

ORDINANCE NO. 7712

AN ORDINANCE REPEALING PRESENT CHAPTER 9 WHICH SETS REGULATORY STANDARDS FOR CABLE OPERATORS PROVIDING CABLE TELEVISION SERVICE WITHIN THE CITY; AND IN ITS PLACE SUBSTITUTING A NEW CHAPTER 9 WHICH DESCRIBES REGULATORY PRACTICES FOR MULTI-CHANNEL SERVICE PROVIDERS, INCLUDING PROVISIONS FOR INSURANCE, REPORTS AND RECORDS, CONSUMER PRACTICES, CONSUMER PROTECTION MEASURES, CONSTRUCTION AND CONSTRUCTION-RELATED PRACTICES, FRANCHISE FEES AND ALTERNATIVE USER CHARGES, OPERATIONAL PROCEDURES, AND HEALTH, SAFETY, AND WELFARE MEASURES; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF GRAND ISLAND, NEBRASKA.

SECTION 1. Present Chapter 9 of the Municipal Code for Grand Island, Nebraska, is hereby repealed, and in its place is hereby substituted and enacted, the provisions which shall be as follows:

§ 9-1. Title.

This ordinance may be known and cited as the Multi-Channel Service Providers Regulatory Ordinance for the City of Grand Island Nebraska.

§ 9-2. Construction.

This ordinance shall be construed in light of applicable Federal and State laws and regulations governing multi-channel service practices which specifically includes cable television.

§ 9-3. Scope.

This ordinance shall be effective within the geographical limits of the City, including any areas subsequently annexed by the City.

§ 9-4. Severability.

If any word phrase, sentence, part, section, subsection, or other portion of this ordinance, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and

the remaining provisions of this ordinance, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect. The Council/franchising authority declares that no invalid or proscribed provision or application was an inducement to this ordinance, and that it would have enacted this ordinance regardless of the invalid or proscribed provision or application.

§ 9-5. Definitions.

(1) "A/B switch" or "Input selector switch" means any device that enables a viewer to select between a multi-channel service and off-the-air television signals. Such a device may be more sophisticated than a mere two-sided switch, may utilize other multi-channel system interface equipment, and may be built into television receivers.

(2) "Access channel" or "non-broadcast channel" means a government, education, or public channel which is carried on a multi-channel system, but which is not part of any institutional network.

(3) "Activated channel" means a channel engineered at the headend of the cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for governmental, educational, or public use.

(4) "Abandoned calls" mean telephone calls that are connected to an MCS provider's general information and service number, but the caller hangs up without being attended to by a representative of the MCS provider, or by a device capable of problem resolution (e. g. accepting a service request or a work order, directing calls to the appropriate personnel, or such similar functions or service).

(5) "Alternative user charge" means a charge used in place of a franchise fee that the Council requires as payment for the privilege of using the streets, easements, public ways, or rights-of-way, of the City in order to construct, maintain, and operate a multi-channel system. An alternative user fee is not based on an MCS provider's gross annual revenues (as is the case in a franchise fee), but rather is based on the value of the City property that an MCS provider is using to construct, maintain, and operate its multi-channel system.

(6) "Annual gross revenues" means any and all compensation which is derived from the operation of the MCS system, and which is attributable to the subscribers or customers within the City, or the grant of a franchise granted to a franchisee to operate a multi-channel system. Further, "annual gross revenues" means any, and all, compensation, in whatever form (except as exempted by this definition), exchange or otherwise derived from all multi-channel services, MCS

operations, and MCS-related activities within the City including, but not limited to, revenues from subscriber rates, pay television, premium channels, service tiers, service clusters, institutional networks, advertising, installations, rebates or commissions received from services carried or provided on the system, or commercial access. Also, unless prohibited or pre-empted by either Federal or State law, "annual gross revenues" shall mean any, and all, compensation from all ancillary multi-channel services, MCS operations, and MCS-related activities within the City, including, but not limited to, sale of MCS or MCS equipment, advertising stuffers inserted into periodic billing statements or other notices, rental or sale of video discs, rental or sale of video cassettes, rental or sale of descrambling converters, or other devices, rental or sale of remote control devices (including those with volume control), rental or sale of a/b or input switches, rental or sale of channel lock-out devices or technology, rental or sale of interactive games or software, rental or sale of digital radio equipment, sale of satellite antenna dishes, sale of satellite antenna-received programming for a programmer or distributor of services, or from revenues received as the billing agent, collector, or retailer of satellite antenna-received service. However, "annual gross revenues" does not mean, any taxes imposed and/or assessed by law on subscribers (including State sales taxes, but excluding any state or local franchise fees) which an MCS provider is obligated to collect and pay in full to the applicable authorities.

(7) "Applicant" means a person submitting an application or proposal to the City for a license or franchise (where required) to operate a multi-channel system under the terms and conditions set forth in this ordinance, and any State regulations.

(8) "Application" or "Proposal" are synonymous for the purposes of this ordinance. An "application" or "proposal" means the process by which the applicant submits a request and indicates a desire to be granted a license or franchise (where required) for all, or a part, of the City. An "application" or "proposal" includes all written documentation, and verbal statements and representations, in whatever form or forum, made by an applicant to the Council/franchising authority concerning the construction, rendering of services, maintenance, or any other matter pertaining to the proposed multi-channel system.

(9) "Assignment of a franchised MCS provider's franchise" or "Transfer of a franchised MCS provider's franchise" means any transaction or action which effectively or actually changes operational or managerial control from one person or entity to another.

(10) "Auxiliary equipment" means equipment supplied by the MCS provider (such as a converter, remote control unit, or input selector switch), which enhances or assists in the reception or provision of multi-channel service.

(11) "Basic cable television service" means any service tier which includes the retransmission of local television broadcast signals.

(12) "Cable channel" or "Cable television channel" or "Data channel" means a portion of the electromagnetic or light frequency spectrum which is capable of delivering a television channel (as "television channel" is defined by the FCC regulation).

(13) "Cable operator" or "operator" means any person or group of persons who:

- a) provides cable television service over a cable system and directly or through one (1) or more affiliates owns a significant interest in such cable system; or
- b) otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

(14) "Cable service" means:

- a) the one-way transmission to subscribers of video programming, or other programming service; and
- b) subscriber interaction, if any, which is required for the selection of such video programming service.

(15) "Cable system" or "Cable television system" means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video, voice or data programming, and which is provided to multiple subscribers within the City. However, such terms do not include the following:

- a) a facility that serves only to retransmit the television signals of one (1) or more broadcast stations; or
- b) a facility that serves only subscribers in one (1) or more multiple unit dwellings under common ownership, control, or management unless such facility or facilities uses any public rights-of-way; or
- c) a facility or a common carrier which is subject, in whole, or in part, to the provisions of Title II of the Communications Act of 1934, except that such facility shall be considered a cable system (other than for purposes of Section 621(c) of the CCPA

-- codified at 47 USC 541) to the extent such facility is used in the transmission of video, voice, or data programming or service directly to subscribers or;

d) any facilities of any electric utility used solely for operating its electric utility.

(16) "CCPA" means the Cable Communications Policy Act of 1984, as amended.

(17) "Charge" means a one-time or non-regularly occurring cost paid by the subscriber, and which is associated with the installation, maintenance, service, or repair of the multi-channel service.

(18) "Cherry-picking" or "cream-skimming" means the process whereby an MCS provider targets only selected areas of the City for service (either through a new-build, overbuild, or selective upgrade), and then primarily for reasons of higher than average density, or the relative affluence of the area.

(19) "City" means the City of Grand Island, Nebraska or its lawful successor.

(20 - 24) RESERVED.

(25) "Collection charge" means a charge or fee imposed on a customer by an MCS provider for such provider's efforts at collecting, or attempting to collect, a past due account.

(26) "Commercially impracticable" means with respect to any requirement applicable to an MCS provider, that it is commercially impracticable for such an MCS provider to comply with such requirement as a result of a change in conditions which is beyond the control of such an MCS provider, and the non-occurrence of which, was the basic assumption on which the requirement was based.

(27) "Converter" means any electric, electronic, or other device, separate and apart from the subscriber's receiver that is capable of converting or changing signals to a frequency not intended to be susceptible to interference within the television, video, or data receiver of a subscriber, and by an appropriate channel or other type of selector may also permit a subscriber to view or otherwise use signals delivered at designated dial locations, or such other reception and use allocations as may be applicable and required for the practical use of the signal.

(28) "Council" or "Council/franchising authority" means the City Council for the City of Grand Island, Nebraska or its lawful successor, which is the lawful

legislative body for the City.

(29) "Customer" means a subscriber or user of the services and/or facilities of the multi-channel system provided by an MCS provider.

(30) "DBS" means direct broadcasting satellite.

(31) "DBS provider" or "Direct Broadcast Satellite provider" means any person who delivers and/or provides multi-channel services from a satellite to a subscriber's residence through the use of a small earth or satellite station.

(32) "Decoder" or "Descrambler" means a device which enables a subscriber to convert a scrambled signal into a viewable or otherwise useable signal.

(33) "Disaster emergency" or "Disaster" or "Emergency" means an imminent, impending, or actual natural or humanly induced situation wherein the health, safety, or welfare of all, or a representative portion of the residents of the City is threatened. A "disaster emergency" (by illustration) may include a snowstorm, flood, tornado, severe thunderstorm, hazardous waste infiltration, petroleum, munitions, or nuclear explosion, or aircraft crash.

(34) "Drop" means a small branch of cable, or other transmitting medium which connects the terminals on the back of the subscriber's receiver to the feeder cable or future technical equivalent on the street, easement, rights-of-way, or public way.

(35) "Easement" means and shall include any public easement or other compatible use created by dedication, or by other means, to the City for public utility purposes or any other purpose whatsoever, including cable television, or any other MCS provider. "Easement" shall include a private easement used for the provision of cable service or any other multi-channel service.

(36) "FCC" or "Federal Communications Commission" means the Federal administrative agency, or lawful successor, authorized to oversee cable television and other multi-channel regulation on a national level.

(37) "Fiber cable" or "Fiber optic cable" means very thin and pliable cylinders, or strands of glass or plastic, or any future developed technical equivalent, used to carry wide bands of multiple frequencies.

(38) "Franchise" means the initial authorization, or subsequent renewal granted by the Council/franchising authority in order for a person to construct, operate, and maintain a franchised MCS system in all, or part, of the City.

(39) "Franchised MCS provider" means a person that is awarded a franchise by the Council/franchising authority to construct and operate a franchised multi-channel system, within all, or part, of the City. The term "franchised MCS provider" specifically includes the term "cable operator".

(40) "Franchise expiration" means the date of expiration, or the end of the term of a franchised MCS provider, as provided under a franchise agreement.

(41) "Franchise fee" means a fee or charge that the City requires as payment for the privilege of using the streets, rights-of-way, public ways, and easements of the City in order to construct, maintain, and operate a franchised MCS system.

(42) "Franchising authority" or "Council/franchising authority" means the City Council for the City of Grand Island, Nebraska. This definition specifically includes the situation wherein the Council in its franchising authority capacity grants a franchise, or renews a franchise, or approves a franchise transfer by an applicant for an MCS franchise, or a franchised MCS provider.

(43) "Headend" means the electronic control center, where incoming signals, including those of television broadcast stations are amplified, modulated, filtered, converted, or in any way processed or converted for redistribution to subscribers.

(44) "Hub" means the satellite or remote receiving, processing and/or transmitting facility, enabling the signal to be extended beyond the physical/electronic capabilities of the multi-channel electronics and/or to serve as a remote switching facility.

(45) "Late charge" means a charge which is added to a subscriber's account or bill for non-payment of a previously due and delinquent account.

(46 - 54) RESERVED.

(55) "Mayor" means the Mayor for the City of Grand Island, Nebraska, or the Mayor's official designee.

(56) "MCS" means multi-channel service.

(57) "MCS provider" or "Multi-channel service provider" means any person or group of persons who:

- a) provides multi-channel communications service over a multi-channel system and directly or indirectly owns a

significant interest in such multi-channel system; or

- b) who otherwise controls or is responsible through any arrangement, the management and operation of such a multi-channel system.

The term "MCS provider" or "multi-channel service provider" specifically includes the terms "cable operator", "DBS operator" or "direct broadcast satellite provider", "MDS provider" or "multi-point distribution system provider", "MMDS provider", and "SMATV operator."

(58) "MDS" means multi-point distribution system.

(59) "MDS provider" or "Multi-point distribution system provider" means any person or group of persons who is authorized by the FCC to transmit (via Super High Frequency) specialized multi-channel programming or data or facsimile transmission to subscriber-selected locations.

(60) "Multi-channel programming service" or "Multi-channel service" means:

- a) means the one-way transmission to subscribers of video programming, or other programming service; and
- b) subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

(61) "Ordinance" means the Multi-Channel Service Providers Regulatory Ordinance for the City of Grand Island, Nebraska.

(62) "Other programming service" means information that an MCS provider (specifically including a cable operator) makes available to all subscribers generally.

(63 - 70) RESERVED.

(71) "Pay-per-view" or "Premium channel" means the delivery over the multi-channel system of audio and/or video signals in an unintelligible form to subscribers for a fee or charge (over and above the charge for standard or basic service) on a per program, or per channel basis where said unintelligible or unusable form for viewing is made intelligible only to subscribers paying a separate fee or charge for the viewing or use of the signals.

(72) "Person" means any individual, corporation, business trust, estate, trust, partnership, association of two (2) or more persons having a joint common interest, governmental agency, or other legal entity, including the City.

(73) "Proposed abandonment of multi-channel service" or "Proposed withdrawal of multi-channel service" or "Proposed cessation of multi-channel service" means the anticipated, imminent, or expected (either voluntary or involuntary) disruption, discontinuance, desertion, or removal of an MCS provider's operation and provision of multi-channel service from all, or part, of the City for a projected period exceeding three (3) months in duration.

(74) "Public, educational or governmental access facilities" means:

- a) Channel capacity designated exclusively for public, educational or governmental use; and
- b) facilities and equipment for the use of such channel capacity.

(75) "Public way" means any public street, public way, public place, or rights-of-way, now laid out or dedicated, and all extensions thereof, and additions thereto, in the area served by the MCS provider.

(76) "Rate" means the monthly, bi-monthly, quarterly, semi-annual, annual, or other periodic price paid by a subscriber in order to receive standard or basic, tiered, clustered, premium, or pay-per-view multi-channel service.

(77) "Revocation," "Termination," or "Non-renewal," means an official act by the City whereby the Council/franchising authority removes, repeals, or rescinds previously approved authorization for a licensed or franchised MCS provider to conduct the running of a multi-channel system within the City.

(78-84) RESERVED.

(85) "Service cluster" means the grouping, aligning, or packaging of one (1) or more multi-channel programming services by category (such as sports and/or news), or by rate, or by some other identifiable method, and charging a separate price or rate for each service cluster.

(86) "Service day" means any day, other than a Sunday or MCS provider holiday, in which employees of the MCS provider (including customer service representatives and service technicians) regularly respond to service requests, inquiries, and complaints.

(87) "Service outage" means the loss of picture or sound on all standard or basic subscriber channels, or one (1) or more auxiliary programming channels (including tiers and clusters), and which is not caused by the subscriber's television receiver or by the subscriber.

(88) "Service tier" means a category of multi-channel service or other programming service provided by an MCS provider, and for which a separate rate is charged by an MCS provider.

(89) "SMATV" means Satellite Master Antenna Television.

(90) "SMATV operator" or "Satellite Master Antenna Television operator" means any person or group of persons who:

- a) provides multi-channel service over an SMATV system; or
- b) otherwise controls or is responsible for, through any arrangement, the management of an SMATV system.

(91) "SMATV system" means a private multi-channel system not crossing any public rights-of-way and which is located on private property, and serving private dwellings. Multi-channel programming services are obtained via an earth station, amplification, and a distribution system.

(92) "Standard multi-channel service" means the lowest priced or least comprehensive service cluster or service tier available to residential subscribers.

(93) "State" means the State of Nebraska.

(94) "Street" means the surface of, and the space above and below a public street, road, highway, freeway, land, path, public way or place, alley, court, boulevard, parkway, drive, or other easement now or hereafter held by the City (including any street, as defined, which is acquired by eminent domain) for the purpose of public travel and shall include other easements or rights-of-way now or hereafter held by the City (including any easements or rights-of-way acquired by eminent domain) which shall, with their proper use and meaning, entitle the City and MCS provider to use thereof for the purpose of installing or transmitting multi-channel system transmissions over poles, wires, cable, conductors, ducts, conduits, viaducts, manholes, amplifiers, appliances, attachments, and other property as may ordinarily be necessary and pertinent to a multi-channel system.

(95) "Subscriber" means a person lawfully receiving multi-channel service delivered by the MCS provider.

(96) "USC" means United States Code.

(97) "User" means a person or organization utilizing a multi-channel system and/or its equipment for purposes of production and/or transmission of material, as contrasted with receipt thereof in a subscriber capacity.

(98) "Video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

§ 9-6. Statement of Intent.

A) The Council recognizes the United States Congress' intent in approving the CCPA (expressed in Section 601 -- codified at 47 USC 521). As such, the Council reaffirms and adopts those principles and ideals as part of the City's intent with respect to cable television and expands its intent to cover all MCS providers.

B) As expressed by Congress, and adopted by the Council, its intent is as follows:

- 1) establish a local policy concerning communications and technologies;
- 2) establish franchise procedures and standards which encourage the growth and development of cable systems which assure that cable systems are responsive to the needs and interests of the City;
- 3) establish guidelines for the exercise of local authority with respect to the regulation of cable systems;
- 4) assure that cable communications provide, and are encouraged to provide, the widest diversity of information and services to the public;
- 5) establish an orderly process for franchise renewal which protects cable operators against unfair denials of renewal where an operator's past performance and proposal for future performance meet the standards set by the CCPA, and this ordinance; and
- 6) promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic burden on cable systems.

C) In addition to principles and ideals listed in subsection (2), the Council also expresses that its intent covers the following:

- 1) to create a set of regulations, standards, and procedures for MCS providers;

- 2) to create a comprehensive customer service and consumer protection policy for MCS providers;
- 3) to provide for access and inspection of an MCS provider's books and records in order to monitor compliance of local, State, and Federal laws, and any franchise agreement (if one has been granted);
- 4) to create a thorough construction and installation policy for an MCS provider's system;
- 5) to provide for the health, safety, and welfare of the citizens of the City in light of the MCS provider's construction, operation, and maintenance;
- 6) to provide for emergency override capability, so that citizens of the City may be warned of a potential, imminent, actual disaster or emergency situation that exists in the area;
- 7) to provide for the introduction and installation of an in-home signal or safety alert technology in order to notify both subscribers and non-subscribers to an MCS provider's service of imminent disaster emergencies;
- 8) to create a thorough procedure for collecting and monitoring franchise fees and alternative user charges;
- 9) to create a viable alternative to franchise fees in case such fees, or their collection, or method of computation are ruled invalid, unenforceable, or unconstitutional;
- 10) to create a thorough default and revocation procedure for licensed and franchised MCS providers;
- 11) to provide for continuity of services in the event of City acquisition, abandonment, withdrawal, cessation of service, revocation, termination, non-renewal, or expiration of an MCS provider; and
- 12) creating a performance review procedure in order to assist the City in its periodic evaluation of a franchised MCS provider's performance.

§ 9-7. Administration; Delegation of Powers and Authority.

A) The Council/franchising authority is hereby designated the officer of the City which is responsible for the continuing administration of this ordinance.

B) Unless prohibited by federal or State law, the Council/franchising authority may delegate its powers and authorities with respect to an MCS provider to a duly authorized representative of the City, including the Mayor, the City Manager, a City Cable Advisory Committee, or an outside consultant.

C) However, the City/franchising authority may never delegate its franchising or revocation power to another person.

§ 9-8. Applicability of this Ordinance to an MCS Provider.

Unless exempted entirely from this ordinance, or exempted under one (1) or more provisions of this ordinance, or granted relief (by the Council/franchising authority) from one (1) or more provisions and/or requirements of this ordinance, then this ordinance shall be applicable to an MCS provider, and this ordinance shall have full effect and be enforceable in its entirety. Moreover, a non-exempt MCS provider shall be expected to comply with this ordinance no later than six (6) months after this ordinance becomes effective, except where a different compliance date is given or noted.

§ 9-9. Exemption from this Ordinance for Certain MCS Providers.

A) Recognizing the inherent technological differences between various types of MCS providers, and taking into account a number of financial, operational, and maintenance considerations, the Council/franchising authority exempts certain MCS providers from complying with the provisions contained in this ordinance.

B) MCS providers who are exempted from complying with the provisions of this ordinance are as follows:

- 1) an MCS provider who is exempted from this ordinance as a result of an applicable FCC ruling; or
- 2) an MCS provider who is exempted from this ordinance as a result of an applicable judicial ruling.

C) It is expressly understood that an exempted MCS provider remains exempted only as long as it meets one (1) or more of the specifications of this particular section.

D) It also is expressly noted that the extent of the exemption for a

qualified MCS provider is only for this ordinance. Consequently, such an exempted MCS provider is expected to abide by, and comply with, any other applicable City, State, or Federal laws and regulations, including any applicable federal, or State consumer protection, or customer service laws and regulations.

§ 9-10. Non-Exempt MCS Providers Seeking Relief from this Ordinance.

A) Any MCS provider affected by this ordinance may file a written petition, at any time, with the Council/franchising authority seeking relief from one (1) or more provisions of this ordinance. The relief requested may specifically include the delay in implementation (as to the petitioning MCS provider only) of one (1) or more provisions of this ordinance.

B) In order to receive any relief from one (1) or more of the provisions of this ordinance, a non-exempt MCS provider must satisfactorily demonstrate to the Council/franchising authority that at least one (1) of the following facts exist:

- 1) the provision and/or requirement is expressly prohibited by Federal law, the FCC, or State law; or
- 2) where applicable, that the provision in question materially affects, and is in conflict with an expressed right that is specifically noted in an existing franchise agreement (but only for the term of the existing franchise); or
- 3) that the imposition of such provisions and/or requirements will create such an undue economic hardship on an MCS provider so as to imperil or eliminate an MCS provider's ability to provide multi-channel service to a majority of current subscribers; or
- 4) that the MCS provider has its own construction, maintenance, operation, or customer service policy, which the Council/franchising authority deems comparable to, or exceeding, any provision and/or requirement from which the MCS provider seeks relief.

C) Unless delegated to another authorized representative of the City, the Council/franchising authority shall have the responsibility of determining whether an MCS provider's construction, maintenance, operation, or customer service policy, is comparable to, or exceeds, a similar provision in this ordinance.

D) As an alternative to seeking an exemption, or requesting relief, an MCS provider may petition for clarification on the precise intent and effect that one

(1) or more provisions or sections of this ordinance has on the petitioning MCS provider.

E) In accordance with this ordinance, the Council/franchising authority may charge the petitioning MCS provider with the actual costs for processing such a petition, including any costs incurred by outside consultants who are retained by the City to review an MCS provider's petition.

F) In those instances where the Council/franchising authority grants an exemption, or relief, or clarification, to a franchised MCS provider, or deems a franchised MCS provider's operational policy to be comparable to an ordinance provision, then the franchise agreement (initial, existing, or renewal) shall be amended within thirty (30) days to reflect the exact extent of such exemption and/or relief. It should be specifically noted that the benefit of such exemption, relief, clarification, or comparable policy extends only to the MCS provider granted such exemption, relief, clarification, or comparable policy.

§ 9-11. Failure of the Council/Franchising Authority to Enforce this Ordinance.

A non-exempt MCS provider shall not be excused from complying with the any of the requirements of this ordinance, or any subsequently adopted amendments to this ordinance, by any failure of the Council/franchising authority on any one (1) or more occasions to seek, or insist upon compliance with such requirements or provisions.

§ 9-12. MCS Providers or their Assignees Subject to Present and Future Ordinances.

A) Any non-exempt MCS provider, its assignee, or transferee shall be subject to, and expected to comply with, all ordinances now or hereafter adopted and in effect within the City, including this ordinance, to the extent that said MCS provider has not received an exemption or relief from said ordinance(s).

B) Any non-exempt MCS provider, its assignee, or transferee shall be subject to, and expected to comply with, all Federal and State Laws, and with all rules issued by all applicable regulatory agencies now or hereafter in existence.

C) Any non-exempt MCS provider, its assignee, or transferee shall be subject to all lawful exercise of the City's police power.

D) With respect to future ordinances noted in this Section, nothing contained herein prevents an MCS provider from exercising any, and all, of its administrative, and legal rights as to the constitutionality, applicability, and enforceability of said future ordinances.

§ 9-13. Repeal of Prior Inconsistent Resolutions and Ordinances.

To the extent that there is any prior resolution or ordinance which in part, or in whole, is directly inconsistent with this ordinance, then such part, or such whole, of the prior resolution or ordinance shall be repealed to the extent of the inconsistency.

§ 9-14. Resolution of Inconsistencies with Federal or State Rules, Regulations or Laws.

A) In any case of an actual inconsistency between any provision or section of this ordinance, and any provision or section of a Federal or State rule, regulation, or law, then the Federal or State rule, regulation, or law shall not only supersede the effect of the ordinance, but also control in any local application.

B) The above subsection specifically includes any situation wherein an applicable Federal or State judicial decision creates an actual inconsistency with any provision or section of this ordinance. In such a situation, the Federal or State judicial decision shall not only supersede the effect of the ordinance, but also control in any local application.

§ 9-15. Resolution of Conflicts Between this Ordinance and an Existing Franchise Agreement.

A) Where there is a conflict (actual or apparent) between this ordinance and an existing and applicable franchise agreement, the ordinance shall control, and prevail, unless administratively, or judicially determined invalid, unenforceable, or unconstitutional.

B) In the case where a franchised MCS provider receives an exemption, relief, or clarification from one (1) or more provisions or Sections of this ordinance, or has one (1) or more of its policies deemed comparable to a provision contained in this ordinance, then the franchise should specifically note such exemption, relief, clarification, or comparable policy, and to the extent that such an exemption, relief, clarification, or comparable policy, is inconsistent with a provision contained in this ordinance, then the specifically noted exemption, relief, clarification, or comparable policy language contained in the franchise agreement controls.

Section 9-16. Arbitration.

If the Council/franchising authority and a franchised MCS provider agree to such, and the federal or State law does not expressly prohibit such, then arbitration or settlement mediation may be used to resolve any dispute that arises out of this ordinance or franchise agreement. The terms and conditions relating to the arbitration or settlement mediation process (including possible cap on costs expended by both parties, composition of the hearing panel, and liability, if any for costs expended) shall be stated with specificity in the franchise agreement.

Section 9-17. Penalties.

Any violation or failure to abide by, and comply with, any provision or requirement of this ordinance shall be a violation of this ordinance and shall be subject to any civil remedies provided by State law, including (where permissible) the imposition of monetary fines, but excluding incarceration.

Section 9-18. The Council/Franchising Authority's Retained Rights and Authorities.

A) Subject to pre-emption by, or other approval authority of, the FCC or any other Federal or State governmental entity or agency, the Council/franchising authority retains the authority to provide for:

- 1) the regulation and control of any multi-channel system within the geographical limits of City, and within the limits prescribed by applicable law;
- 2) the award and grant of an MCS franchise (where required) subsequent to review of an application or proposal by the Council/franchising authority;
- 3) the periodic review and/or amendment or repeal of all, or part, of this ordinance; and
- 4) if mutually agreed to with a franchised MCS provider, the periodic review and/or amendment of any existing franchise agreement.

B) The Council/franchising authority, to the extent permitted by Section 623 of the CCPA (codified at 47 USC 543), retains the power to approve the rates or charges associated with the providing of multi-channel service classified as cable service by an MCS provider classified as a cable operator.

C) Subject to pre-emption by, or other approval authority of, the FCC, or any other Federal or State governmental entity or agency, the Council/franchising authority retains the jurisdiction to enforce all laws and regulations relating to multi-channel customer service practices and consumer protection.

Section 9-19. MCS Provider May Promulgate Rules.

To the extent that they are consistent with the requirements and responsibilities detailed in this ordinance, an MCS provider is authorized to promulgate such rules and internal practices as shall be necessary to enable it to exercise its rights and perform its duties under this ordinance, the state, and the rules of any federal agency charged with the

responsibility of regulating MCS providers.

Section 9-20. Notices.

A) Both the Council/franchising authority and each non-exempt MCS provider shall provide the other party with the name and address of the contact person designated to receive notices, filings, reports, records, documents, and other correspondence. All notices shall be delivered to each party's contact person by certified mail, return receipt requested, personal service with a signed receipt of delivery, or overnight with receipt verification. All other filings, reports, records, documents, and other correspondence may be delivered by any permissible means including, but not limited to: facsimile transmission ("faxing"); personal service; overnight mail or package delivery; or delivery via cable. The delivery of all notices, reports, records, and other correspondence shall be deemed to have occurred at the time of receipt (unless otherwise designated by State law).

B) If the non-exempt MCS is required to maintain a franchise, then the designation of such contact person for notice purposes, may be contained within a franchise agreement.

Sections 9-21 -- 9-25. Reserved.

Section 9-26. Indemnity.

A) To the extent permitted by law, a non-exempt MCS provider shall at all times defend, indemnify, protect, save and hold harmless, and exempt the City, the Mayor, the City Administrator, the Council/franchising authority, their officers, agents, servants, and employees from any, and all, penalty, damage, or charges arising out of claims, suits, demands, causes of action, or award of damages whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might be claimed now or in the future, which may arise out of, or be caused by, the construction, erection, location, products performance, operation, maintenance, repair, installation, replacement, removal or restoration of the multi-channel system within the City by a negligent act or omission of an MCS provider, its agents or employees, contractors, subcontractors, independent contractors, or implied or authorized representatives. With respect to the penalties, damages or charges referenced herein, attorneys' fees, consultants' fees, and expert witness fees are included as those costs which may be recovered by the Council/franchising authority.

B) The City, Mayor, and the Council/franchising authority specifically reserve the right to retain counsel of their own choice, at their own expense.

C) If an MCS provider obtains counsel for the City, the Mayor, or the

Council/franchising authority, then any one of them shall have the right to approve counsel.

D) Neither the City, the Mayor, nor the Council/franchising authority shall unreasonably withhold its approval of counsel.

E) With respect to an MCS provider's own defense of such actions, noted in this Section, it is understood, that such MCS provider reserves the right to select and retain, without the Council/franchising authority's approval, counsel of the MCS provider's choice, at such provider's expense.

F) Where arbitration is permitted in a franchise agreement, or agreed to in writing by the MCS provider and Council/franchising authority, the arbitration provisions shall specify to what extent costs are to be borne by either the Council/franchising authority, and the MCS provider.

Section 9-27. Liability Insurance.

A) An MCS provider shall secure and maintain, for as long as it provides multi-channel service to subscribers, public liability, property damage insurance, and umbrella coverage in at least the following amounts:

- 1) Public liability: \$2,000,000.00 per person/per occurrence;
- 2) Property damage: \$2,000,000.00 per any one (1) claim;
- 3) Umbrella liability: \$4,000,000.00 with up to a \$50,000.00 deductible and/or base insurance.

B) An MCS provider's public and personal liability and property damage insurance policy shall specifically include the City, the Mayor, the Council/franchising authority, their officials, agents, employees or representatives as additional insureds.

C) The public and personal liability and property damage insurance policy shall be issued by an agent or representative of an insurance company licensed to do business in the State, and which has one (1) of the three highest or best ratings from the Alfred M. Best Company, and which is acceptable to the City/franchising authority, or has been rated acceptable by the State.

D) Whenever needed to protect the interests of the citizens of the City, the Council/franchising authority may require an MCS provider to provide insurance for greater amounts than already listed.

E) The public liability and property damage insurance policy shall contain an endorsement obligating the insurance company to furnish the Council/franchising authority with at least thirty (30) days written notice in advance of the cancellation of the insurance.

F) Renewal or replacement policies or certificates shall be delivered to the Council/franchising authority at least fifteen (15) days before the expiration of the insurance which such policies are to renew or replace.

G) Before a multi-channel system provides multi-channel service to subscribers, the MCS provider shall deliver the policies or certificates representing the insurance to the Council/franchising authority, and each policy or certificate delivered shall be accompanied by evidence of payment of the premium thereon.

H) If the State permits an MCS provider to self-insure, then the MCS provider may exercise its right and self-insure as long as the minimal insurance amounts outlined in this Section are met and maintained.

Section 9-28. Performance and Construction/Completion Bond.

A) An MCS provider shall furnish to the Council/franchising authority, in an amount totalling at least one hundred thousand dollars (\$100,000.00), a performance bond or security bond executed by a surety licensed to do business in this State. The purpose of the performance bond is to ensure performance of any requirements imposed by this ordinance on an MCS provider. Further, the purpose is to guarantee that should the MCS provider not fulfill any obligations imposed by this ordinance (or where applicable a franchise agreement), then the surety will make whole (to the extent of the policy) any monetary losses incurred by the City.

B) An MCS provider shall furnish to the Council/franchising authority, a construction/completion bond prior to the time it commences a construction, upgrade, rebuild, or repair/maintenance project that has a capital construction cost or outlay exceeding fifty thousand dollars (\$50,000.00) in value. The amount of the bond shall equal at least ninety percent (90%) of the projected capital construction cost or outlay. The construction/completion bond shall remain in force at all times, unless relief is granted or a reduction schedule is detailed in an agreement between the Council/franchising authority, and the MCS provider.

C) The construction/completion bond or security bond shall specifically guarantee that an MCS provider will timely abide by its construction, upgrade, rebuild, or repair/maintenance schedule for the multi-channel system and/or any timetable for technical and service improvements or additions to the multi-channel system as may be committed to, or agreed upon, from time to time by the Council/franchising authority and MCS provider.

D) If the City draws on a performance or completion bond, or cash deposit, or letter of credit as a result of an MCS provider's failure to timely discharge its obligations, or failure to construct and activate the multi-channel system, or failure to complete a multi-channel system upgrade or rebuild or repair/maintenance, then the MCS provider shall be required, within thirty (30) days to replenish the completion and performance bond or security bond to the minimal level required by the Council/franchising authority.

E) Based upon such reasons as the Council/franchising authority might feel are necessary to protect the public interest, and welfare, the Council/franchising authority may raise the minimal amount of the performance bond.

F) The performance bond or security bond, shall be in force at all times unless relief is granted or a reduction schedule is detailed in an agreement, between the MCS provider and the Council/franchising authority.

G) In lieu of a performance bond, and construction/completion bond, the Council/franchising authority may accept a written guarantee of an MCS provider pledging the full faith and credit of the affected MCS provider should there be a breach in a material franchise term, or failure to meet any construction schedule.

Section 9-29. The Council/Franchising Authority's Policy With Respect to Reports and Records.

A) The Council/franchising authority recognizes that advances in technology, and the adoption and application of multi-channel laws, rules, regulations, and court decisions may have a profound effect and impact on an MCS provider in any given year.

B) Consequently, it is incumbent that the Council/franchising authority take measures to reduce the risk that multi-channel service or the multi-channel system will be adversely affected in any given year.

C) Therefore, the evaluation of legal, technical, financial, and character qualifications of an MCS provider is viewed as a constant undertaking on the part of the City. As a result, the Council/franchising authority requires that the operator maintain and retain all records and reports necessary for a City/franchising authority to determine compliance with the obligations imposed on an MCS provider, and to determine the MCS provider's (legal, technical, financial, and character) qualifications. The information is primarily intended to assist the MCS provider to maximize service, rather than to identify incidents of non-compliance.

Section 9-30. Furnishing of Reports.

A) At any time the FCC or another Federal or State agency requires or requests the submission of reports, data, or other information by a non-exempt multi-channel service provider, then such MCS provider shall, at the same time, without a separate or specific request, submit those reports, data, or other information to the Council/franchising authority. However, unless specifically authorized by the State, an MCS provider shall not be required to submit State or Federal tax returns, or any information exempted under federal privacy laws, including Section 631 of the CCPA (codified at 47 USC 551).

B) With respect to the reports required by this ordinance, it is noted that a non-exempted MCS provider shall timely submit any required report including, but not limited to the following:

- 1) an annual compliance statement in the manner set forth in this ordinance;
- 2) a periodic gross revenue report in the manner set forth in this ordinance;
- 3) preventative maintenance reports in the manner set forth in this ordinance;
- 4) copies, if applicable, of the MCS provider's FCC Form 395-A (or successor form), or any supplemental forms relating to equal employment opportunity, and fair contracting practices; and
- 5) any other reports or information required by another Section of this ordinance, or by the Council/franchising authority which are necessary to protect the health, safety, and welfare of the citizens of the City.

Section 9-31. Books and Records.

A) An MCS provider shall keep complete and accurate books of accounts, and records of the business and operations under, and in connection with, the MCS system.

B) The Council/franchising authority shall have the right to review (either by mail or at the MCS provider's local office) all records (pertaining to an MCS provider's cable and/or multi-channel operations) on seven (7) days written notice, unless specifically exempted by the Council/franchising authority. Such review, unless mutually agreed upon, or judicially ordered, should occur within the MCS provider's regular office hours.

C) The Council/franchising authority shall have the right to hire, at its own expense, an independent certified public accountant, or other business or financial expert, to review the books and records of an MCS provider. If after a financial audit it is determined that the MCS provider has underpaid amounts owed to the City, then the City may require the MCS provider to reimburse the City for the actual cost of the audit.

D) A false entry into the books and/or records of an MCS provider, made by an MCS provider, of a material and substantial fact shall constitute a material violation of this ordinance.

E) An MCS provider, at the local office shall keep complete and accurate books and records of the key aspects of the multi-channel system's operation for at least the preceding three (3) years in such a manner that all matters pertaining to the City, can be easily produced and/or verified at the City's request. Also, the MCS provider shall keep, at its local office any other applicable records and information that may be required by any other Federal or State agency having jurisdiction over MCS providers.

Sections 9-32 -- 9-36. Reserved.

Section 9-37. Annual Compliance Statement Required.

A) Within one hundred eighty (180) days from the date that this ordinance becomes effective, the Council/franchising authority shall develop an MCS provider's compliance statement in an effort to determine whether such MCS provider is complying with the various provisions and/or requirements of this ordinance.

B) Prior to December 1, of each calendar year, the City shall furnish to each MCS provider, a compliance statement.

C) Prior to December 31, of each calendar year, each non-exempt MCS provider shall return to the Council/franchising authority a completed and executed (by owner or officer) compliance statement.

D) There shall be no charge or fee associated with returning the annual compliance statement. However, if the MCS provider supplies incomplete information which requires independent verification by the City or a consultant hired by the City, then the MCS provider may be required to reimburse the City for all costs associated with the independent verification. Moreover, failure to submit a statement by the deadline, or the provision of false information within a statement, may subject an affected MCS provider to any, and all, penalties and fines listed in this ordinance.

Section 9-38. Notification of Customers and MCS Providers' Rights and Responsibilities; General Policy.

A) The Council/franchising authority recognizes that it is critical that a customer of an MCS provider fully understands and realizes the rights and responsibilities of both the customer and MCS provider with respect to the provision, maintenance, and repair of multi-channel service.

B) Further, the Council/franchising authority believes that if sufficient information is provided to a customer on certain customer service practices such as rates, billing periods, number and types of services provided, and rules concerning equipment use and return, then that customer will have the information necessary to make an informed decision on what, if any, multi-channel services to subscribe to, and receive.

C) In order to provide customers with the variety of information needed to make an informed decision, and to ensure that customers are notified of their, and the MCS provider's rights and responsibilities with respect to the multi-channel system, an MCS provider must provide a customer with a written "Notice of a Customer's and MCS Provider's Rights and Responsibilities With Respect to the Provision of Multi-Channel Service."

D) The "Notice of a Customer's and MCS Provider's Rights and Responsibilities With Respect to the Provision of Multi-Channel Service" shall be provided at the time of initial installation. Thereafter, a subscriber shall be provided with a written "Notice" at least once every twelve (12) months. If, however, an MCS provider amends, repeals, adds, deletes, modifies, or makes other changes to any customer service practice that is required in this ordinance, then said MCS provider shall provide a subscriber with such written notification at least thirty (30) days prior to the effective date of such amendment, repeal, addition, deletion, modification, or other change.

Section 9-39. Notice of Customer's and MCS Provider's Rights and Responsibilities With Respect to the Provision of Multi-Channel Service; Minimum Contents.

A) At the time an MCS provider is required to furnish an initial or annual "Notice", such "Notice" shall contain, at a minimum, the following:

- 1) an up-to-date listing of the specific multi-channel services provided--clearly indicating and isolating the standard and/or basic, premium, and informational services offered, as well as the service tiers or service clusters offered;
- 2) notification of a subscriber's ability to purchase or lease, from

the MCS provider, a lock box, parental control mechanism, or other device which will prohibit the viewing of a particular multi-channel service during a period selected by the subscriber;

- 3) pursuant to FCC regulations, a subscriber's ability of purchasing or using an A/B or input selector switch;
- 4) a comprehensive listing and explanation of all rates and charges (including rates for standard or basic and premium channels/services, particular service tiers or service clusters, current discount or promotional fees, installation charges, and security deposits, if any);
- 5) if service clustering is available, then a description and explanation of any penalties, credits, restrictions, upcoming (within sixty (60) days of the "Notice") service clustering changes or differing alignments, or other pertinent information;
- 6) a comprehensive listing and explanation of all billing options available;
- 7) the customer service office hours and telephone number(s) in a manner consistent with the specific policy set forth in this ordinance;
- 8) the billing practices of an MCS provider in a manner consistent with the specific policy set forth in this ordinance;
- 9) the specific customer complaint/inquiry resolution policy that is adopted and followed by an MCS provider and which is consistent with the parameters set forth in this ordinance;
- 10) if applicable, and permitted, the rules and regulations for using any facilities, including a studio or mobile van of an MCS provider;
- 11) the method of securing a voluntary disconnection in a manner consistent with the specific policy set forth in this ordinance;
- 12) the extent of the credit/refund policy in a manner consistent with the specific policy set forth in this ordinance;
- 13) the equipment use and return policy together with any required

security deposits in a manner consistent with the specific policy set forth in this ordinance; and

- 14) the additional rights of blind, hearing-impaired or ambulatory impaired customers in a manner consistent with the specific policy set forth in this ordinance.

B) The "Notice" shall be written in plain, simple to understand English. The "Notice" shall contain no fine print, and any exclusions, limitations, or caveats shall be clearly indicated as such in the "Notice".

C) The "Notice" shall be delivered to a subscriber via an insert in the subscriber's periodic invoice or through a special mailing.

Section 9-40. Billing Practices.

A) Within the "Notice" that is required by this ordinance, subscribers shall be informed of at least the following practices of an MCS provider:

- 1) billing procedures (including payments necessary to avoid discontinuance of service);
- 2) payment due and delinquent dates;
- 3) amount or percentage of late charges, if any;
- 4) advance billing options;
- 5) resolution procedures for billing disputes, complaints, and inquiries;
- 6) refund policy for service interruptions, substandard signal quality, or uncontracted service;
- 7) current service rates in a detailed and understandable format;
- 8) procedure and amount of charges for installation or relocation of an MCS provider's facilities and/or equipment;
- 9) current schedule and explanation for any billed charges or other non-regularly occurring fees invoiced to subscribers; and
- 10) any lower-income or fixed-income rates together with any qualifications to obtain such rates.

B) All bills shall plainly state that service may be paid for on an individual monthly basis, by the end of the month for which the service was delivered, with no late penalty or charge assessed.

C) Existing subscribers shall be informed of the items listed in subsection (1) at least once every 12 months.

D) Whenever there is a change in an MCS provider's billing practices or payment requirements, all subscribers must be notified in writing at least thirty (30) days before such billing practices or payment requirements become effective.

E) In any case where a subscriber requests a cancellation or reduction of service within thirty (30) days after the notification of a scheduled rate or charge adjustment, then the subscriber's liability for the newly implemented rate or charge shall cease from the moment that the rate or charge adjustment becomes effective.

Section 9-41. Billing Credit or Refunds for Service Outages, Interruptions; Substandard Signal or Picture Quality or Unsolicited Service.

A) An MCS provider shall provide a subscriber with credit or a rebate for a service outage or interruption exceeding eight (8) hours in duration, which credit, for purposes of determining the amount of the credit or rebate, shall be deemed to be equivalent to or the same as a twenty-four (24) hour service outage.

B) Where not expressly prohibited by the State, the Council/franchising authority may prescribe rules for giving credit to a subscriber in cases of substandard signal or picture quality.

C) In the case of a charge for unsolicited service, an MCS provider shall provide a subscriber with an adjustment or billing credit on the next available billing statement. Moreover, in such a case, an MCS provider shall not consider a subscriber delinquent for failure to pay a charge for unsolicited service.

Section 9-42. Prohibition Against Multiple Changes of Service Tiers or Service Clusters Within a 365 Day Period.

A) To prevent "bait and switch" tactics, and to promote stability with respect to multi-channel services provided on a multi-channel system, an MCS provider may not switch any particular multi-channel service from one (1) service tier or service cluster more than twice during any three hundred sixty (365) day period.

B) Nothing contained in this Section should be construed as mandating any particular programming service being provided to a subscriber. Nor should this

Section be construed as requiring any particular programming service be provided on a particular tier or cluster. Rather, this Section is designed to promote tier or cluster stability, so that a subscriber may choose a tier or cluster that best suits the subscriber's individual programming and informational needs.

Section 9-43. Customer Service Hours; Capabilities of Customer Service Office; and Telephones.

A) In order to facilitate the needs of the local customers, an MCS provider shall maintain a customer service office which is both within the City, and easily accessible to customers.

B) The customer service office shall be open at least forty (40) hours per week (exclusive of holidays).

C) Within the forty (40) hours per week that a customer service office must be open, an MCS provider must provide office hours either on at least two (2) evenings (after 5 p.m.), or on Saturdays and/or Sundays (if not prohibited by State law).

D) The customer service office should have an adequate and knowledgeable staff in order to handle the vast majority of customer service inquiries, specifically including, but not limited to: billing inquiries, refunds, service outages, equipment service and repair, payment of bills and other charges, and inquiries from disabled or physically-impaired customers.

E) MCS providers shall for a reasonable charge, provide customers with a monthly, bi-monthly, or weekly multi-channel programming service guide, listing and/or detailing the programs and services available during the time period. In lieu of providing a programming service guide via the mail, or a newspaper, or third party, the MCS provider may disseminate the information over a channel designated as a program preview or program listing channel.

F) At least annually, any MCS provider shall certify to the Council/franchising authority that each customer service representative (CSR) has taken and passed an MCS provider-implemented course designed to train CSRs to handle their jobs in a courteous, efficient, and responsive manner.

G) An MCS provider shall maintain at least one (1) toll-free and/or local telephone number to accommodate normal business inquiries.

H) An MCS provider shall maintain a separate twenty-four (24) hour toll-free telephone number to facilitate calls concerning repair of equipment and extended interruption of service. During any hours that the customer service office

is open, the MCS provider must have or make available in-house personnel to address a customer's inquiries. During other hours, a telephone may be manned by an automatic answering device, provided that the use of an answering device or answering service still results in an initial phone call by the MCS provider within ninety (90) minutes, in order to at least determine the extent of the outage. The MCS provider shall not be required to make in-person telephone contacts to subscribers at a rate which exceeds sixty (60) calls per hour, and shall not be required to make such calls between the hours of 10:00 p.m. and 6:00 a.m. for situations other than reports of service outages.

I) A non-exempt MCS provider shall have adequate staff and/or extension lines (except during special marketing promotion periods, peak billing cycles, and service outages) in order to handle call to the general information number to the following specifications:

- 1) Eighty-five percent (85%) of all customer calls received in a year shall be attended within three minutes by a representative of the MCS provider, or by a device that is capable of complaint or inquiry resolution; and
- 2) The rate of abandoned calls shall no be greater than fifteen percent (15%) over any consecutive six (6) month period of time. "Abandoned calls" shall in no event be deemed to include calls in which the caller hangs up within forty-five (45) seconds of making the call.

J) With respect to the specifications listed in subsection (I) of this Section, it shall be the MCS provider's responsibility to quarterly certify to the Council/franchising authority that the affected MCS provider is meeting the minimal specifications.

Section 9-44. Special Service Requirements for Blind, Hearing-Impaired, or Ambulatory-Impaired Customers.

In addition to any other requirements mandated by this ordinance, or by Federal or State law, an MCS provider shall comply with the following special service requirements for blind, hearing-impaired, or ambulatory-impaired customers:

- 1) provide wheelchair accessibility to an MCS provider's customer service office;
- 2) for any customer declared legally blind by the State, an MCS provider must provide, if requested by such customer, large type, braille, voice synthesized or functionally equivalent notices, bills, and other pertinent multi-channel system information;

- 3) provide at a non-discriminatory cost, a special closed-captioned converter for the hearing impaired;
- 4) provide at a non-discriminatory cost, a remote control device and/or converter for wheelchair subscribers or subscribers with a permanent medical or physical ambulatory impairment;
- 5) where applicable, provide modified or special instructions for use of equipment by individuals who have physical impairments; and
- 6) in times of a disaster emergency or other instances requiring an emergency alert, mandating an all channel video blanking capability, so that all channels would be blanked simultaneously with the audio alert signal, in order to increase the likelihood that hearing and sight-impaired customers would be alerted.

Section 9-45. Preferential or Discriminatory Practices Prohibited.

A) An MCS provider shall not, as to rules, regulations, rates, charges, provision of service, or use of a provider's facilities and equipment, make, allow, or grant any undue preference or advantage to any person, nor subject any person to prejudice or disadvantage on the basis of age, race, creed, color, sex, national origin, handicap, religious affiliation or location of residence.

B) Consistent with Section 621 (a) (3) of the CCPA (codified at 47 USC 541 (a) (3)), MCS providers classified as cable operators shall not deny cable service, or the extension of cable service, to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.

C) Consistent with subsections (A) and (B) of this Section, an MCS provider shall not provide multi-channel service in a "cherry-picking" or "cream-skimming" manner or fashion, to the exclusion of other residents based on the excluded residents' income.

D) Subsection (A) of this Section, however, does not prohibit an MCS provider from offering a promotional or incentive discount rate or charge as long as the rate or charge does not exceed three hundred seventy (370) days in length. This subsection does not prohibit an MCS provider from offering special incentive rates such as one (1) month basic service free, if twelve (12) months of basic service are paid in one payment or within a certain time-frame.

E) Subsection (A) of this Section, also does not prohibit an MCS provider from denying service based on location of residence, if that residence is outside the

parameters for line extension as detailed in a franchise agreement (if applicable).

F) Subsection (A) of this Section also does not prohibit an MCS provider from implementing a carefully designed no-frills service tier or service cluster for "lower income", and/or fixed income individuals.

G) Subsection (1) of this Section also does not prohibit an MCS provider from making agreements or entering into multi-channel service agreements with multiple dwelling unit owners (including hotel, motel, and mobile park owners) to provide multi-channel service under a bulk billing or other type of arrangement.

Section 9-46. Use of Equipment, Return of Equipment, Security Deposits, and their Return.

A) Prior to formally delivering any equipment, including auxiliary equipment (such as a converter, input selector switch, or video control recorder) to a customer, an MCS provider shall have tested a representative sample (at least one percent (1%)) of such equipment to make sure that it is in proper working order.

B) If needed for proper operation, or requested by a customer, an MCS provider shall deliver to a customer, handwritten or typed instructions detailing the proper use of rented, loaned, or purchased equipment. Unless required by another Section of this ordinance, an MCS provider may comply with this Section by delivering the manufacturer's instructions to a customer.

C) An MCS provider is not required to seek a security deposit from a customer for use or rental of the MCS provider's equipment.

D) An MCS provider shall comply with any, and all, applicable State rules concerning security deposits.

E) If the State is silent on the security deposit for a particular piece of equipment, then the MCS provider shall be prohibited from charging any security deposit for equipment which exceeds the replacement cost to the MCS provider.

F) As a matter of consumer protection, an MCS provider shall be prohibited from charging any security deposit for multi-channel service which exceeds twice the basic monthly rate.

G) An MCS provider shall return a security deposit (together with any interest earned) after the equipment is satisfactorily returned, or the subscriber maintains a satisfactory payment history (which is determined as no payment delinquencies within the preceding twelve (12) month period).

H) A customer shall maintain any equipment rented or leased from an MCS provider in good working order, and operate such equipment only in the manner specified by the MCS provider or manufacturer of the equipment.

I) A customer shall totally and fully reimburse an MCS provider for any damage or loss to an MCS provider's equipment that is due to the customer's failure to properly maintain and operate such equipment.

J) A customer shall be relieved from any responsibility for reimbursing an MCS provider for equipment which malfunctions or does not operate due to a hidden or latent defect in the equipment, or for equipment which fails to operate, or improperly operates due to natural occurrences conditioned by the normal wear and tear of such equipment, or for equipment damaged or destroyed by an act of nature, and which is not covered by a customer's home or apartment insurance policy.

Section 9-47. Service Inquiry Logs.

A) An MCS provider shall be required to keep and maintain service inquiry logs, subject to any limitations imposed by State or Federal law, including (for MCS providers classified as cable operators) any subscriber privacy limitations imposed by the CCPA.

B) The purpose of the service inquiry logs is to assist the City in assessing the type, degree, and rate of resolution of customer service requests, inquiries, and complaints.

C) At a minimum, the service inquiry logs should contain the following:

- 1) the time and date of initial receipt of any service request, inquiry, or complaint, together with the time and date of initial response to that service request, inquiry or complaint;
- 2) the nature of the service request, inquiry, or complaint;
- 3) the precise action taken by an MCS provider in order to resolve the service inquiry, request, or complaint;
- 4) whether the service request, inquiry, or complaint was resolved by allowing a credit or refund of some sort; and
- 5) the area, location, or quadrant of the City where the service request, inquiry, or request was generated.

D) In addition to any other right of inspection that the Council/franchising authority may possess, it shall have the right to review and inspect a compilation of such logs. However, the Council/franchising authority shall not have the right of access, review, or inspection for any service inquiry logs or any information contained within service inquiry logs that are otherwise protected from access, review, or inspection by State or Federal law.

E) This Section does not require MCS providers to maintain service inquiry logs on scheduled installations.

Sections 9-48 -- 9-50. Reserved.

Section 9-51. Restoration of a Subscriber's Property.

A) At any time an MCS provider (in furtherance of its right to construct, operate, and maintain a multi-channel system), disturbs the yard, residence, or other real or personal property of a subscriber, such MCS provider shall ensure that the subscriber's yard, residence, or other personal property is returned, replaced, and/or restored to a condition that is sufficiently comparable to the condition that existed prior to the commencement of the work.

B) The costs associated with both the disturbance and the return, replacement, and/or restoration shall be borne by the MCS provider. This subsection also requires the MCS provider to reimburse a subscriber or private property owner, for any damage caused by the MCS provider, its subcontractor, or its independent contractor, in connection with the disturbance of a subscriber or private property owner's property.

C) The types of acts specifically included in this Section are the following:

- 1) removal of a subscriber's sod, lawn, plants, shrubbery, flowers, trees, driveway, or fence to install, trench, repair, replace, remove, or locate cable or other equipment of an MCS provider;
- 2) installation or removal of cable or other equipment of an MCS provider within a subscriber's residence which requires drilling, excavating, plastering, or the like on the part of the MCS provider;
- 3) temporarily relocating or moving a piece of personal property or a fixture of a subscriber (such as a motor vehicle, fence, air conditioning or heating unit, or the like), in order to perform some sort of construction, maintenance, or repair on the

multi-channel system; or

- 4) permanently removing an MCS provider's cable or equipment due to either the revocation, termination, or non-renewal of a franchise (if applicable), or the abandonment, withdrawal, or cessation, of multi-channel service to any portion of the City.

D) The requirements imposed upon the MCS provider extend to any subcontractor or independent contractor that the MCS provider might employ to perform the tasks outlined in this Section.

E) In light of the foregoing, an MCS provider has the authority and responsibility to diligently trim trees of a private property owner (including a subscriber), but only to the extent necessary to prevent the branches of the trees from coming in contact with the MCS provider's wires and cables.

Section 9-52. Service Inquiries, Requests, Complaints, and Response Times, and New Installations or Reconnections of Service.

A) Except in times of a natural or man-made emergency, or an appointment scheduled with the mutual consent of a subscriber, an MCS provider shall respond to the service inquiries, requests, and complaints of subscribers, within such MCS provider's normal business or service hours, and within the time schedules detailed in subsections (B) through (I) of this Section. Moreover, except in emergency situations, an MCS provider shall inform the customer whether the service call is scheduled for the morning, afternoon, or evening hours. If the service call has to be canceled or rearranged, then the MCS provider shall make every effort to notify the customer as soon as possible, and if desired by the subscriber shall reschedule the service call for a time within twenty-four (24) hours of the cancellation.

B) In the case of a signal or service interruption, a non-exempt MCS provider shall respond to, and make repairs as are necessary to resume the signal or service to the subscriber within twenty-four hours (24) from the time the non-exempt MCS provider first received notification of the signal or service interruption.

C) In the case of a "blank" or "no-picture" situation of any given level of billing or service, a non-exempt MCS provider shall respond to, and make repairs as are necessary to return the multi-channel service system picture within twelve hours (12) from the time the non-exempt MCS provider first received notification of the "blank" or "no-picture" situation.

D) In the case of a defective, improperly operating, or non-operating

piece of equipment, a non-exempt MCS provider shall respond to, and make repairs as are necessary to correct the problem within twenty-four (24) hours from the time the MCS provider first received notification of the defective, improperly operating, or non-operating piece of equipment.

E) In the case of repair to a piece of equipment in a subscriber's residence, or repair to the cable (coaxial, fiber or functional equivalent), the repair should be completed, and the situation resolved, at the conclusion of the first service visit. If the repair is not completed and resolved within three (3) visits, and if as a result of the insufficient repair, a situation remains wherein there is a visually or audibly detected degradation of a multi-channel signal by human eye or ear, then the MCS provider must immediately, and completely replace all drop cable (coaxial, fiber or its functional equivalent), and/or any necessary MCS provider equipment at no charge.

F) In no case shall a subscriber's service request or inquiry go unresponded or unattended to for more than twelve (12) hours from the time the MCS provider first received notification of the service inquiry or request. Moreover, except in emergency situations, all requests and inquiries shall be handled or corrected within thirty-six (36) hours from the time the MCS provider first received notification. If a cancellation of a service call occurs, then the MCS provider shall re-schedule the call in a manner consistent with the guidelines expressed in subsection (A) of this Section.

G) A complaint/inquiry regarding loss of all channels comprising a service level, cluster, or tier will be responded to, and corrected, within six hours (6) from the time the MCS provider first received notification of the loss of all channels comprising a service level, or service tier, or service cluster.

H) In case of a dispute concerning the precise time that the MCS provider received notification, or the precise circumstances surrounding the MCS provider receiving the notification, or whether notification was received at all, the Council/franchising authority shall reserve the right and authority to settle such a dispute.

I) New installations, upgrades, or reconnections of multi-channel service by an MCS provider shall be performed and completed within seven (7) days of a customer requesting such a new installation, upgrade, or reconnection.

Section 9-53. MCS Providers Required to Maintain Sufficient Repair Parts and Sufficient Repair Personnel.

A) Except in times of natural or man-made emergency, an MCS provider shall, at all times, have access to, and be able to secure, sufficient maintenance and

repair parts and equipment for the MCS system, so that the MCS provider can respond to, and correct, all subscriber service interruptions within the time periods specified in this ordinance.

B) Having access to, and being able to secure sufficient maintenance and repair parts and equipment, is necessary to promptly restore a subscriber's multi-channel service, and avoid delays caused by having to obtain needed parts and equipment.

C) Except in times of natural or man-made emergency, or strike (whose duration has been less than seventy-two (72) hours), an MCS provider shall have sufficient maintenance and repair personnel, so that the MCS provider can respond to, and correct, subscriber service interruptions within the time periods specified in this ordinance.

D) An MCS provider shall annually certify to the Council/franchising authority that each service technician has taken and passed an MCS provider-implemented course designed to train service technicians to handle their jobs in a courteous, efficient, and responsive manner. Also, the course should be designed to provide continuing education to service technicians in changes in technology, repair/maintenance procedures and related matters.

E) Notwithstanding the other requirements and provisions in this Section, an MCS provider shall maintain at least one (1) service technician on call twenty-four (24) hours per day.

Section 9-54. Disconnection for Non-Payment.

A) A subscriber shall not be considered delinquent in payment until at least forty-five (45) days after the posting of the bill to the subscriber, and payment has not been received by an MCS provider.

B) Before disconnection of a subscriber's multi-channel service (either physically or electronically) takes place, the following must occur:

- 1) the subscriber must in fact be delinquent in payment of multi-channel service; and
- 2) at least five (5) days have elapsed after a separate written notice of impending disconnection has been personally served upon the subscriber; or
- 3) at least eight (8) days have elapsed after mailing a separate

written notice of impending disconnection to the subscriber; or

- 4) at least five (5) days have elapsed after the subscriber has either signed for or, refused to accept, a separate written notice of impending disconnection.

C) The written notice of disconnection must expressly and clearly state the amount that is owed by the subscriber to an MCS provider, the minimum amount required to be paid to avoid disconnection, and the date and place where such payment must be made.

D) An MCS provider who physically retrieves its equipment including converter, remote control unit, or digital audio tuner), from a subscriber, must do so within both a normal service day and normal service hours of an MCS provider.

E) Receipt of a "bad check" from a subscriber, in response to a written notice of disconnection, does not constitute payment, and the affected MCS provider need not give the subscriber further notice prior to disconnecting multi-channel service.

F) An MCS provider may add a reasonable collection charge to the subscriber's bill if the applicable provisions of this ordinance, and any applicable State regulations, are followed.

G) Any refund due a subscriber after such a disconnection shall be made within sixty (60) days of the disconnection for non-payment.

Section 9-55. Voluntary Disconnections and Downgrades.

A) At any time, a subscriber may request that a particular service tier, service cluster, pay channel, premium channel, informational service, or the entire multi-channel service be disconnected.

B) Where provided by an MCS provider, a subscriber may request a downgrade from a particular level of service to a less comprehensive level of service, or a less expensive level of service.

C) From the date that such a subscriber makes such a request for either a disconnection or downgrade, then the MCS provider shall have seventy-two (72) hours or three (3) service days, whichever is longer, to disconnect or downgrade the service tier, pay channel, premium channel, informational service, or entire multi-channel service. In the event that an MCS provider does not disconnect or downgrade service within seventy-two (72) hours, a subscriber's obligation to pay for such service shall cease, or in the case of a downgrade, a subscriber's obligation to

pay for the more comprehensive and/or higher priced service shall cease.

D) For a service tier, service cluster, premium channel or informational service which is voluntarily disconnected, a subscriber shall pay a pro rata share of the monthly rate for such service tier, service cluster, premium channel or informational service.

E) No separate disconnect or downgrade charge may be passed on to a subscriber if it chooses to take advantage of a lower-priced service tier/cluster or an optional service tier/cluster. However, to prevent subscriber abuse of this voluntary disconnection, or downgrade policy, a subscriber shall be charged a minimum one (1) months full rate for any one service tier/cluster which is disconnected and/or downgraded at least three (3) times within a span of one hundred eighty (180) days.

F) If, however, an MCS provider's equipment is, or has been damaged by a subscriber, prior to such disconnection, then the MCS provider may charge the subscriber with the entire cost for such damage, provided that the MCS provider notifies the subscriber within ten (10) days of the disconnection. A subscriber shall not be required to pay for equipment failure, if the circumstances fall within the normal wear and tear guidelines established in this ordinance.

G) Any refund due a subscriber after disconnection (both for non-payment and voluntary) shall be made within sixty (60) days after such disconnection.

H) In no event will this Section be viewed as abridging or otherwise limiting the rights and remedies afforded by the subscriber complaint/inquiry resolution process outlined in this ordinance.

Sections 9-56 -- 9-61. Reserved.

Section 9-62. Protection of Subscriber Privacy.

A) An MCS provider shall abide by any, and all, subscriber privacy rules or regulations of the Federal, or State governments.

B) For MCS providers classified as cable operators, such operators shall also abide by, and comply with, any subscriber privacy protection requirements and procedures listed in Section 631 of the CCPA (codified at 47 USC 551).

Section 9-63. Resolution of Complaints/Inquiries.

A) An MCS provider is required to develop a comprehensive complaint/inquiry resolution policy that is consistent with the rules and regulations

outlined in this ordinance.

B) An MCS provider's complaint/inquiry resolution policy shall be reduced to writing, and such policy shall be available upon request, to any person. In any event, a subscriber shall receive notice of such policy in the manner that is prescribed by this ordinance.

C) The Council/franchising authority shall establish a neutral, third-party appeal process, to handle complaints/inquiries that are not satisfactorily resolved at the MCS provider level.

D) An MCS provider's complaint/inquiry resolution policy shall contain at least the following minimal standards:

- 1) the initial response to a complaint/inquiry shall occur no later than twenty-four (24) hours after receipt of the complaint/inquiry;
- 2) every attempt will be made to resolve the complaint/inquiry within twenty-four (24) hours after receipt of the complaint/inquiry;
- 3) complaints/inquiries that fall into the category of service inquiries shall abide by the procedure set forth in this ordinance;
- 4) informing subscribers of the credit/refund policy which is consistent with this ordinance, and any applicable State regulations; and
- 5) informing subscribers of the billing disputes policy which is consistent with this ordinance, and any applicable State regulations.

Section 9-64. Policy With Respect to Continuity of Multi-Channel Service Provisions.

A) The Council/franchising authority declares that as part of its right to establish multi-channel customer service guidelines, it has the duty to ensure continuity of multi-channel service for all subscribers. In that light, the Council/franchising authority also determines that it may take appropriate measures in order to ensure that no portion of the City is threatened or faced with a disruption, interruption, or discontinuance of multi-channel service due to the actions of any MCS provider.

B) In addition to the principles and ideals enumerated in subsection (A), the Council/franchising authority also expresses that its policy covers the following:

- 1) to provide for continuity of multi-channel service in the event of acquisition by the City;
- 2) to provide for continuity of service in the event of a proposed abandonment, withdrawal, or cessation of multi-channel service by an MCS provider;
- 3) to provide for continuity of service in the event of revocation, termination, or non-renewal of a franchised MCS provider's franchise;
- 4) to provide for continuity of service in the event that a transaction occurs that affects the ownership or control of the MCS provider, such as an assignment, sale, transfer, or merger;
- 5) to provide for continuity of service in the event of an expiration of a franchise;
- 6) to prevent disruption of multi-channel service which would provide a hardship on those subscribers who rely on a multi-channel system as their primary or secondary source for information; and
- 7) to prevent the interruption or cessation of multi-channel service which would disrupt or eliminate the diversity of programming choices enjoyed by subscribers of a multi-channel system, and thereby restricting their ability to receive information.

C) In any situation (including those mentioned above) which threatens the City and subscribers with the loss or interruption in the continuity of multi-channel service, then the MCS provider shall provide the Council/franchising authority with at least forty-five (45) days notice (except in extreme circumstances) prior to the effective date of any action which would cause a loss or interruption in the continuity of multi-channel service. The purpose of the notice is to apprise the Council/franchising authority of the possibility of such loss or interruption in the continuity of multi-channel service, so that it might explore its options and take appropriate measures.

D) Whenever any situation occurs (including those mentioned above) which threatens the City and subscribers with the loss or interruption in the

continuity of multi-channel service, then the Council/franchising authority may direct the MCS provider for a period of up to twenty-four (24) months to do everything in its power to ensure that all subscribers receive continuous, uninterrupted multi-channel service of the same quality, mix, and level(s) regardless of the circumstances.

E) During the interim period, the Council/franchising authority shall work with the MCS provider in order to secure a new multi-channel system owner, or rectify the problem, so that the threat of loss of continuity is removed at the earliest possible instance.

F) During any interim period in which the MCS provider continues to provide multi-channel service to subscribers, the MCS provider is entitled to all revenues collected, except any sums owed (including franchise fees, alternative user charges, and taxes) to the City or to other persons.

G) In the event that the threat of loss of continuity is not resolved within twenty-four (24) months, then the Council/franchising authority may extend the interim period on a month-to-month basis until the situation is satisfactorily resolved. Also, in such a circumstance, the Council/franchising authority may adopt any emergency rules or procedures which will ensure that the subscribers will receive continuous, uninterrupted multi-channel service of the same quality, mix, and level(s).

Section 9-65. Continued Use of Individual Antennas Protected.

A) The Council/franchising authority does not intend to prohibit the erection or continued use of individual television antennas within the City so long as the individual television antennas conform to any and all applicable zoning and/or land use regulations. Consequently, no person shall be required to receive multi-channel service, or to physically connect to a multi-channel system.

B) It is also noted that no person shall be penalized or fined (through either a home sales contract, deed of restrictive covenants, or other type of agreement) for failing or refusing to receive multi-channel service, or physically connecting to a multi-channel system.

Section 9-66. Periodic Multi-Channel Subscriber Surveys.

A) At least every three (3) years after the adoption of this ordinance, the City and any affected MCS provider shall conduct a survey of current subscribers of that particular MCS provider in order to ascertain the degree of customer satisfaction/dissatisfaction with the subscriber sensitive aspects of the multi-channel

system including (but not limited to) billing practices, response times, programming choices available and receivable, responsiveness to inquiries, and use, availability, and accessibility of any customer service office.

B) If the survey results indicate or demonstrate that the customer service practices set forth in this ordinance are not sufficient to meet reasonable or identified projected City needs, then the Council/franchising authority may take whatever measures are appropriate in order to rectify the deficiency or insufficiency in a particular customer service practice by one or more MCS providers.

Sections 9-67 -- 9-70. Reserved.

Section 9-71. Construction Schedule and Construction-Related Requirements.

A) In order to establish minimum uniform standards, the Council/franchising authority requires any MCS provider to adopt the following minimal construction schedule and construction-related requirements:

- 1) construct, install, maintain, and repair the multi-channel system in accordance with the requirements noted in this ordinance;
- 2) use streets and public ways, as set forth in this ordinance;
- 3) where applicable, remove franchise property from public streets, as set forth in this ordinance;
- 4) adopt the construction standards, as set forth in this ordinance;
- 5) adopt the system expansion standards, as set forth in this ordinance;
- 6) adopt the construction schedule as referred to in this ordinance;
- 7) abide by, and act in strict accordance with, all current technical codes adopted by the City, or the State, or the United States, as noted in this ordinance; and
- 8) maintain all permits and licenses, as noted in this ordinance.

Section 9-72. Construction of Good Quality.

During any phase of construction, installation, maintenance, and repair of the multi-channel system, the MCS provider shall use materials of good and durable quality and

all such work shall be performed in a safe, thorough, and reliable manner.

Section 9-73. Conditions on Use of Streets and Public Ways.

A) All wires, conduits, cable (coaxial, fiber, or functional equivalent), and other property and facilities of an MCS provider shall be so located, constructed installed, and maintained so as not to endanger or unnecessarily interfere with usual and customary use, traffic and travel upon the streets, rights-of-way, easements, and public ways of the City.

B) In the event an MCS provider's system creates a hazardous or unsafe condition or an unreasonable interference with property, then at its own expense such MCS provider shall voluntarily, or upon the request of the Council/franchising authority, remove that part of the system that creates the hazardous condition from the subject property.

C) An MCS provider shall not place equipment where it will interfere with the rights of property owners or with gas, electric or telephone fixtures, or with water hydrants or mains, or with wastewater lift stations, or any other service or facility that benefits the City's or its residents' health, safety, or welfare.

D) An MCS provider, at either its own expense or that of a private contractor, shall protect, rights-of-way, easements, and support or temporarily disconnect or relocate in the same street or other public way, any property of such MCS provider when necessitated by reason of:

- 1) traffic conditions;
- 2) public safety;
- 3) a street closing;
- 4) street construction or resurfacing;
- 5) change or establishment of street grade;
- 6) installation of sewers, drains, water pipes, storm drains, lift stations, force mains, power or signal lines; or
- 7) any improvement, construction or repair related to the City's or its residents health safety, or welfare.

E) It shall be the responsibility of an MCS provider (acting alone or in conjunction with another person) to locate and mark or otherwise visibly indicate and alert others to the location of its underground cable (coaxial, fiber or functional

equivalent) before employees, agents, or independent contractors of such MCS provider, install cable in the marked-off area.

F) An MCS provider shall, on the request of any person holding a building moving permit, temporarily remove, raise or lower the cable wires to allow the moving of the building. The expense of temporary removal shall be paid by the person requesting it, and such MCS provider may require payment in advance. The affected MCS provider shall be given not less than fifteen (15) days notice of a contemplated move to arrange for temporary wire changes.

G) For any new installations occurring after the effective date of this ordinance, and at the time that an MCS provider rebuilds or upgrades the multi-channel system, all trunk or feeder cable (coaxial, fiber, or functional equivalent) shall be placed underground. Further, where both power and utilities are presently underground, multi-channel system cable shall be placed underground also.

Section 9-74. Franchised MCS Provider's Duty to Remove Franchised Properties from the Public Streets.

A) This Section is applicable to any MCS provider required to maintain a franchise to operate within the City.

B) Whenever the following occurs:

- 1) a franchised MCS provider ceases to operate all, or part, of the multi-channel system for a continuous period of six (6) months;
- 2) a franchised MCS provider ceases and fails to construct the multi-channel system outlined in the application, or proposal for renewal, or renewal franchise agreement;
- 3) the Council/franchising authority elects not to renew the franchise pursuant to the provisions set forth, in this ordinance;
or
- 4) the franchised MCS provider's franchise is revoked pursuant to the provisions set forth in this ordinance;

Then--Unless the City or another MCS provider uses such multi-channel system, under the continuity provisions outlined in this ordinance, the affected franchised MCS provider shall promptly remove its multi-channel system property from the streets, public ways, and private property located within the City.

C) If not removed voluntarily by a franchised MCS provider, then the Council/franchising authority may notify such franchised MCS provider that if removal of the property is not accommodated within two hundred seventy (270) days, or substantial progress towards removal is not made within two hundred ten (210) days, then the Council/franchising authority may direct officials or representatives of the City to remove such franchised MCS provider's system property at that franchised MCS provider's expense. The performance and/or construction bond, irrevocable letter of credit, cash deposit, or full faith and credit guarantee required as set forth in this ordinance shall be available to pay for such work.

D) If officials or representatives of the City remove a franchised MCS provider's system property, and such franchised MCS provider does not claim the property within ninety (90) days of its removal, then the Council/franchising authority may take whatever steps are available under State law to declare the property surplus, and sell it, with the proceeds of such sale (if permitted by State law) going to the City.

E) When such franchised MCS provider removes its multi-channel system property from the streets, public ways, and private property located within the City, the franchised MCS provider shall, at its own expense, and in a manner approved by the Council/franchising authority, replace and restore such public or private property in as good a condition as before the work causing the disturbance was done.

Section 9-75. Construction Standards.

A) Methods of construction, installation, maintenance repair of any multi-channel system shall comply with the most current editions of the National Electrical Safety Code, and the National Electric Code, as affects the construction, installation, and maintenance of electrical supply and communication lines and attachments and supports. To the extent that these are inconsistent with other provisions of a franchise, or State, or local law, then the more stringent shall govern in order to protect the public health, safety, and welfare.

B) All installations shall treat the aesthetics of the property as a priority, shall not substantially affect the appearance of the structure, and shall not be installed on the bias across property or the face or side of a home or building without the owner's permission.

C) No home/building within 150 feet of the system shall be served by a drop with any pole span being longer than 150 feet without the owner's permission.

D) All underground drops shall follow property lines and cross property

only at right angles, unless otherwise permitted by the owner.

Section 9-76. System Construction Schedule For Franchised MCS Providers.

A) This Section is applicable to any MCS provider required to maintain a franchise to operate with the City.

B) A franchised MCS provider's construction schedule for the multi-channel system shall be detailed in the franchise agreement in a form and format determined by the Council/franchising authority.

C) A franchised MCS provider who does not abide by the system construction schedule shall be handled in the manner allowed under either this ordinance, or where applicable, a franchise agreement.

Section 9-77. System Expansion for MCS Providers.

A) The Council/franchising authority recognizes that one of its primary purposes in the franchising process is to ensure that the widest diversity of programming sources be available to the greatest number of City residents. The Council/franchising authority is also cognizant that an MCS provider may have some constitutionally protected rights with respect to when and what areas of the City are provided service.

B) In order to balance those interests, the Council/franchising authority sets the minimum guidelines for any system expansion on the part of a franchised MCS provider.

C) A franchised MCS provider shall submit, within six (6) months of the effective date of this ordinance, a detailed plan for multi-channel system expansion to any area not presently served within the City. Provided, however, no such plan shall be accepted by the Council/franchising authority as to any area less than the entire City limits if a non-exempt MCS provider has already submitted such a plan as part of a franchise. Such plan should not be construed as a requirement for universal service, but rather as a means for achieving the Council/franchising authority's goals, mentioned in Subsection (A). However, at a minimum, a franchised MCS provider shall extend multi-channel service to any area within the City that has a density of ten (10) homes or building passings per mile, or fractional equivalent thereof, as measured from the extremity of the system nearest the unserved area. Also, in such a case, a newly installed subscriber shall not be assessed or apportioned the cost for installation, except for the usual and normal connection fees paid by subscribers, so long as the system expansion is technically feasible.

D) The detailed plan must include criteria for:

- 1) extending the provision of service to isolated subscribers;
- 2) extending the provision of service to new or existing developments with overhead cable construction; and
- 3) new or existing developments with underground cable construction.

E) The detailed plan must be reviewed and approved by the Council/franchising authority.

F) For purposes of this Section, "isolated subscribers" means any potential customer of a franchised MCS provider who dwells in a house more than one-half (1/2) mile from the nearest franchised MCS provider connection.

Section 9-78. Permits and Licenses.

An MCS provider shall obtain, at its own expense, all permits and licenses required by law, rule, regulation, or ordinance, and maintain the same, in full force and effect, for as long as required.

Sections 9-79 -- 9-85. Reserved.

Section 9-86. Council/Franchising Authority's Policy With Respect to Safety Requirements.

A) The Council/franchising authority requires that the MCS provider's construction, operation, and maintenance of the multi-channel system meet certain threshold safety levels which are designed to protect the public and lessen the likelihood of interruption of multi-channel service.

B) Consequently, the Council/franchising authority requires any non-exempt MCS provider to adopt the following safety requirements:

- 1) emergency alert override activation in the manner set forth in this ordinance;
- 2) minimum standby power as noted in this ordinance;
- 3) the provision of an indoor signal or safety alert technology in the manner noted in this ordinance;
- 4) implementing a periodic preventative maintenance program as set forth in this ordinance;

- 5) follow all FCC rules and regulations concerning maximum cumulative leakage index (CLI) limits; and
- 6) comply with, and abide by, any construction, safety or fire codes as noted in this ordinance.

Section 9-87. Provisions to Alert Subscribers in the Event of an Emergency; Standby Power.

A) In order that subscribers may be alerted in the event of an impending, imminent or actual, natural or man-made emergency, then all MCS providers shall ensure that the multi-channel system providing multi-channel service to all, or part, of the City is designed so as to permit an authorized official of the City to override the audio portion of all channels, by touch-tone phone (or functional equivalent) from any location.

B) In addition to any other requirements listed in this Section, an MCS provider shall:

- 1) designate a channel which will be used for emergency broadcasts of both audio and video;
- 2) inform subscribers of the designated emergency channel at least daily on at least one (1) channel of the multi-channel system;
- 3) maintain all channel video blanking capability to facilitate the needs of hearing and sight-impaired customers;
- 4) test the emergency override system not less than once a month;
- 5) cooperate with the City on the use and operation of the emergency alert override system; and
- 6) develop a plan (with the City's concurrence) in order to provide continuity of multi-channel service, and response to service calls in the event of a natural or man-made emergency.

C) As one method of providing continuity of multi-channel services in the event of a natural or man-made emergency, an MCS provider shall, unless exempted by the Council/franchising authority, have the capacity for four (4) hour automatically activated standby power on all trunk and feeder cable, and all headends, hubs, and receive sites associated with the distribution of cable service to, and throughout the City.

Section 9-88. Provisions Concerning Safety Alert Technology.

A) The Council/franchising authority considers the need for an indoor signal or safety alert technology, available to both subscribers and non-subscribers of an MCS provider's lowest level of programming service, of paramount interest and need, and as such should be an integral part of an MCS provider's system. Though in some ways similar to the concept of emergency alert override, signal alert technology is different and distinct in that it may be used by both subscribers to basic service and non-subscribers to the basic service of an MCS provider's system. Moreover, such safety alert technology is connected to the National Weather Service twenty-four (24) hour radio service including its new WRSAME/"Site Select" weather and warning system, which specifically allows for an indoor warning and notification via an audio alert voice path, regardless of whether an individual has a television receiver or monitor, or an FM receiver, and, moreover, can provide effectively instantaneous alert and warning, as well as needed instructions, in addition to allowing key community-oriented entities to communicate with both the general populace and selected (i.e. target) segments of the community.

B) In realization and recognition of the preceding, a non-exempt MCS provider shall offer for use throughout the City (within twelve (12) months of the effective date of this ordinance) a signal or safety alert monitoring technology for purposes of alerting both subscribers and non-subscribers of a multi-channel system to impending or occurring disaster emergencies, and allowing the City to communicate with both subscribers and the public as the need to do so may exist at any time.

C) A non-exempt MCS provider shall cooperate with the City and the provider of said technology in the marketing and distribution of the necessary on-premises alert receiving devices, including the installation, and replacement of such, as may be needed from time to time.

D) A non-exempt MCS provider shall install the necessary electronics, processing, and distribution equipment in the MCS provider's headend, and will ensure the maintenance, operating condition, and replacement of such equipment, as is necessary to protect its continued use.

E) Notwithstanding the preceding, a non-exempt MCS provider has no responsibility for repair of such equipment beyond obtaining (in a timely manner) replacement from the manufacturer for inoperable components.

F) It is explicitly understood that one need not be a subscriber to a multi-channel system to use the safety alert device, and receive the safety alert service, so long as a drop is installed into the address to which said device is

attached. It is also understood that the user need not have a television receiver.

G) The Council/franchising authority recognizes the positive effect on the safety of the public in general, and the ability to save lives, and property, of those who would otherwise be prevented from receiving the most expeditious warning or alert possible without such a device and technology. Consequently, the Council/franchising authority requires that all non-exempt MCS providers shall participate in a periodic public awareness campaign as deemed appropriate by the Council/franchising authority, in cooperation with the Council/franchising authority and the manufacturer, to inform the citizenry and non-cable subscribers of the availability and capability of such safety alert technology.

H) An MCS provider shall assure that all subscribers to multi-channel service receive printed material, fully describing the technology and its benefits, at least annually and at the time of installation.

I) An MCS provider shall allow non-subscribers of Basic Cable Service the choice of purchasing or leasing the necessary equipment, which shall include the cost of installation on a non-discriminatory basis, and so inform such persons of both options.

J) Given the significant public safety and life and property saving benefits of this technology, and the resultant need of as much of the general public as possible to be protected from the otherwise unnecessary greater risk to life, limb and property associated with other alert/warning systems, an MCS provider shall assure that the service is placed on the same level of service and is priced commensurate with that for like technology/service in the Mid-Western United States.

K) Given the importance and critical nature of preventing the loss of life and property, and the need and ability of the Council/franchising authority to communicate directly with the public in any number of situations, including but not limited to those potentially involving matters of life and death, and as this technology is clearly not a programming service, the Council/franchising authority deems it appropriate to designate the use of the capability of such technology as a governmental use of the system, and it is the intent of the City that it be made available to all subscribers.

Section 9-89. Implementation of a Preventative Maintenance Program.

A) It shall be the duty of an MCS provider (that has more than three hundred fifty subscribers) to devise and implement a quarterly preventative maintenance program for the multi-channel system in order to ensure that there is no material degradation of the multi-channel system that would affect the citizens' health, safety, and welfare, or negatively affect the quality of multi-channel services

being provided.

B) Before the MCS provider implements such a program, it shall be reviewed and approved by the Council/franchising authority. Within forty-five (45) days after the completion of the quarterly preventative maintenance program, the MCS provider shall prepare and submit a written report to the Council/franchising authority detailing the results of the tests conducted, and all items performed or addressed during the quarterly program. Although not exhaustive, the following areas should be included in a preventative maintenance program, and subsequent report:

- 1) inspection, and repair if needed, of the headend;
- 2) inspection, and repair if needed, of the antenna tower;
- 3) requiring weather-proofing and protection of the antenna lead connectors, and on any other exposed fittings;
- 4) requiring the conducting of signal leakage tests that are in accord with FCC requirements;
- 5) removing tree roots, limbs, and branches that interfere with, or come in contact with, the MCS provider's cable;
- 6) requiring the periodic servicing, testing, and calibration of the MCS provider's equipment including equipment on service vehicles, and field test equipment;
- 7) employing a status monitoring system to identify problems or situations in which the multi-channel system electronics are operating outside pre-programmed parameters; and
- 8) testing of the emergency alert system to ensure that it will function properly during an emergency situation.
- 9) testing of the safety alert system or technology.

Section 9-90. Construction, Fire, and Safety Codes.

A) An MCS provider shall construct, operate, maintain, repair, remove, replace, or restore the multi-channel system in strict compliance with all current technical codes adopted by the Council/franchising authority, the State, or the United States.

B) The codes referred to specifically include, but are not limited to, construction, fire and safety, and zoning codes.

Sections 9-91 -- 9-95. Reserved.

Section 9-96. Alternative User Charge.

A) This Section is applicable to any unfranchised, but otherwise authorized MCS provider, and to any MCS provider who has had its franchise ruled unconstitutional, unenforceable, or invalid. For all franchised MCS providers the provisions concerning franchise fees shall be applicable.

B) Where not specifically prohibited by Federal or State law, and as an alternative to the imposition of a franchise fee as set forth in this ordinance, the Council/franchising authority may impose, extract, and collect, a charge from an affected MCS provider for the use by such provider of the streets, rights-of-way, easements, and public ways of the City.

C) The alternative user charge shall be based on the following mathematical mode:

- 1) determine the present value of all public streets, rights-of-way, easements, and public ways of the City in which are located multi-channel system facilities and equipment of the affected MCS provider;
- 2) take the average percentage increase in land appraisals within the City (as determined by the Property Appraiser for the City, for the five preceding years);
- 3) take the average percentage increase for the five preceding years and use it to determine the dollar amount of property value increase for the remaining term of the franchise (if no franchise applicable, then use five years);
- 4) add the present value to the dollar amount of property value increase for the remaining term of the franchise (if no franchise applicable then use five years);
- 5) divide the adjusted value by the remaining number of years on the term of the franchise (if no franchise applicable then use five years);
- 6) multiply that figure by five percent (5%) to arrive at the annual

user charge that is to be collected from the affected MCS provider.

For purposes of illustration only, the formula reads as follows:

present value = the dollar amount of the property value increase for remaining term of the franchise (based on average percentage increase of land appraisals for past years of franchise term;

divide the adjusted present value by the remaining years on the term of the franchise;

multiply that figure by five percent (5%), = (equals) the annual alternative user charge.

D) The Council/franchising authority adopts such an alternative user charge in order to receive fair compensation for the affected MCS provider's use of the public streets and public ways if such compensation cannot be obtained by imposing a flat percentage fee on such MCS provider's annual gross revenues. However, an affected MCS provider may agree to an alternative charge that is based on a flat percentage of gross revenues, as long as that charge did not exceed the maximum amount previously allowed under law that was assessed as a franchise fee calculated as a percentage of an affected MCS provider's annual gross revenues.

E) It is expressly understood that a franchise fee and an alternative user charge will not be imposed on the same MCS provider at the same time, for the same period.

F) An affected MCS provider shall at no time be charged or obligated to pay an alternative user charge that exceeds the maximum amount previously allowed under law that was assessed as a franchise fee calculated as a percentage of such MCS provider's gross revenues (as defined by this ordinance) for any particular reporting period. In the event that the alternative user charge does exceed the maximum amount previously allowed under law that was assessed as a franchise fee and calculated as a percentage of gross revenues, then such alternative user charge should be reduced to reflect an amount not greater than the maximum amount previously allowed under law that was assessed as a franchise fee and calculated as a percentage of gross revenues.

G) An affected MCS provider shall pay twenty-five percent (25%) of the alternative user charge at the end of every three (3) months.

Section 9-97. Franchise Required; Exception.

A) Except as provided in subsections (B) and (C), and (D) of this Section, no person, or MCS provider shall be permitted to construct, operate or maintain a multi-channel system which requires the laying or positioning of cable (coaxial, fiber or functional equivalent) across the rights-of-way of the City, without having first obtained a franchise, and then entering into a franchise agreement with the City.

B) Pursuant to the CCPA, a local government may own and operate a multi-channel system classified as a cable system. Consequently, should the Council/franchising authority directly, or indirectly, through any legal means available to the Council/franchising authority, decide to purchase, acquire, construct, lease, control, or otherwise own a cable system within the territorial limits of the City, then the Council/franchising authority shall not be required to submit a proposal for, or receive, a franchise in order to construct, operate, and maintain a cable system within the geographical limits of the City.

C) In the case of a person or MCS provider lawfully providing multi-channel service on July 1, 1984, then such person or MCS provider shall not be required to obtain a franchise, and enter into a franchise agreement unless the Council/franchising authority expressly requires the person or MCS provider to do so.

D) If, as a result of annexation (either previous to, or subsequent to, the effect date of this ordinance), an MCS provider comes under the jurisdiction of the City, then such MCS provider shall be subject to the provisions of this ordinance, including (if applicable) obtaining a franchise. Any such franchise shall extend only to the territory comprising the annexed area. The provisions of Section 9-10 and 9-15 of this ordinance do not apply to this subsection.

E) Where a person or MCS provider is required by the Council/franchising authority to obtain a franchise, then the Council/franchising authority shall notify the person or MCS provider, in writing, within thirty (30) days of the Council/franchising authority's formal action.

F) After receipt of notification, the affected person or MCS provider has ninety (90) days to submit an application or proposal in substantially the same form and format as required by the Council/franchising authority. Then, the affected person or MCS provider's application will be handled as set forth by either State or local law.

Section 9-98. Authority to Grant Non-Exclusive Franchises.

A) Consistent with Section 621(a)(1) of the CCPA (codified at 47 USC 541), the Council/franchising authority may award one (1) or more non-exclusive multi-channel service franchises within its geographical limits. With the exception

of existing non-exempt MCS providers in an area annexed by the City and subject to Section 9-77 of this ordinance, the Council/franchising authority shall not award a franchise for a service area comprising less than the entire City limits. Note well, however, that existing non-exempt MCS providers as of the effective date of this ordinance may, but are not required to, serve any subsequently annexed area of the City in a manner consistent with line extension policies outlined in this ordinance, and which are specifically noted in the MCS provider's franchise agreement. Further, any MCS provider not exempt on the effective date of this ordinance, may not commence service to subscribers until it has completed construction of its cable system to fifty percent (50%) of the service area. The provisions of Section 9-10 and 9-15 of this ordinance do not apply to this subsection.

B) A franchised MCS provider shall be selected as part of a public proceeding and hearing which affords due process to both the City, and the applicant, and after which, if the applicant is selected as a franchised MCS provider, then such applicant will enter into a franchise agreement with the City, pursuant to the provisions of Federal, State and local laws and regulations.

Section 9-99. Franchise Agreement; Minimal Requirements.

A) If the Council/franchising authority awards an applicant a franchise to construct, operate, or maintain a multi-channel system within the City, or approves a proposal for a renewal of a franchise, then within one hundred eighty (180) days, an applicant or a renewal franchised MCS provider and the City shall enter into a franchise agreement which details the rights, duties, responsibilities, and liabilities of both parties.

B) A newly franchised MCS provider may not lay any cable (coaxial, fiber, or functional equivalent) until the franchise agreement is executed by both the newly franchised MCS provider and the Council/franchising authority.

C) A franchise agreement shall be in sufficient detail in order to clearly delineate the rights and duties of the franchised MCS provider, and the Council/franchising authority.

D) At a minimum, a franchise agreement shall contain provisions for the following: 1) a detailed definition of "annual gross revenues" or "gross revenues" which specifically includes an explanation of what constitutes the revenue base for determining what revenues are subject to any franchise fee or alternative user charge; 2) the term or duration of the franchise; 3) indemnity and holds harmless clauses; 4) insurance; 5) performance and completion bonds or security deposits; 6) construction, upgrade or rebuild schedule; 7) franchise fees; 8) continuity of multi-channel programming service; 9) repeal of prior inconsistent franchise agreements; and 10) a severability clause.

Section 9-100. Extent of Grant of Franchise.

A) Upon an award of a franchise, and the subsequent execution of the franchise agreement, an MCS provider required to obtain and maintain a franchise may construct, erect, install, maintain, operate, repair, replace, remove, or restore a multi-channel system within the geographical limits set forth in the franchise agreement.

B) The franchised multi-channel system may be located in, upon, along, across, over, and under the streets, rights-of-way, easements, and public ways of the City.

C) If necessary, the responsibility of obtaining easements for private property (including privately owned utility or street light poles) shall be that of a franchised MCS provider.

D) A franchised MCS provider, through a separate pole or utility easement agreement with an affected utility, may locate the multi-channel system on, or within, the property of such utility company. This provision specifically includes MCS providers classified as cable operators.

Section 9-101. Term of Franchise.

A) The term of an initial renewal franchise may be for a period not to exceed fifteen (15) years from the date that a franchise renewal agreement is approved by the Council/franchising authority.

B) If an initial franchise or renewal franchise is for a period of six (6) years or less, then the franchise agreement shall detail the reasons for granting the shorter franchise term.

C) The reasons for a franchise term of six (6) years or less, include, and are limited to, the following:

- 1) multiple or repeated violations of the prior franchise agreement;
- 2) multiple or repeated violations of this ordinance, or any mandated provisions of the CCPA;
- 3) a continuing and documented pattern of substandard or non-responsive service;
- 4) reckless disregard for the safety and welfare of the citizens of

the City;

- 5) failure to comply with any construction, rebuild, or upgrade schedule; and
- 6) failure to timely pay in their entirety any franchise fees, or taxes, or other charges due to the City.

D) The Council/franchising authority reserves the right to grant a franchised MCS provider a variable franchise term wherein the initial or renewal term may be extended by up to two (2) years (not to exceed fifteen (15) years total) upon the franchised MCS provider attaining an "excellent" rating during the course of a periodic performance evaluation.

E) The Council/franchising authority reserves the right to grant a franchised MCS provider a variable franchise term (wherein the initial or renewal term may be extended by up to two (2) years (not to exceed fifteen (15) years total) should the franchised MCS provider consistently and continually meet the Council/franchising authority's objectives with respect to the provision of broad categories of video programming as noted in this ordinance.

F) The Council/franchising authority reserves the right to reduce the term of the franchise by one (1) year for each material, repeated occurrence of an uncured/unremedied violation of the franchise or this ordinance, pursuant to the procedures set forth in Section 9-105 of this ordinance, or when the MCS provider fails to attain a minimum rating of "adequate" (on a scale of "excellent", "adequate" and "poor") for any two (2) successive periodic performance reviews, as set forth in Section 9-106 of this ordinance.

G) Should the highest court of the nation, or State, invalidate, void as unenforceable or unconstitutional, the concept of a franchise or franchise duration, then the Council/franchising authority may adopt emergency rules and regulations in order to preserve and protect the rights and duties of both the Council/franchising authority and any franchised MCS provider. During the interim, the invalid franchise may be considered (unless prohibited by the State) and interpreted in the same manner and fashion as a business license or other comparable authorization. Upon the adoption of emergency rules, the Council/franchising authority should enter into a new agreement which describes which terms and conditions of the franchised MCS provider's system may be reviewed and examined, and under what circumstances may a franchised MCS provider forfeit its right to operate a multi-channel system within the City.

Section 9-102. Application for Franchise; Application Fee.

A) The Council/franchising authority may develop rules and regulations with respect to the submission and processing of applications for a franchise. Such rules and regulations shall primarily be aimed at determining the legal, financial, technical, and character qualifications of the applicant.

B) Unless prohibited, an applicant shall pay an application fee which shall be equal to the administrative and consulting costs associated with processing an application for a franchise. The total application fee must be paid, unless waived, regardless of whether the applicant receives, or does not receive a franchise. The total application fee must be paid (or waived) prior to the Council/franchising authority's formal action on the applicant's request for a franchise.

Section 9-103. Franchise Fees.

A) Any non-exempt franchised MCS provider (specifically including any MCS provider classified as a cable operator) awarded a franchise or renewal franchise after the date this ordinance becomes effective, shall pay to the City for the privilege and use of the streets, rights-of-way, easements, and public ways, and other facilities of the City in the operation of the multi-channel system, and for the City's supervision thereof during the term of the franchise, a sum equal to five percent to (5%) of the annual gross revenues of such non-exempt franchised MCS provider. Such fee shall explicitly be separate from, and in addition to, any fees or charges for the use or occupancy of any municipally-owned poles, conduits or other facilities owned by a municipally-owned utility.

B) If the FCC, Congress or other governmental entity with authority over multi-channel service ever allows a governmental entity or Council/franchising authority to increase the franchise fee beyond five percent (5%), then the Council/franchising authority shall have the authority to increase the franchise fee to the maximum rate allowable.

C) It is intended that the franchise fees will promote the health, safety, and welfare of the citizens of the City. Therefore, the five percent (5%) franchise fee shall be deposited into the general revenues of the City, unless specifically authorized elsewhere.

D) A non-exempt franchised MCS provider shall file with the Council/franchising authority, within forty-five (45) days after the expiration of each of the franchised MCS provider's fiscal quarters, a detailed financial and revenue report clearly showing the gross revenues received by such franchised MCS provider during the preceding quarter and certified by a certified public accountant or officer of a franchised MCS provider attesting to the accuracy, completeness, and veracity of the revenue figures. Such report shall be in the form and format determined by the Council/franchising authority. Such report shall include revenue from whatever

source, directly or indirectly derived from, or allowed, or caused to be derived from, or applicable to the operation of the multi-channel system, or the provision of any multi-channel service by or to the multi-channel system. Revenue will be reported by service category, type, and level showing computations and using incremental billing rates for all sources, levels, tiers, and types of service and other revenue sources of all kinds and types.

E) Payment of the quarterly portion of the franchise fee shall be rendered to the City at the time the revenue report is filed.

F) In the event that payment is not made within forty-five (45) days after the date specified in this Section, then such franchised MCS provider may be declared in default of the franchise, and the franchise may be revoked, terminated, or canceled in the manner prescribed by this ordinance.

G) The Council/franchising authority reserves the right to audit a franchised MCS provider books, if the Council/franchising authority deems it necessary. If such audit discovers an underpayment of franchise fees that exceeds two percent (2%) of the total fee paid for any reporting quarter, then the affected franchised MCS provider shall reimburse the City for the cost of such an audit. It is specifically understood that the right of audit and recomputation of any, and all, amounts paid under a franchise fee, shall always be accorded to the Council/franchising authority.

H) All annual reports due and pertaining to the payment of franchise fees, will be certified by an officer of the franchised MCS provider, and such provider shall maintain records used in the preparation of said report, to be produced in their originality and totality upon request or demand by the Council/franchising authority.

I) No acceptance of any payment shall be construed as a release of, or an accord, or satisfaction of, any claim that the City might have for further or additional sums payable under the terms of this ordinance, or for any other performance or obligation of a franchised MCS provider hereunder.

J) Payments of compensation made by a franchised MCS provider to the City, pursuant to the provisions of this ordinance, shall be considered in addition to, and exclusive of, any and all authorized taxes, business license fees, other fees, other levies or assessments presently in effect, or subsequently adopted.

K) A franchise fee does not include any items excluded by Section 622 (g) (2) (D) of the CCPA (codified at 47 USC 542 (g) (2) (D)).

L) Nothing in this Section shall be construed to limit the authority of the

Council/franchising authority to impose a tax, fee or other assessment of any kind, on any person (other than a franchised MCS provider) with respect to multi-channel service or other programming or communications service provided by such person over a multi-channel system for which charges are assessed to subscribers, but not received by a franchised MCS provider. For purposes of illustration only, this subsection shall include the situation(s) where a premium service directly bills a subscriber, or the franchised MCS provider merely acts as collection agent for a premium service billing directly to a subscriber, or where a person leases a channel for commercial use and sells advertising or goods on that channel, and receives the money directly or through a third party.

M) For any twelve (12) month period, the fees paid by any person subject to subsection (L) who provides any such multi-channel service shall not exceed five percent (5%) of such person's gross revenues derived in such period from the provision of such service over the multi-channel system.

N) If at any time, the highest court of the nation, or the highest court of the State, invalidates, voids, or rules as unconstitutional the concept of franchise fees, then the Council/franchising authority may impose an alternative user charge on the franchised MCS provider, in the manner set forth in this ordinance.

Section 9-104. Assignment or Transfer of Franchise.

A) Where required for operation, an MCS provider's franchise may not be assigned or transferred in whole, or in part, by the affected MCS provider, without the prior express written approval by the Council/franchising authority.

B) Any attempted assignment or transfer without such prior written consent shall constitute a default of such franchise.

C) In the event of such a default, the Council/franchising authority shall proceed according to the procedure set forth in this ordinance, and any applicable State law.

D) At least ninety (90) days before a proposed assignment or transfer of an MCS provider's franchise is scheduled to become effective, such franchised MCS provider shall petition in writing for the Council/franchising authority's written consent for such a proposed assignment or transfer.

E) The Council/franchising authority will not unreasonably withhold its consent to such an assignment or transfer. However, in making such a determination, the Council/franchising authority may consider the following:

- 1) experience of proposed assignee or transferee (including

conducting an investigation of proposed assignee or transferee's service record in other communities);

- 2) qualifications of proposed assignee or transferee;
- 3) legal integrity of proposed assignee or transferee;
- 4) financial ability and stability of the proposed assignee or transferee;
- 5) if requested by the Council/franchising authority, submittals from the proposed assignee or transferee, on what, if any, changes it intends to make in the operation and maintenance of the present multi-channel system;
- 6) the corporate connection, if any, between the franchised MCS provider, and proposed assignee or transferee;
- 7) the economic viability or non-viability of the multi-channel system in the future, based upon certain factors including the impact of the purchase price on the City and/or the proposed assignee or transferee; and
- 8) any other legitimate aspect of the proposed assignee's or transferee's background which could affect the health, safety, and welfare of the citizenry of City as it relates to the operation of the multi-channel system.

F) A copy of the completed sales agreement, or a functionally equivalent instrument, between the franchised MCS provider and proposed assignee or transferee shall be provided to the Council/franchising authority, so that the Council/franchising authority may discover the assumption of obligations by the franchised MCS provider and proposed assignee or transferee with respect to the multi-channel system. In lieu of the sales agreement, the Council/franchising authority may accept an attested summary of obligations assumed by the above referenced parties.

G) Before an assignment or transfer is approved by the Council/franchising authority, the proposed assignee or transferee shall execute an affidavit, acknowledging that it has read, understood, and intends to abide by both this ordinance, and the applicable franchise agreement.

H) In the event of any approved assignment or transfer, the assignee or transferee shall assume all obligations and liabilities of the former franchised MCS

provider, except as noted in subsection (I).

I) An assignment or transfer shall not relieve the former franchised MCS provider of its liabilities under the franchise agreement until the assignment actually takes place, or unless specifically relieved by Federal, or State law, or unless specifically relieved by the Council/franchising authority at the time an assignment or transfer is approved.

Section 9-105. Default of Franchise; Revocation, Termination or Cancellation of Franchise.

A) When any event, act or omission (on the part of the franchised MCS provider) occurs which represents a violation of an integral provision of this ordinance, or compromises the corporate character, or legal, financial or technical integrity and/or stability of the multi-channel system or the franchised MCS provider to such a degree that the interests of the subscribers and users are negatively affected, then such event, act or omission may be considered a major breach of this ordinance. Under such circumstances, the Council/franchising authority shall notify the affected MCS provider in writing, of the specific breach, and direct such franchised MCS provider to comply with all such provisions of its proposal, franchise agreement, or this ordinance.

B) For illustrative purposes only, the events, acts and omissions include, but are not limited to: bankruptcy, insolvency, failure to pay taxes or franchise fees (including the alternative user charge if applicable), failure to receive written Council/franchising authority approval for an assignment or transfer, or failure to abide by the integral terms and conditions of the franchise agreement, or integral provisions of this ordinance.

C) Where a franchised MCS provider satisfactorily corrects any of the enumerated conditions, within sixty (60) days, then in no event shall the enumerated condition be weighed against such franchised MCS provider in any subsequent review of franchise performance.

D) A copy of such notice of material breach shall be mailed to the surety on the performance bond.

E) Within seventy-five (75) days, after such written notice is mailed to a franchised MCS provider, the Council/franchising authority shall conduct a public hearing on the matter.

F) The Council/franchising authority shall provide written notice to a franchised MCS provider, and the surety, of the time and place of said public hearing in a manner consistent with either State law, or approved by the Council/franchising authority.

G) At the time of the hearing, the affected franchised MCS provider may present information on the current status of the alleged breach of the franchise agreement. If the situation has been resolved, or steps are being taken to resolve the situation, then the franchised MCS provider should present the information at the hearing.

H) If the affected franchised MCS provider fails to attend the hearing, and has not requested a continuance of the hearing, then such franchised MCS provider shall be deemed to have waived its right to a further continuation of the matter, and may be declared in default of the franchise agreement.

I) After the public hearing, the Council/franchising authority may determine the franchised MCS provider to be in compliance and dismiss the matter, or may determine that the MCS provider has cured any non-compliance and thereby dismiss the matter. However the Council/franchising authority may determine that an ordinance violation exists and remains uncured. Consequently, upon a finding that the MCS provider violated an integral ordinance provision, or failed to cure an outstanding ordinance violation, the Council/franchising authority may, direct the affected franchised MCS provider to take corrective action within a specified period of time, or may declare such franchised MCS provider in default of the franchise agreement, and thereafter may revoke, terminate, or cancel the franchise, unless the franchised MCS provider presents sufficient mitigating circumstances.

J) If the Council/franchising authority directs corrective action to take place within a specified time or declares such franchised MCS provider in default of the franchise agreement, then that declaration shall be reduced to writing, and the notice of corrective action or default shall be mailed to such franchised MCS provider, and surety, within fifteen (15) days of the Council/franchising authority's action.

K) If within forty-five (45) days, the affected franchised MCS provider, or surety does not take significant action to rectify the breach, or submit a plan detailing how the affected MCS provider will eliminate the breach, then the Council/franchising authority shall revoke such MCS provider's franchise, and shall notify the affected franchised MCS provider, and surety forthwith, unless there are mitigating circumstances.

Section 9-106. Performance Evaluations.

The Council/franchising authority is authorized to design a performance evaluation procedure which periodically monitors compliance of the franchised MCS provider with the terms and conditions of both the franchise and this ordinance. Moreover, the Council/franchising authority may periodically review, and examine whether a franchised MCS provider's financial, technical, legal, and character qualifications continue to meet

required operational, maintenance, and performance levels in order to ensure the uninterrupted provision of multi-channel services. Such performance evaluations may be conducted every three (3) years during the franchise term, and may be done as part of any required survey.

Sections 9-107 -- 9-115. Reserved.

Section 9-116. Specific Additional Rules for MCS Providers Classified as Cable Operators.

A) In addition to any requirements contained within this ordinance, all non-exempt MCS providers that are classified as cable operators shall be expected to abide by, and comply with, all applicable provisions of the Cable Communications Policy Act of 1984.

B) The specific provisions of the CCPA include, but are not limited to, the following:

- 1) cable channels for public, educational, or governmental use (Section 611 CCPA--codified at 47 USC 531);
- 2) cable channels for commercial use (Section 612--47 USC 532);
- 3) general franchise requirements (Section 621--47 USC 541);
- 4) franchise fees (Section 622--47 USC 542);
- 5) regulation of rates (Section 623--47 USC 543);
- 6) regulation of services, facilities, and equipment (Section 624--47 USC 544);
- 7) modification of franchise obligations (Section 625--47 USC 545);
- 8) franchise renewal (Section 626--47 USC 546);
- 9) conditions of sale of a franchise (Section 627--47 USC 547);
- 10) subscriber privacy (Section 631--47 USC 551); and
- 11) equal employment opportunity (Section 634--47 USC 554).

C) Further, as an additional requirement, before the second anniversary of the effective date of this ordinance, any non-exempt MCS provider classified as

a cable operator and providing cable service within the City shall have designed, built and activated a multi-channel system with a channel capacity of at least sixty (60) channels.

D) Further, the Council/franchising authority is committed that the goal of the CCPA, as set forth in Section 601 (4) of the Act (codified at 47 USC 521 (4)), is met at all times. As a result, the Council/franchising authority expressly requires that upon the advent, implementation, and transmission of high definition television (HDTV), its functional equivalent, or any subsequently developed technological advancement affecting channel capacity or needed bandwidth for any video programming source or service, the cable operator shall not lessen, dilute, or decrease the mix, level, quality, or quantity of programming services carried on the cable system for reasons of lack of adequate channel capacity.

E) Additionally, the Council/franchising authority, in the interests of minimizing on-going operating costs to the cable operator and the resultant increases in rates and charges paid by subscribers is committed to the introduction of technological advancements that could realize such benefits to both the cable operator and subscriber. Therefore, unless an operator can demonstrate that it is both technologically and economically unfeasible, the affected cable operator shall within eighteen (18) months of the effective date of a franchise renewal agreement, or at the time of initial construction under a new franchise agreement, introduce addressable technology allowing cable service levels to be changed without the expense (either to the operator or subscriber) of a separate trip or call.

Section 9-117. Specific Additional Public, Educational, and Governmental Rules for MCS Providers Classified as Cable Operators.

A) The Council/franchising authority recognizes that under Section 611 of the CCPA (codified at 47 USC 531), the Council/franchising authority has certain power with respect to certain aspects for public, educational, or governmental (PEG) use that is provided by MCS providers classified as cable operators.

B) To the extent permitted by law, and in order to fulfill the Council/franchising authority's desired goal of a public, educational, and governmental (PEG) access policy that will facilitate the long-range needs of the City, the Council/franchising authority adopts the following:

- 1) At the time of an initial application for an MCS franchise for a cable system, and contained within any renewal franchise agreement, an MCS provider classified as a cable operator shall pledge to include the following guarantees:
 - a) An MCS provider classified as a cable operator shall

provide, at its own expense, one (1) twelve (12) hour educational channel; and

- b) An MCS provider classified as a cable operator shall provide, at its own expense, one (1) twelve hour (12) governmental channel that is available for providing coverage of Council meetings, and other related programming offered or designed by the City Manager, or designated official, including department heads; and
 - c) An MCS provider classified as a cable operator shall provide, at its own expense, one (1) twelve (12) hour public access channel that is available for use by various community groups and organizations.
- 2) At such time as the Council/franchising authority determines the need for more channel time to exist on any given access channel, an MCS provider shall make any or all of the access channels available for more than twelve (12) hours per day upon thirty (30) days written notice.
 - 3) Both the Council/franchising authority and the affected cable operator shall review use after every six (6) months, including the percentage of use of every PEG channel. At the end of each six (6) month period, the Council/franchising authority shall evaluate the response and actual use of such channels. If, after any six (6) month period, the percentage of use for any required PEG channel drops below twenty-five percent (25%) of the total time allocated, then the required number of hours shall be reduced to a number that most closely approximates the average hours of use per day. If the Council/franchising authority determines the average hours of use per day for any required PEG channel is less than one (1) hour, then the requirement for that channel's availability shall cease, and an affected cable operator may use such channel for any lawful purpose, unless and until the Council/franchising authority determines that need for the use of the channel again exists.
 - 4) If, at any time, ninety percent (90%) of the total time allocated for any required PEG channel is consistently used five (5) days a week for a period of three (3) months, then the cable operator shall provide an additional PEG channel.
 - 5) A cable operator shall provide mobile, portable, and stationary

equipment to be used for PEG access, together with the aid of technical and production assistance provided by the cable operator. A cable operator shall provide equipment that can store programs for delayed cable-casting. There will be no cost for technical production assistance for PEG access use to any one user provided that such use does not exceed fifty (50) actual production man-hours. Moreover, the cost of maintenance of a PEG access studio, and equipment required to run the studio shall be borne by the cable operator.

- 6) The City Council/franchising authority may require a cable operator to provide live cable-casting of City Council meetings and School Board meetings, as the need may be determined by the respective bodies, and the operator shall comply with the request to do so within thirty (30) days of notification by the City Council/franchising authority.

Section 9-118. The Council/Franchising Authority's Policy Regarding Local Production Facilities and Equipment.

A) The Council/franchising authority recognizes the fact that certain needs of the City and the public regarding the transmission and receipt of information can be met by a local production facility. In order to meet those above-noted needs, the Council/franchising authority may require, after a public hearing, that any MCS provider:

- 1) provide and equip, a facility that will enable the City, the public, and non-profit organizations or agencies to produce and originate video and audio programming from a fixed studio location.
- 2) equip such facility so as to permit a complete and full array of production, editing, and program insertion capabilities and functions, as may be deemed necessary for maximizing the system's capabilities, taking into account the cost of such requirement.
- 3) activate the system in a bi-directional mode, so as to allow the live or taped insertion of programming from remote locations throughout the City for distribution to any and/or all locations within the City, in a time-frame determined by the City.
- 4) maintain and replace, as needed, any and all, production-related equipment provided or purchased by the

operator in a timely manner, upon demonstration of the need for such and upon request by the City.

- 5) provide additional production-related equipment, from time-to-time, as may be deemed necessary for the City to fulfill its goal of maximizing the capabilities of a system in meeting identified community needs.

Section 9-119. The Council/Franchising Authority's Objective With Respect to the Provision of Broad Categories of Video Programming.

A) The Council/franchising authority recognizes that under Section 624 of the CCPA (codified at 47 USC 544), the legal power of local government is severely restricted in requiring and/or demanding that particular video programming or other services be provided to subscribers over the multi-channel system.

B) Nevertheless, the Council/franchising authority recognizes that it should strive to ensure that its citizens receive the widest, and most diverse selection of video programming possible. Consequently, for those MCS providers required to maintain a franchise, the Council/franchising authority states as its objective to such franchised MCS providers, that the provision of services and video programming categories to subscribers should include at least the following broad categories:

- 1) local broadcast stations;
- 2) two (2) distant carriage signals, or satellite fed broadcast stations;
- 3) PEG programming on the lowest offered and/or available tier;
- 4) sports programming services (regional and/or national);
- 5) news, information, or public affairs/interest programming services;
- 6) financial/consumer-oriented programming services;
- 7) scientific and/or cultural programming services;
- 8) children's programming services; and
- 9) ethnically sensitive programming services.

Section 9-120. The Council/Franchising Authority's Policy Regarding the Provision of

Seamless or "See-through" Technology.

A) The Council/franchising authority recognizes the fact that it is in the public's interest to be able to utilize the functions inherent in subscriber receiving equipment, without having to incur additional costs to obtain the same functions. Consequently, the Council/franchising authority may require that:

- 1) unless an MCS provider can demonstrate to the City that it is technically or economically unfeasible or commercially impracticable, then such MCS provider shall provide the ability to utilize the functions inherent in subscriber equipment in a seamless or "see-through" manner which allows:
 - a) the use of any built-in remote control capability of a subscriber's television for the control of any, and all, television channels provided by the MCS provider without the use or necessity of additional equipment; and
 - b) the ability to record video programming on any channel provided by the MCS provider, while watching programming on any different channel, without the use or necessity of any additional in-home equipment other than the television receiver/monitor and a recorder.

Sections 9-121 -- 9-125. Reserved.

Section 9-126. Miscellaneous Provisions--Tampering and Unauthorized Reception of Certain Services.

A) Consistent with Section 633 of the CCPA (codified at 47 USC 553), no person shall intercept or receive, or assist in intercepting or receiving any communications service offered over a multi-channel system, unless specifically authorized to do so by an MCS provider, or as may otherwise be specifically authorized by law.

B) For the purpose of this Section, the term "assist in intercepting or receiving" shall include the manufacture or distribution of equipment intended by the manufacturer or distributor (as the case may be) for the unauthorized reception of multi-channel service as noted in subsection (A) of this Section.

C) Without securing permission from an MCS provider, or making payment to an MCS provider, then no person shall be authorized to make any connection, whether physically, electrically, acoustically, inductively, or otherwise,

with any part of an authorized or franchised multi-channel system for the purpose of receiving or intercepting, or assisting others to receive or intercept any cable service provided lawfully by the MCS provider.

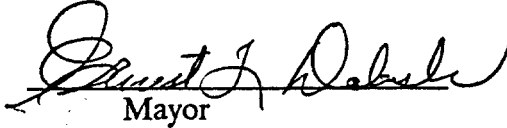
D) No person shall be authorized to willfully tamper with, remove, or damage any cable, wires, equipment, or facilities used for the distribution of multi-channel services.

E) Any, and all, MCS providers are encouraged to work with the Council/franchising authority in developing and implementing a plan designed to control and eliminate the unauthorized reception of certain cable services within the City.

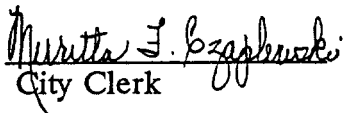
Section 9-127. Effective Date.

This ordinance shall become effective from and after its passage and publication in pamphlet form by the city clerk.

PASSED AND APPROVED THIS THE 23 DAY OF September, 1991.


Mayor

ATTEST:


City Clerk