not possible to calculate each monthly franchise fee payment within the required time for payment, grantee shall estimate, using its best efforts, the monthly payment and make said payment no later than 20 days after the end of each monthly period. Grantee shall certify the correctness of each monthly payment or make the appropriate adjustments no later than 90 days after the end of each month.
- (2) Acceptance of any franchise fee payment shall not be construed as an accord that the amount paid is, in fact, the correct amount, nor shall acceptance of payment be construed as a release or waiver of any claim the city may have for further or additional sums. All amounts paid shall be subject to an annual audit and recomputation by the city. For this purpose, all financial records relating to gross annual revenues,

whether derived directly or indirectly, of the grantee for the designated service area shall be open for review and inspection by the city upon reasonable notice to the grantee. In addition, if such recomputation results in additional revenues to be paid to the city, such amount shall bear interest at the legal rate, as defined by state law, from the due date until paid unless the calculation of the amount paid in error is the fault of the city.

- (3) Nothing in this section 6(I) shall limit the grantee's liability to pay other applicable local, state or federal taxes, fees, charges or assessments.

II. *Franchise fee* shall mean the charge based on the gross annual revenue of the grantee levied pursuant to this ordinance. It shall not include:

- (1) Any tax, fee or assessment of general applicability;
- (2) Fees for capital costs associated with public, educational or governmental access facilities and equipment; or
- (3) Any other fees or charges not based solely on the gross revenue of the grantee.

III. *Gross annual revenues* means all revenues derived directly or indirectly by the grantee, its affiliates, subsidiaries, parent, and any person in which the grantee has a financial interest, from or in direct or indirect connection with the operation of a cable system pursuant to this ordinance, including but not limited to, basic subscriber service monthly fees, pay cable fees, the distribution of any cable-related service or other service over a cable system, installation and reconnection fees, wiring fees, leased channel fees, converter rentals and sales, advertising revenues, revenue derived from the sale of products advertised or promoted on a cable system to the extent that such revenue represents payment, in whole or in part, for the use of a channel on a cable system, and revenue derived from the sale of signal to other program packagers, including but not limited to satellite master antenna system (SMATV)

operator. "Gross annual revenues" shall include but shall not be limited to, all amounts billed rather than only those amounts actually collected. Gross annual revenues shall not include any taxes on services furnished by the grantee herein imposed directly upon any subscriber or user by the state or other governmental unit and collected by the grantee on behalf of other governmental units.

Section 7. Forfeiture of franchise.

I. In addition to all other rights and powers pertaining to the city by virtue of this franchise or otherwise, the city reserves the right to terminate and cancel this franchise and all rights and privileges of the grantee hereunder in the event that the grantee:

- (a) Violates any material provision of this ordinance or any rule, order or determination of the city or city commission made pursuant to this ordinance, except where such violation is without grantee's fault or through excusable neglect. The city shall have the right to determine, in its sole discretion, whether any violation or violations are material.
- (b) Becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt.
- (c) Attempts to evade any of the provisions of this ordinance or practices any fraud or deceit upon the city or subscriber, or engages in any unfair, misleading or deceptive marketing tactics.

II. Such termination and cancellation shall in no way affect any of the city's rights under this ordinance 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 this ordinance may be terminated and cancelled under this section, the grantee must be provided with an opportunity to be heard before the city commission.

Section 8. [Incorporation of federal amendments.]

By ordinance, and in the city's discretion, any lawful modification or re-regulation resulting from