

lation is proposed. It shall be the responsibility of a grantee to determine any conflicts of its proposed installation with the facilities and equipment of easement holders or beneficiaries.

- (4) Within 30 days of the completion of any non-drop line installation in public or private easements, a grantee shall furnish to the city engineer a set of as-built plans and maps of the installation.

(c) *Credit status of new subscribers.*

- (1) Notwithstanding anything to the contrary contained herein, a 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 a grantee's reasonable judgment, after conducting a reasonable inquiry with respect thereto, the credit standing of the prospective subscriber is poor, a grantee may require a non-refundable 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.
- (2) In addition to the non-refundable deposit for one year's service set forth in the preceding subsection (1) (or at a grantee's discretion, as an alternative thereto), a 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 a 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 the grantee by subscriber of all amounts

due and owing to the grantee for services rendered as of the date of termination of service. A 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.

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

Sec. 71-113. Removal.

(a) Upon expiration or termination of a cable communications franchise and if all required procedures under the renewal provisions of the Federal Cable Act, if any, are completed, and if neither the city nor an assignee purchase the cable communications system, a grantee may remove any underground cable from the streets which has been installed in such a manner that it can be removed without trenching or other opening of the streets along the extension of cable to be removed. A grantee shall not remove any underground cable or conduit which requires trenching or other opening of the streets along the extension of cable to be removed, except as provided in this chapter. A grantee shall remove, at the grantee's sole cost and expense, any underground cable or conduit by trenching or opening of the streets along the extension thereof or otherwise which is ordered to be removed by the city based upon a determination, in the sole discretion of the city, that removal is required in order to eliminate or prevent a hazardous condition or promote future utilization of the streets for public purposes. Any order by the city to remove cable or conduit shall be mailed to the grantee not earlier than the date of expiration of the franchise or the conclusion of any renewal proceedings, whichever is later. A grantee shall file written notice with the city clerk not later than 30 calendar days following such notice of its intention to remove cable intended to be removed and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the director of public works of the city. Removal shall be completed not later than 12 months following the date that notice of removal is sent to a grantee. In

the event that removal is not completed within said 12-month period, city shall have the option, but not the obligation, to complete such removal at the grantee's sole cost and expense. Underground cable and conduit in the streets which is not removed shall be deemed abandoned and title thereto shall be vested in the city, subject to a grantee's right to compensation, if any, as provided by federal law.

(b) Upon expiration or termination of a franchise, if the franchise is not renewed and if neither the city nor an assignee purchase the system, the grantee, at the grantee's sole expense, shall, unless relieved of the obligation by the city, remove from the streets all aboveground elements of the cable communications system, including but not limited to amplifier boxes, pedestal-mounted terminal boxes and cable attached to or suspended from poles, which are not purchased by the city or an assignee.

(c) A grantee shall apply for and obtain such encroachment permits, licenses, authorizations or other approvals and pay such fees and deposit such security as required by generally applicable ordinance, regulations or policies of the city; shall conduct and complete the work of removal in compliance with all such applicable ordinances, regulations and policies; and shall restore the streets to the same condition they were in before the work of removal commenced. In the event that removal is not completed within said 12-month period, city shall have the option, but not the obligation, to complete such removal at the grantee's sole cost and expense. No surety on any bond shall be discharged until the city has certified to the grantee in writing that the system has been dismantled, removed, and all other property restored to the satisfaction of the city. (Ord. No. 02-03, Art. IV(13), 2-28-02)

Sec. 71-114. Standby power.

Each cable communications system shall include equipment capable of providing standby powering for headend, transportation and truck amplifiers for a minimum of two hours. The equipment relating to the headend shall be so constructed as to automatically notify the cable office when it is in operation and to automatically

revert to the standby mode when the AC power returns. The system shall incorporate safeguards necessary to prevent injury to linemen resulting from a standby generator powering a dead utility line. A grantee shall make such inspections as are necessary to ensure the reliability of the system. (Ord. No. 02-03, Art. IV(14), 2-28-02)

Sec. 71-115. Override capability.

A grantee shall comply with the emergency alert requirements of FCC regulations. Any emergency notification shall be coordinated with Orange County. (Ord. No. 02-03, Art. IV(15), 2-28-02)

Sec. 71-116. System description, service and standards.

(a) Each cable communications franchise grantee shall construct, install and maintain the grantee's cable communications system in a manner consistent and in compliance with all applicable laws, ordinances, construction standards, governmental requirements and technical standards equivalent to those established by the FCC. If the FCC should delete such requirements, the city reserves the right to exercise such regulatory authority as it may have under applicable law. Each grantee shall provide to the city, upon request, written reports of the grantee's annual proof of performance tests conducted pursuant to FCC standards and requirements, if any.

(b) Each grantee shall at all times comply with the National Electrical Safety Code (National Bureau of Standards); National Electrical Code (National Fire Protection Association); applicable FCC and other federal, state and local regulations; and codes and other ordinances of the city.

(c) A cable communications system shall not endanger or interfere with the safety of persons or property within the city or other areas where the grantee may have equipment located.

(d) All working facilities, conditions and procedures used or occurring during construction of a cable communication system shall comply with the standards of the Occupational Safety and Health Administration.

(e) Construction, installation and maintenance of a cable communications system shall be performed in an orderly and workmanlike manner and in close coordination with public and private utilities serving the city following accepted construction procedures and practices and working through existing committees and organizations.

(f) All cables and wires shall be installed, where possible, parallel with electric and telephone lines, and multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering consideration.

(g) Any antenna structure used in a cable communications system shall comply with construction, marking and lighting of antennae structures required by federal, state, and local law, including but not limited to any requirements of the United States Department of Transportation and the Federal Aviation Administration.

(h) A grantee shall comply with FCC technical standards.

(Ord. No. 02-03, Art. IV(16), 2-28-02)

Sec. 71-117. Approval of construction by city; inspection; correction of defects in system; violations.

The city shall have and maintain the right to inspect the construction, operation and maintenance of the system by a grantee to ensure the proper performance of the terms of this chapter. (Ord. No. 02-03, Art. IV(17), 2-28-02)

Sec. 71-118. Communications with regulatory agencies.

Copies of all petitions, applications, communications and reports submitted by a cable communications franchise grantee to the FCC or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting construction or operation of a cable communications system or services provided through such a system shall, if requested by the city, be filed with the city. Copies of responses or any other communications from the regulatory agencies to a grantee likewise shall, if requested, be filed with the city immediately on receipt. (Ord. No. 02-03, Art. IV(18), 2-28-02)

Sec. 71-119. No preemption.

Any franchise granted under this chapter shall not serve to grant any grantee any permits, agreement or authorization required by the city's Code, rules, regulations or resolutions for the privilege of conducting business within the city limits. Any franchise granted under this chapter is specifically conditioned upon grantee obtaining and maintaining all necessary certificates, licenses or other authorizations as may be required by federal and state law for the operation of grantee's system. Any franchise granted under this chapter is hereby made subject to all generally applicable ordinance provisions in effect now or in the future in the city, including but not limited to any ordinance of general applicability regulating the use of any streets or rights-of-way in the city and is subject to the city's police power. The regulations regarding the use and occupancy of the city's streets and rights-of-way contained herein are in addition to and not in limitation of any other rules and regulations of general applicability. In the event of any direct conflict between the provisions contained herein and any rule or regulation of general applicability, the more restrictive shall control.

(Ord. No. 02-03, Art. IV(19), 2-28-02)

Sec. 71-120. Property rights.

Nothing in this chapter shall vest in a grantee any property rights in city owned property, nor shall city be compelled to maintain any of its property any longer than, or in any fashion other than, in the city's sole judgment its own business needs may require. City retains full and complete discretion to utilize the streets and public rights-of-way as city deems appropriate and may abandon and vacate the same at any time in city's sole discretion.

(Ord. No. 02-03, Art. IV(20), 2-28-02)

Sec. 71-121. Rates.

The city commission expressly reserves the right to regulate the rates which the cable communications franchise grantee charges its subscribers for both basic cable service and the rates for other services as the city commission may be permitted to regulate by law. If the city commis-

sion is permitted by applicable law to regulate a grantee's rates, at the time of the grant of a franchise or thereafter during the term of any franchise, it may do so consistent with applicable laws and regulations. A grantee may adjust rates at any time in accordance with this chapter and applicable laws and regulations, subject to the city's right to regulate rates.

(Ord. No. 02-03, Art. IV(21), 2-28-02)

Sec. 71-122. Treatment of subscribers.

A grantee shall not engage in any fraud or deceit upon any subscriber located in the city and shall not engage in any unfair, misleading or deceptive marketing tactics within the city or reasonably calculated or designed to reach subscribers or potential subscribers within the city.

(Ord. No. 02-03, Art. IV(22), 2-28-02)

Sec. 71-123. Non-liability of city.

The city shall not be liable for any damage occurring to the property of a grantee caused by employees of the city in the performance of their duties, nor shall the city be liable for the interruption of service by actions of city employees in the performance of their duties, nor shall the city be liable for the failure of a grantee to be able to perform normal services due to acts of God. Nothing contained in this chapter or in any instruments executed pursuant to the terms of this chapter shall be construed as a waiver or attempted waiver by the city of its sovereign immunity under the constitution and laws of the State of Florida. The limitations on liability contained in this section are applicable solely with respect to the liability of the city. The provisions of this section are not applicable to, and do not create or negate any liability or limitation of liability otherwise imposed or granted to a private person or entity performing work for or on behalf of the city.

(Ord. No. 02-03, Art. IV(23), 2-28-02)

Sec. 71-124. Indemnification.

A grantee shall indemnify, save harmless and defend the city, its elected officials, officers, employees, and agents, against any and all claims of whatever nature resulting from the installation of a grantee's facilities and equipment, or the use of

any easement or right-of-way. The indemnification shall include any and all costs, expenses and reasonable attorney's fees. In the event it becomes necessary for the city to seek administrative or judicial enforcement of any franchise granted under this chapter against a grantee, the city shall, upon prevailing, be entitled to its reasonable attorneys' fees and costs, including any appellate actions.

(Ord. No. 02-03, Art. IV(24), 2-28-02)

Sec. 71-125. City maps.

The city does not guarantee the accuracy of any map showing the horizontal or vertical location of any existing or planned substructures. In public rights-of-way, where necessary, the location of any lines or other structures shall be verified by excavation conducted by grantee.

(Ord. No. 02-03, Art. IV(25), 2-28-02)

Sec. 71-126. Right of intervention.

The city shall have the right of intervention in any suit or proceeding to which a grantee is a party relative to the franchise for the city.

(Ord. No. 02-03, Art. IV(26), 2-28-02)

Sec. 71-127. Notice.

All notices required or permitted to be given under this chapter shall be in writing and sent to the address for a grantee set forth on grantee's application and to the city at:

To the city:

City of Winter Garden
251 West Plant Street
Winter Garden, Florida 34787
Attention: City Manager

All notices shall be hand-delivered to the addressee, sent by Federal Express or similar overnight delivery service, or sent by U.S. mail, certified and return receipt requested. The names and addresses in this section may be changed by either party at anytime by giving written notice to the other party. Notices shall be deemed received three days after deposit in the United States mail

return receipt requested postage prepaid or upon actual receipt if sent or transmitted in any other manner.

(Ord. No. 02-03, Art. IV(27), 2-28-02)

Sec. 71-128. Force majeure.

Notwithstanding any other provision of this chapter, a grantee shall not be liable for delay in performance of, or failure to perform, in whole or in part, its obligations pursuant to this chapter due to strike, unavailability of materials, or equipment, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, civil disturbance, sabotage, act of public enemy, fire, flood, or other events, to the extent that such causes or other events are beyond the control of the grantee.

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

Sec. 71-129. Non-waiver.

Any other provision of this chapter to the contrary notwithstanding and while the city fully reserves its right to exercise its police powers, a grantee by its acceptance of a franchise granted pursuant to the terms of this chapter shall not be held to have waived any right to assert the position that the city may not by ordinance or otherwise alter or impair the terms of a franchise and/or to object to any subsequent action of the city on the grounds that such action changes the terms of its franchise and to seek appropriate relief.

(Ord. No. 02-03, Art. IV(29), 2-28-02)

Sec. 71-130. Severability.

In any subsection, sentence, clause or phrase of this chapter is held invalid or unconstitutional by the decision of any court of competent jurisdiction or the FCC, such decision shall not affect the validity of the remaining portions hereof. The invalidity of any portion of this chapter shall not abate, reduce, or otherwise affect any consideration or other obligation of the grantee hereunder; provided, however that the city may amend those provisions invalidated.

(Ord. No. 02-03, Art. IV(30), 2-28-02)

Chapters 72, 73

RESERVED

