

Chapter 66
TELECOMMUNICATIONS

ARTICLE I. IN GENERAL

Secs. 66-1—66-18. Reserved.

ARTICLE II. CABLE TELEVISION SYSTEMS*

*State law reference—Municipal regulation of cable television, Minn. Stats. ch. 238.

DIVISION 1. GENERALLY

Sec. 66-19. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicable laws means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority.

Basic cable service means any service tier which includes the retransmission of local television broadcast signals. The term "basic cable service" as defined herein shall not be inconsistent with 47 USC 543(b)(7)(1993).

Cable Act means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984) (codified at 47 USC 521-611 (1982 & Supp. V 1987)) as amended by the cable television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385 and the Telecommunications Act of 1996, Pub. L. No. 104-458 and as the same may, from time to time, be amended.

Cable service means:

- (1) The one-way transmission to subscribers of:
 - a. Video programming; or
 - b. Other programming service; and
- (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

Cable television system, system or cable 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 programming and which is provided to multiple subscribers within a community, but such term does not include:

- (1) A facility that serves only to retransmit the television signals of one or more television broadcast stations;
- (2) A facility that serves subscribers without using any public rights-of-way;
- (3) A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 USC 201—226, except that such facility shall be considered a cable system (other than for purposes of 47 USC 541) to the

extent such facility is used in the transmission of video programming directly to subscribers; unless the extent of such use is solely to provide interactive on-demand services;

- (4) An open video system that complies with section 653 of the Cable Act; or
- (5) Any facilities of any electric utility used solely for operating its electric utility system.

Channel or cable channel means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel as defined by the Federal Communications Commission.

Franchise means an initial authorization, or renewal thereof, issued by the city, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement or otherwise, which authorizes the construction or operation of a cable system over publicly owned rights-of-way.

Franchise agreement means a franchise granted pursuant to this article containing the specific provisions of the franchise granted, including references, specifications, requirements and other related matters.

Franchise fee.

- (1) The term "franchise fee" means any tax, fee or assessment of any kind imposed by the city or any other governmental authority on a grantee or cable subscriber, or both, solely because of their status as such.
- (2) The term "franchise fee" does not mean or include:
 - a. Any tax, fee or assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers);
 - b. Capital costs which are required by the franchise agreement to be incurred by the grantee for PEG access facilities;
 - c. Requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages; or
 - d. Any fee imposed under title 17 of the United States Code.

Governmental authority means any court or other federal, state, county, municipal or other governmental department, commission, board, agency or instrumentality.

Grantee means any person receiving a franchise pursuant to this article and its agents, employees, officers, designees, or any lawful successor, transferee or assignee.

Grantor or city means the city as represented by the Council or any delegate acting within the scope of its jurisdiction. The City Manager shall be responsible for the continuing administration of the franchise.

Gross revenues means any and all revenues derived by the Grantee from the operation of the Cable System to provide Cable Services in the Service Area. Gross Revenues shall include, by way of example, but not limitation, revenues from Basic Cable Service, all Cable Service fees,

premium, pay-per-view, pay television, late fees, guides, home shopping revenue, installation and reconnection fees, revenues from program guides and electronic guides, additional outlet fees, Franchise Fees required by this Franchise, upgrade and downgrade fees, advertising revenue, Converter rental fees and lockout device fees and any and all other revenue derived by the Grantee from the operation of Grantee's Cable System to provide Cable Services in the City. Copyright fees or other license fees paid by Grantee shall not be subtracted from Gross Revenues for purposes of calculating Franchise Fees. Gross Revenues shall include revenue received by any affiliated entity where that affiliated entity receives revenue from the operation of the Cable System to provide Cable Services in the Service Area. Revenues which are not directly attributable to specific customers, such as advertising revenue and home shopping commissions, shall be allocated to systems and jurisdictions on a per subscriber basis measured in a consistent manner from period to period. "Gross Revenues" shall not be net of (1) any operating expense; (2) any accrual, including, without limitation, any accrual for commissions; or (3) any other expenditure, regardless of whether such expense, accrual, or expenditure reflects a cash payment. "Gross Revenues", however, shall not be double counted. Revenues of both Grantee and an affiliated entity that represent a transfer of funds between the Grantee and the affiliated entity, and that would otherwise constitute Gross Revenues of both the Grantee and the affiliated entity, shall be counted only once for purposes of determining Gross Revenues. Similarly, operating expenses of the Grantee which are payable from Grantee's revenue to an affiliated entity and which may otherwise constitute revenue of the affiliated entity, shall not constitute additional Gross Revenues for purposes of the Franchise. "Gross Revenues" shall not include any taxes, fees, or assessments of general applicability imposed or assessed by any Governmental Authority. A Franchise Fee is not such a tax, fee, or assessment. The City acknowledges and accepts that Grantee shall maintain its books and records in accordance with GAAP.

Initial service area means the area of the city which will receive cable service initially, as set forth in any franchise agreement.

Installation means the connection of the system to a subscriber and the provision of cable service.

Normal business hours means those hours during which most similar businesses in the city are open to serve customers. In all cases, the term "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

Normal operating conditions means those service conditions which are within the control of the grantee. Those conditions which are not within the control of the grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the system.

Person means any individual or any association, firm, general partnership, limited partnership, joint stock company, joint venture, trust, corporation, limited liability company or other legally recognized entity, private or public, whether for-profit or not-for-profit.

Public, educational or government access facilities or PEG access facilities means:

- (1) Channel capacity designated for public, educational or governmental use; and
- (2) Facilities and equipment for the use of such channel capacity.

Section means any section, subsection or provision of this article.

Service area or franchise area means the entire geographic area within the city as it is now constituted or may in the future be constituted, unless otherwise specified in the franchise agreement.

Service interruption means the loss of picture or sound on one or more cable channels.

Street or publicly owned right-of-way means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the city limits:

- (1) Streets;
- (2) Roadways;
- (3) Highways;
- (4) Avenues;
- (5) Lanes;
- (6) Alleys;
- (7) Sidewalks;
- (8) Easements;
- (9) Rights-of-way; and
- (10) Similar public property and areas;

that the grantor shall permit to be included within the definition of street from time to time.

Subscriber means any person who or which lawfully elects to subscribe to, for any purpose, a service provided by the grantee by means of or in connection with the cable system whether or not a fee is paid for such service.

(Ord. No. 99-1998, § 1100.10, 6-23-1998; Ord. No. 11-2013, 12-22-13)

Sec. 66-20. Franchise renewal.

Franchise renewals shall be in accordance with applicable laws. The grantor and the grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the franchise. To the extent consistent with applicable laws, a reasonable nonrefundable renewal application fee in an amount established by the city may be required to accompany any renewal application. Such application fee shall not be deemed to be franchise fees within the meaning of section 622 of the Cable Act (47 USC 542), and such payments shall not be deemed to be:

- (1) Payments in kind or any involuntary payments chargeable against the franchise fees to be paid to the city by the grantee pursuant to section 66-68 and applicable provisions of a franchise agreement; or
- (2) Part of the franchise fees to be paid to the city by the grantee pursuant to section 66-68 hereof and applicable provisions of a franchise agreement.

(Ord. No. 99-1998, § 1100.85, 6-23-1998)

Sec. 66-21. Intent.

(a) The city, pursuant to applicable laws, is authorized to grant one or more nonexclusive franchises to construct, operate, maintain and reconstruct cable television systems within the city limits.

(b) The City Council finds that the development of cable television systems has the potential of having great benefit and impact upon the residents of the city. Because of the complex and rapidly changing technology associated with cable television, the City Council

further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the city or such persons as the city shall designate. It is the intent of this article and subsequent amendments to provide for and specify the means to attain the best possible cable television service to the public and any franchises issued pursuant to this article shall be deemed to include this finding as an integral part thereof.

(Ord. No. 99-1998, § 1100.05, 6-23-1998)

Sec. 66-22. Federal, state and city jurisdiction.

- (a) This article shall be construed in a manner consistent with applicable laws.
- (b) This article shall apply to all franchises granted or renewed after the effective date of the ordinance from which this article is derived. This article shall further apply to the extent permitted by applicable laws to all existing franchises granted prior to the effective date of this article.
- (c) The rights of all the grantees are subject to the policing powers of the city to adopt and enforce ordinances necessary to the health, safety and welfare of the public. All the grantees shall comply with all applicable laws enacted by the city pursuant to that power.
- (d) No grantee shall be relieved of its obligation to comply with any of the provisions of this article or any franchise granted pursuant to this article by reason of any failure of the city to enforce prompt compliance.
- (e) This article and any franchise granted pursuant to this article shall be construed and enforced in accordance with the substantive laws of the city, state and applicable federal laws, including the Cable Act.
- (f) This article together with any franchise granted hereunder shall comply with the franchise standards contained in Minn. Stats. § 238.084.
- (g) The grantee and the city shall conform to state laws and rules regarding cable communications not later than one year after they become effective, unless otherwise stated, and shall conform to federal laws and regulations regarding cable communications as they become effective.

(Ord. No. 99-1998, § 1100.35, 6-23-1998)

Sec. 66-23. Emergency use.

In the case of any emergency or disaster, the grantee shall, upon request of the city or emergency management personnel, make its cable system and related facilities available to the city for emergency use.

(Ord. No. 99-1998, § 1100.55, 6-23-1998)

Sec. 66-24. Geographical coverage.

- (a) The grantee shall design, construct and maintain the cable television system to have the capability to pass every dwelling unit in the service area, subject to any service area line extension requirements of the franchise agreement.
- (b) After service has been established by activating trunk and/or distribution cables for any service area, the grantee shall provide cable service to any requesting subscriber within that service area within 30 days from the date of request, provided that the grantee is able to secure all rights-of-way necessary to extend service to such subscriber within such 30-day period on reasonable terms and conditions.
- (c) No subscriber shall be refused service arbitrarily. However, for unusual circumstances such as the existence of more than 150 feet of distance from distribution cable to

connection of service to subscribers, or a density equivalent of less than 40 homes per mile, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the grantee and subscribers in the area in which service may be expanded, the grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per mile, and whose denominator equals 40 residences. Subscribers who request service hereunder, will bear the remainder of the construction and other costs on a pro rata basis. The grantee may require that the payment of the capital contribution in aid of construction borne by such potential subscribers be paid in advance.

(d) The grantee shall immediately bury all drops to subscribers dwellings when required by local construction standards. In the event the ground is frozen or otherwise unsuitable to permit immediate burial, the grantee shall be permitted to delay such burial until the ground becomes suitable for burial and shall complete said burial no later than June 1 of each year.

(Ord. No. 99-1998, § 1100.60, 6-23-1998)

Sec. 66-25. Consumer protection and service standards.

(a) *Responsibilities of grantee.* The grantee shall maintain a convenient local customer service or bill payment location for receiving subscriber payments. The grantee shall also maintain or arrange for a location where equipment can be dropped off or exchanged as is necessary or, in the alternative, establish a system for having subscriber equipment picked up at the subscriber residence free of charge. The grantee shall also provide the necessary facilities, equipment and personnel to comply with the following consumer protection standards under normal operating conditions:

- (1) *Office hours and telephone availability.* The cable system office hours and telephone availability is as follows:
 - a. The grantee will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.
 1. Trained grantee representatives will be available to respond to customer telephone inquiries during normal business hours.
 2. After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained grantee representative on the next business day.
 - b. Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed 30 seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed 30 seconds. These standards shall be met no less than 90 percent of the time under normal operating conditions, measured on a quarterly basis.
 - c. The grantee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

- d. Under normal operating conditions, the customer will receive a busy signal less than three percent of the time.
 - e. Customer service center and bill payment locations will be open at least during normal business hours.
- (2) *Installations, outages and service calls.* Under normal operating conditions, each of the following four standards will be met no less than 95 percent of the time measured on a quarterly basis:
- a. Standard installations will be performed within seven business days after an order has been placed. Standard installations are those that are located up to 125 feet from the existing distribution system. The grantee has agreed to 150 feet at section 66-24(c).
 - b. Excluding conditions beyond the control of the grantee, the grantee will begin working on service interruptions promptly and in no event later than 24 hours after the interruption becomes known. The grantee must begin actions to correct other service problems the next business day after notification of the service problem.
 - c. The appointment window alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The grantee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)
 - d. The grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
 - e. If the grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted prior to the time of the scheduled appointment. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.
- (3) *Communications between grantee and subscribers.* The communications between the grantee and subscribers is as follows:
- a. *Notifications to subscribers.* Notifications to subscribers is as follows:
 - 1. The grantee shall provide written information on each of the following areas at the time of installations of service, at least annually to all subscribers, and at any time upon request:
 - (i) Products and services offered;
 - (ii) Prices and options for programming services and conditions of subscription to programming and other services;
 - (iii) Installation and service maintenance policies;

- (iv) Instructions on how to use the cable service;
 - (v) Channel positions of the programming carried on the system; and
 - (vi) Billing and complaint procedures, including the address and telephone number of the grantee's office within the service area.
2. Customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of 30 days in advance of such changes if the changes are within the control of the grantee. In addition, the grantee shall notify subscribers 30 days in advance of any significant changes in the other information required by subsection (a)(3)a.1 of this section. The grantee shall not be required to provide prior notice of any rate changes as a result of a regulatory fee, franchise fee, or other fees, tax, assessment or charge of any kind imposed by any federal agency, state or franchising authority on the transaction between the operator and the subscriber.
- b. *Billing.* The billing is as follows:
- 1. Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
 - 2. In case of a billing dispute, the grantee must respond to a written complaint from a subscriber within 30 days.
- c. *Refunds.* Refund checks will be issued promptly, but no later than either of the following:
- 1. The customer's next billing cycle following resolution of the request or 30 days, whichever is earlier; or
 - 2. The return of the equipment supplied by the grantee if service is terminated.
- d. *Credits.* Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(b) *Quarterly compliance report.* The grantee shall provide the city with a quarterly customer service compliance report specific to the system serving the city in a form mutually agreed to, which report shall, at a minimum, describe in detail the grantee's compliance with each and every term and provision of this section and any additional customer service requirements contained in the grantee's franchise and shall outline and summarize all subscriber complaints received by the grantee during the preceding calendar quarter.

(Ord. No. 99-1998, § 1100.90, 6-23-1998)

Sec. 66-26. Rate regulation.

The city reserves the right to regulate rates for basic cable service and any other services offered over the cable system, to the extent not prohibited by applicable laws. The grantee shall be subject to the rate regulation provisions provided for herein, and those of the Federal Communications Commission (FCC) at 47 CFR, pt. 76, subpt. N, as the same may be amended from time to time. The city shall follow the rules relating to cable rate regulation promulgated by the FCC at 47 CFR, pt. 76, subpt. N, as the same may be amended from time to time.

(Ord. No. 99-1998, § 1100.95, 6-23-1998)

Sec. 66-27. Design and construction requirements.

(a) The grantee shall not construct any cable system facilities until the grantee has secured the necessary permits from the grantor, or other applicable governmental authorities.

(b) In those areas of the city where transmission or distribution facilities of all the public utilities providing telephone and electric power service are underground, the grantee likewise shall construct, operate and maintain its transmission and distribution facilities therein underground.

(c) In those areas of the city where the grantee's cables are located on the aboveground transmission or distribution facilities of the public utility providing telephone or electric power service, and in the event that the facilities of both such public utilities subsequently are placed underground, then the grantee likewise shall construct, operate and maintain its transmission and distribution facilities underground, at the grantee's cost. Certain of the grantee's equipment, such as pedestals, amplifiers and power supplies, which normally are placed above ground, may continue to remain in aboveground closures, however, the city specifically reserves all of its rights to approve aboveground or underground locations for pedestals subject to applicable laws.

(d) In new residential developments in which all the electric power and telephone utilities are underground, the city may, in its sole discretion, require that the following procedure apply with respect to access to and utilization of underground easements:

- (1) The developer shall be responsible for contacting and surveying all the grantees to ascertain which the grantees desire (or, pursuant to the terms and provisions of this article and any franchise agreement, may be required) to provide cable service to that development. The developer may establish a reasonable deadline to receive responses from the grantees. The final development map shall indicate the grantees which have agreed to serve the development.
- (2) If one or more grantees wish to provide service within all or part of the development, they shall be accommodated in the joint utilities trench on a nondiscriminatory shared basis. If fewer than two grantees indicate interest, the developer shall provide conduit to accommodate a minimum of two sets of cable television cables and dedicate to the city any initially unoccupied conduit. The developer shall be entitled to recover the cost of such initially unoccupied conduit in the event that grantor subsequently leases or sells occupancy or use rights to any grantee.
- (3) The developer shall provide at least ten business days notice of the date that utility trenches will be open to the grantees that have agreed to serve the development. When the trenches are open, such grantees shall have two business days to begin the installation of their cables, and five business days after beginning installation to complete installation.

- (4) The final development map shall not be approved until the developer submits evidence that:
 - a. It has notified each grantee that underground utility trenches are to open as of an estimated date, and that each grantee will be allowed access to such trenches, including trenches from proposed streets to individual homes or home sites, on specified nondiscriminatory terms and conditions; and
 - b. It has received a written notification from each grantee that the grantee intends to install its facilities during the open trench period on the specified terms and conditions, or such other terms and conditions as are mutually agreeable to the developer and the grantee, or has received no reply from a grantee within ten days after its notification to such grantee, in which case the grantee will be deemed to have waived its opportunity to install its facilities during the open trench period.
- (5) Sharing the joint utilities trench shall be subject to compliance with state regulatory agency and utility standards. If such compliance is not possible, the developer shall provide a separate trench for the cable television cables, with the entire cost shared among the participating grantees. With the concurrence of the developer, the affected utilities and the grantees, alternative installation procedures, such as the use of deeper trenches, may be utilized, subject to the requirements of applicable laws.
- (6) Any grantee wishing to serve an area where the trenches have been closed shall be responsible for its own trenching and associated costs and shall repair all property to the condition which existed prior to such trenching.
- (e) Construction codes and permits.
 - (1) The grantee shall obtain all necessary permits from city before commencing any construction upgrade or extension of the system, including the opening or disturbance of any street, or private or public property within city. The grantee shall strictly adhere to all state and local laws and building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the system in city and give due consideration at all times to the aesthetics of the property.
 - (2) The city shall have the right to inspect all construction or installation work performed pursuant to the provisions of the franchise and to make such tests at its own expense as it shall find necessary to ensure compliance with the terms of the franchise and applicable provisions of local, state and federal law.
- (f) Repair of streets and property. Any and all streets or public property or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the system shall be promptly and fully restored by the grantee, at its expense, to a condition as good as that prevailing prior to the grantee's work, as approved by city in the case of streets and other public property. If the grantee shall fail to promptly perform the restoration required herein, city shall have the right to put the streets, public, or private property back into good condition. The city reserves its rights to pursue reimbursement for such restoration from the grantee.

- (g) Conditions on street use.
- (1) Nothing in this franchise shall be construed to prevent the city from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any street; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.
 - (2) All system transmission and distribution structures, lines and equipment erected by the grantee within city shall be located so as not to obstruct or interfere with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights of property owners who abut any of the said streets, alleys and other public ways and places, and not to interfere with existing public utility installations. The grantee shall furnish to and file with City Manager the maps, plats, and permanent records of the location and character of all facilities constructed, including underground facilities, and the grantee shall file with city updates of such maps, plats and permanent records annually if changes have been made in the system.
 - (3) If at any time during the period of this franchise city shall elect to alter, or change the grade or location of any street, alley or other public way, the grantee shall, at its own expense, upon reasonable notice by city, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the system, and in each instance comply with the standards and specifications of city. If the city reimburses other occupants of the street, the grantee shall be likewise reimbursed.
 - (4) The grantee shall not place poles, conduits, or other fixtures of system above or below ground where the same will interfere with any gas, electric, telephone, water or other utility fixtures and all such poles, conduits, or other fixtures placed in any street shall be so placed as to comply with all requirements of city.
 - (5) The grantee shall, on request of any person holding a moving permit issued by city, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the person requesting the same, and the grantee shall be given not less than ten days' advance notice to arrange for such temporary changes.

(Ord. No. 99-1998, § 1100.105, 6-23-1998)

Sec. 66-28. Technical standards.

(a) The grantee shall construct, install, operate and maintain its system in a manner consistent with all applicable laws and the Federal Communications Commission technical standards, and any standards set forth in its franchise agreement. In addition, the grantee shall provide to the grantor, upon request, a copy of the results of the grantee's periodic proof of performance tests conducted pursuant to Federal Communications Commission standards and guidelines.

(b) Failure to comply with the FCC's technical standards shall entitle the city to utilize the procedures of section 66-75 hereof.

(c) All construction practices shall be in accordance with all applicable sections of

the Occupational Safety and Health Act of 1970, as amended, as well as all other applicable laws.

(d) All installation of electronic equipment at the time of installation shall be of a permanent nature, durable and installed in accordance with the provisions of the National Electrical and Safety Code and National Electrical Code.

(e) Antennas and their supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable laws.

(f) All of the grantee's plant and equipment, including, but not limited to, the antenna site, headend and distribution system, towers, house connections, structures, poles, wire, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not to endanger or interfere with improvements the city may deem appropriate to make or to interfere in any manner with the rights of any property owner, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic.

(g) The grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

(Ord. No. 99-1998, § 1100.110, 6-23-1998)

Sec. 66-29. Trimming of trees.

The grantee shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinance and easement restrictions, upon and hanging over streets and public places of the city so as to prevent the branches of such trees from coming in contact with the wires and cables of the grantee. City representatives shall have authority to supervise and approve all trimming of trees conducted by the grantee.

(Ord. No. 99-1998, § 1100.115, 6-23-1998)

Sec. 66-30. Use of grantee facilities.

The city shall, at its own expense, have the right to install and maintain upon the poles and within the underground pipes and conduits of the grantee, any wires and fixtures desired by the city to the extent that such installation and maintenance does not interfere with existing operations of the grantee.

(Ord. No. 99-1998, § 1100.120, 6-23-1998)

Sec. 66-31. Programming decisions.

All programming decisions shall be at the sole discretion of the grantee; provided, however, that any change in the mix, quality or level of service pursuant to 47 USC 545(a) shall require the prior approval of the city. Such approval by the city shall not be unreasonably withheld.

(Ord. No. 99-1998, § 1100.125, 6-23-1998)

Sec. 66-32. Indemnification.

The grantee shall indemnify, defend and hold the city, its officers, boards, commissions, agents and employees (collectively the indemnified parties) harmless from and against any and all lawsuits, claims, causes of action, actions, liability, demands, damages, judgments, settlements, losses, expenses (including reasonable attorneys' fees) and costs of any nature that any of the indemnified parties may at any time, directly or indirectly, suffer, sustain or incur arising out of, based upon or in any way connected with the grant of a franchise to the grantee, the operation of

the grantee's system and/or the acts and/or omissions of the grantee or its agents or employees, whether or not pursuant to the franchise. This indemnity shall apply, without limitation, to any action or cause of action for invasion of privacy, defamation, antitrust, errors and omissions, theft, fire, violation or infringement of any copyright, trademark, trade names, service mark, patent, or any other right of any person, whether or not any act or omission complained of is authorized, allowed or prohibited by this article or any franchise agreement, but shall exclude any claim or action arising out of the acts or omissions of the indemnified parties or related to any city programming or other access programming for which the grantee is not legally responsible.

(Ord. No. 99-1998, § 1100.130, 6-23-1998)

Sec. 66-33. Insurance.

Within 60 days following the grant of a franchise, the grantee shall obtain, pay all premiums for and make available to the city at its request copies of the following insurance policies:

- (1) A general comprehensive liability insurance policy insuring, indemnifying, defending and saving harmless the indemnified parties from any and all claims by any person whatsoever on account of injury to or death of a person occasioned by the operations of the grantee under any franchise granted hereunder, or alleged to have been so caused or occurred with a minimum coverage of \$1,000,000.00 for personal injury or death of one person, and \$3,000,000.00 for personal injury or death of any two or more persons in any one occurrence. The policy limits provided for in this subsection shall be reviewed and adjusted by the city as necessary not more than once every three years.
- (2) Property damage insurance for property damage occasioned by the operation of the grantee under any franchise granted pursuant to this article, or alleged to have been so caused or occurred, with minimum coverage of \$1,000,000.00 for property damage to the property of any one person and \$3,000,000.00 for property damage to the property of two or more persons in any one occurrence. The policy limits provided for in this subsection shall be reviewed and adjusted by the city as necessary not more than once every three years.
- (3) Workers compensation insurance as provided by applicable laws.
- (4) All insurance policies called for herein shall be in a form satisfactory to the city with a company licensed to do business in the state with a rating by A.M. Best and Co. of not less than "A," and shall require 30 days' written notice of any cancellation to both the city and the grantee. The grantee shall, in the event of any such cancellation notice, obtain, pay all premiums for, and file with the city, written evidence of the issuance of replacement policies within 30 days following receipt by the city or the grantee of any notice of cancellation.
- (5) If the grantee sells or transfers the cable system, or in the event of expiration, termination or revocation of a franchise, insurance tail coverage shall be purchased and filed with the city for the then applicable amounts, providing coverage for the time periods according to applicable statutes of limitation, insurance for any issues attributable to the period the grantee held its franchise.
- (6) It shall be the obligation of the grantee to promptly notify the city of any pending or threatened litigation that would be likely to affect the

indemnified parties.

(Ord. No. 99-1998, § 1100.135, 6-23-1998)

Sec. 66-34. Records required and grantor's right to inspect.

(a) The grantee shall at all times maintain the following records and information relating specifically to the cable system serving the city as identified by the FCC community unit identifier (CUID) as opposed to a regional cable system or other operating unit of the grantee:

- (1) A full and complete set of plans, records and as-built drawings and/or maps in an electronic form agreed to by the city and the grantee which shall be updated annually showing the location of the cable television system installed or in use in the city, exclusive of subscriber service drops and equipment provided in the subscribers' homes.
- (2) If requested by the grantor, a summary of service calls, identifying the number, general nature and disposition of such calls, on a monthly basis. A summary of such service calls shall be submitted to the grantor within 30 days following its request in a form reasonably acceptable to the grantor.

(b) Upon reasonable notice, and during normal business hours, the grantee shall permit examination by any duly authorized representative of the grantor, of all franchise property and facilities, together with any appurtenant property and facilities of the grantee situated within or without the city, and all records relating to the franchise, provided they are necessary to enable the grantor to carry out its regulatory responsibilities under applicable laws, this article and the franchise agreement. The grantee shall have the right to be present at any such examination.

(c) The city shall also have the right to inspect, upon 24 hours' written notice, at any time during normal business hours at the grantee's office, all books, records, maps, plans, financial statements, service complaint logs, performance test results, records of request for service, and other like materials of the grantee.

(d) Copies of all petitions, applications, communications and reports submitted by the grantee or on behalf of or relating to the grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other governmental authority having jurisdiction with respect to any matters affecting the cable system authorized pursuant to this article and any franchise shall, upon request, be submitted, upon request to the city. Copies of responses from the governmental authority to the grantee shall likewise be furnished to the city.

(Ord. No. 99-1998, § 1100.140, 6-23-1998)

Sec. 66-35. Annual reports.

(a) The grantee shall, upon request, within 90 days of each calendar year end, submit a written end of the year report to the grantor with respect to the preceding calendar year containing the following information:

- (1) A summary of the previous year's (or in the case of the initial reporting year, the initial year's) activities in development of the cable system, including, but not limited to, services commenced or discontinued during the reporting year;
- (2) A list of the grantee's officers, members of its board of directors, and other principals of the grantee;
- (3) A list of stockholders or other equity investors holding five percent or more of the voting interest in the grantee; and

- (4) Information as to the number of subscribers, additional television outlets, and the number of basic and pay service subscribers.

(b) All reports required under this article, except those required by law to be kept confidential, shall be available for public inspection in the grantee's offices during normal business hours.

(c) All reports and records required under this article shall be furnished at the sole expense of the grantee, except as otherwise provided in this article or the franchise agreement.

(Ord. No. 99-1998, § 1100.145, 6-23-1998)

Sec. 66-36. Abandonment or removal of franchise property.

(a) In the event that the use of any property of the grantee within the franchise area or a portion thereof is discontinued for a continuous period of 12 months, the grantee shall be deemed to have abandoned that property.

(b) The grantor, upon such terms as the grantor may impose, may give the grantee permission to abandon, without removing, any system facility or equipment laid, directly constructed, operated or maintained in, on, under or over the franchise area. Unless such permission is granted or unless otherwise provided in this article, the grantee shall remove all abandoned facilities and equipment upon receipt of written notice from the grantor and shall restore any affected street to its former state at the time such facilities and equipment were installed, so as not to impair its usefulness. In removing its plant, structures and equipment, the grantee shall refill, at its own expense, any excavation made by or on behalf of the grantee and shall leave all streets and other public ways and places in as good a condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. The grantor shall have the right to inspect and approve the condition of the streets, public ways, public places, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this article and any security fund provided for in the franchise agreement shall continue in full force and effect during the period of removal and until full compliance by the grantee with the terms and conditions of this section.

(c) Upon abandonment of any franchise property in place, the grantee, if required by the grantor, shall submit to the grantor a bill of sale and/or other instrument, satisfactory in form and content to the grantor, transferring to the grantor the ownership of the franchise property abandoned.

(d) At the expiration of the term for which the franchise is granted, or upon its earlier revocation or termination, as provided for herein and/or in the franchise agreement, in any such case without renewal, extension or transfer, the grantor shall have the right to require the grantee to remove, at its own expense, all aboveground portions of the cable television system from all streets and public ways within the city within a reasonable period of time, which shall not be less than 180 days.

(e) Notwithstanding anything to the contrary set forth in this article, the grantee may, with the consent of the grantor, abandon any underground franchise property in place so long as it does not materially interfere with the use of the street or public rights-of-way in which such property is located or with the use thereof by any public utility or other cable grantee.

(Ord. No. 99-1998, § 1100.160, 6-23-1998)

Sec. 66-37. Rights of individuals.

(a) The grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, disability,

national origin, age, gender or sexual preference. The grantee shall comply at all times with all other applicable laws, relating to nondiscrimination.

(b) The grantee shall adhere to the applicable equal employment opportunity requirements of applicable laws, as now written or as amended from time to time including 47 USC 551, protection of subscriber privacy.

(c) Neither the grantee, nor any person shall, without the subscriber's consent, tap or arrange for the tapping, of any cable, line, signal input device, or subscriber outlet or receiver for any purpose except routine maintenance of the system, detection of unauthorized service, polling with audience participating, or audience viewing surveys to support advertising research regarding viewers where individual viewing behavior cannot be identified.

(d) In the conduct of providing its services or in pursuit of any collateral commercial enterprise resulting therefrom, the grantee shall take reasonable steps to prevent the invasion of a subscriber's or general citizen's right of privacy or other personal rights through the use of the system as such rights are delineated or defined by applicable laws. The grantee shall not, without lawful court order or other applicable valid legal authority, utilize the system's interactive two-way equipment or capability for unauthorized personal surveillance of any subscriber or general citizen.

(e) No cable line, wire, amplifier, converter, or other piece of equipment owned by the grantee shall be installed by the grantee in the subscriber's premises, other than in appropriate easements, without first securing any required consent. If a subscriber requests service, permission to install upon subscriber's property shall be presumed. Where a property owner or his predecessor was granted an easement including a public utility easement or a servitude to another and the servitude by its terms contemplates a use such as the grantee's intended use, the grantee shall not be required to service the written permission of the owner for the installation of cable television equipment.

(f) No signals of a class IV cable communications channel may be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of a subscriber. The request for permission must be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provisions. The written permission must be for a limited period of time not to exceed one year which is renewable at the option of the subscriber. No penalty may be invoked for a subscriber's failure to provide or renew the authorization. The authorization is revocable at any time by the subscriber without penalty of any kind. The permission must be required for each type or classification or class IV cable communications activity planned.

- (1) No information or data obtained by monitoring transmission of a signal from a subscriber terminal, including, but not limited to, the lists of the names and addresses of the subscribers or lists that identify the viewing habits of subscribers may be sold or otherwise made available to any person other than to the grantee and its employees for internal business use, or to the subscriber who is the subject of that information, unless the grantee has received specific written authorization from the subscriber to make the data available.
- (2) Written permission from the subscriber must not be required for the systems conducting system wide or individually addressed electronic sweeps for the purpose of verifying system integrity or monitoring for the purpose of billing. Confidentiality of this information is subject to the provisions of subsection (a) of this section.
- (3) For purposes of this section, the term "class IV cable communications

channel" means a signaling path provided by a system to transmit signals of any type from a subscriber terminal to another point in the system.

(Ord. No. 99-1998, § 1100.180, 6-23-1998)

Secs. 66-38—66-62. Reserved.

DIVISION 2. FRANCHISES

Sec. 66-63. Required.

It shall be unlawful for any person, other than the city unless specifically required by applicable laws, to construct, install or operate a cable television system in the city in, on, over, under, upon, along or across any street or publicly owned right-of-way without a franchise properly granted pursuant to the provisions of this article.

(Ord. No. 99-1998, § 1100.20, 6-23-1998)

Sec. 66-64. Purpose.

(a) A franchise granted by the city under the provisions of this article shall encompass the following purposes:

- (1) To engage in the business of providing cable service, and such other lawful services as may be permitted by the city, to subscribers within the service area.
- (2) To erect, install, construct, repair, rebuild, reconstruct, replace, maintain and retain cables, lines, related electronic equipment, supporting structures, appurtenances and other property in connection with the operation of a cable system in, on, over, under, upon, along and across streets within the service area.
- (3) To maintain and operate said franchise properties for the origination, reception, transmission, amplification and distribution of television and radio signals for the delivery of cable services.
- (4) To set forth the obligations of a grantee under the franchise agreement.

(b) Nothing contained in this article relieves a person from liability arising out of failure to exercise reasonable care to avoid injuring the grantee's facilities while performing work connected with grading, regrading or changing the line of a street or public place or with the construction or reconstruction of a sewer or water system.

(Ord. No. 99-1998, § 1100.15, 6-23-1998)

Sec. 66-65. Multiple franchises.

(a) The grantor may grant one or more franchises for a service area. The grantor may, in its sole discretion, limit the number of franchises granted, based upon, but not necessarily limited to, the requirements of applicable laws and specific local considerations, such as:

- (1) The capacity of the public rights-of-way to accommodate multiple coaxial cables in addition to the cables, conduits and pipes of the utility systems, such as electrical power, telephone, gas and sewage.
- (2) The impact on the city of having multiple franchises.
- (3) The disadvantages that may result from cable system competition, such as the requirement for multiple pedestals on residents' property, and the disruption arising from numerous excavations of the rights-of-way.

- (4) The financial capabilities of the applicant and its guaranteed commitment to make necessary investment to erect, maintain and operate the proposed system for the duration of the franchise term.

(b) Each grantee awarded a franchise to serve the entire city shall offer service to all residences in the city, in accordance with construction and service schedules mutually agreed upon between the grantor and the grantee, and consistent with applicable laws.

(c) The city may, in its sole discretion, require developers of new residential housing with underground utilities to provide conduit to accommodate cables for a minimum of two cable systems in accordance with the provisions of section 66-27(d).

(d) The grantor may require that any new grantee be responsible for its own underground trenching and the costs associated therewith, if, in the grantor's opinion, the rights-of-way in any particular area cannot feasibly and reasonably accommodate additional cables.

(e) Any additional franchise granted by the city to provide cable service in a part of the city in which a franchise has already been granted and where an existing grantee is providing service shall require the new grantee to provide service throughout its service area within a reasonable time and in a sequence which does not discriminate against lower income residents.

(Ord. No. 99-1998, § 1100.70, 6-23-1998)

Sec. 66-66. Applications.

(a) Any person, other than the city unless specifically required by applicable laws, desiring an initial franchise for a cable television system shall file an application with the city. A reasonable nonrefundable application fee in an amount established by the city shall accompany the initial application. Such application fee shall not be deemed to be franchise fees within the meaning of section 622 of the Cable Act (47 USC 542), and such payments shall not be deemed to be:

- (1) Payments in kind or any involuntary payments chargeable against the franchise fees to be paid to the city by the grantee pursuant to section 66-68 and applicable provisions of a franchise agreement; or
- (2) Part of the franchise fees to be paid to the city by the grantee pursuant to section 66-68 and applicable provisions of a franchise agreement.

(b) An application for an initial franchise for a cable television system shall be in a form reasonably acceptable to the grantor and shall contain, where applicable:

- (1) A statement as to the proposed service area;
- (2) A resume of prior history of the applicant, including the legal, technical and financial expertise of the applicant in the cable television field;
- (3) A list of the general and limited partners of the applicant, if a partnership, or the shareholders, if a corporation;
- (4) The percentage ownership of the applicant of each of its partners, shareholders or other equity owners;
- (5) A list of officers, directors and managing employees of applicant or its general partner, as applicable, together with a description of the background of each such person;
- (6) The names and addresses of any parent or subsidiary of applicant or any other business entity owning or controlling the applicant in whole or in part, or owned or controlled in whole or in part by the applicant;

- (7) A current financial statement of the applicant verified by an audit or otherwise certified to be true, complete and correct to the reasonable satisfaction of the city;
- (8) Proposed construction and service schedule;
- (9) Any additional information that the city deems applicable.

(Ord. No. 99-1998, § 1100.75, 6-23-1998)

Sec. 66-67. Consideration of initial applications.

(a) Upon receipt of any application for an initial franchise, the City Manager shall prepare a report and make his recommendations respecting such application to the City Council.

(b) A public hearing shall be set prior to any initial franchise grant, at a time and date approved by the Council. Within 30 days after the close of the hearing, the Council shall make a decision based upon the evidence received at the hearing as to whether or not the franchise should be granted, and, if granted subject to what conditions. The Council may grant one or more initial franchises, or may decline to grant any franchise.

(Ord. No. 99-1998, § 1100.80, 6-23-1998)

Sec. 66-68. Fee.

(a) Following the issuance and acceptance of a franchise, the grantee shall pay to the grantor a franchise fee in the amount set forth in the franchise agreement.

(b) The grantor, on an annual basis, shall be furnished a statement within 90 days of the close of the calendar year, certified by the company controller or chief financial officer, reflecting the total amounts of gross revenues and all payments, and computations of the franchise fee for the previous calendar year. Upon ten days' prior written notice, the grantor shall have the right to conduct an independent audit of the grantee's records. If such audit indicates a franchise fee underpayment of five percent or more, the grantee shall assume all of city's out-of-pocket costs associated with the conduct of such an audit and shall remit to the grantor all applicable franchise fees due and payable together with interest thereon at the lesser of the maximum rate permitted by applicable laws or 18 percent per annum.

(c) Except as otherwise provided by law, no acceptance of any payment by the grantor shall be construed as a release or as an accord and satisfaction of any claim the grantor may have for further or additional sums payable as a franchise fee under this article or any franchise agreement or for the performance of any other obligation of the grantee.

(d) In the event that any franchise fee payment or recomputed amount is not made on or before the dates specified in the franchise agreement, the grantee shall pay as additional compensation an interest charge, computed from such due date, at an annual rate equal to the lesser of the maximum rate permitted by applicable laws or 18 percent per annum during the period for which payment was due.

(e) The franchise fee payments shall be made in accordance with the schedule indicated in the franchise agreement.

(Ord. No. 99-1998, § 1100.100, 6-23-1998)

Sec. 66-69. Term.

(a) A franchise granted hereunder shall be for the term established in the franchise agreement and shall not exceed 15 years.

(b) A franchise granted hereunder may be renewed upon application by the grantee pursuant to the provisions of this article and applicable laws.

(Ord. No. 99-1998, § 1100.25, 6-23-1998)

Sec. 66-70. Territory.

Any franchise granted pursuant to this article shall be valid within the service area.

(Ord. No. 99-1998, § 1100.30, 6-23-1998)

Sec. 66-71. Nontransferable.

(a) The grantee shall not voluntarily or involuntarily, by operation of law or otherwise, sell, assign, transfer, lease, sublet or otherwise dispose of, in whole or in part, the franchise and/or cable system or any of the rights or privileges granted by the franchise, without the prior written consent of the Council and then only upon such terms and conditions as may be prescribed by the Council with regard to the proposed transferee's legal, technical and financial qualifications, which consent shall not be unreasonably denied or delayed. Any attempt to sell, assign, transfer, lease, sublet or otherwise dispose of all or any part of the franchise and/or cable system or the grantee's rights therein without the prior written consent of the Council shall be null and void and shall be grounds for termination of the franchise pursuant to section 66-75 and the applicable provisions of any franchise agreement.

(b) Without limiting the nature of the events requiring the Council's approval under this section, the following events shall be deemed to be a sale, assignment or other transfer of the franchise and/or cable system requiring compliance with this section:

- (1) The sale, assignment or other transfer of all or a majority of the grantee's assets or the assets comprising the cable system to any person;
- (2) The merger of the grantee or any of its parents with or into another person (including the merger of the grantee or any parent with or into any parent or subsidiary corporation or other person);
- (3) The consolidation of the grantee or any of its parents with any other person;
- (4) The creation of a subsidiary corporation or other entity;
- (5) The sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in the grantee or any of its parents by one or more of its existing shareholders, partners, members or other equity owners so as to create a new controlling interest in the grantee;
- (6) The issuance of additional capital stock or partnership, membership or other equity interest by the grantee or any of its parents so as to create a new controlling interest in the grantee; and
- (7) The entry by the grantee into an agreement with respect to the management or operation of the grantee, any of the grantee's parents and/or the system or the subsequent amendment thereof.

The term "controlling interest" as used herein is not limited to majority equity ownership of the grantee, but also includes actual working control over the grantee, any parent of the grantee and/or the system in whatever manner exercised.

(c) The grantee shall notify the grantor in writing of any foreclosure or any other judicial sale of all or a substantial part of the property and assets comprising the cable system of the grantee or upon the termination of any lease or interest covering all or a substantial part of said property and assets. Such notification shall be considered by the grantor as notice that a change in control or ownership of the franchise has taken place and the provisions under this section governing the consent of the grantor to such change in control or ownership shall apply.

(d) For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the grantor may inquire into the qualifications of the prospective transferee or controlling party, and the grantee shall assist the grantor in any such inquiry. In seeking the grantor's consent to any change of ownership or control, the grantee shall have the responsibility of insuring that the transferee completes an application in form and substance reasonably satisfactory to the grantor, which application shall include the information required under this article and applicable laws. The transferee shall be required to establish to the satisfaction of the city that it possesses the legal, technical and financial qualifications to operate and maintain the system and comply with all franchise requirements for the remainder of the term of the franchise. If, after considering the legal, financial, character and technical qualities of the transferee and determining that they are satisfactory, the grantor finds that such transfer is acceptable, the grantor shall permit such transfer and assignment of the rights and obligations of such franchise as may be in the public interest. The consent of the grantor to such transfer shall not be unreasonably denied.

(e) Any financial institution having a security interest in any and all of the property and assets of the grantee as security for any loan made to the grantee or any of its affiliates for the construction and/or operation of the cable system must notify the grantor that it or its designee satisfactory to the grantor shall take control of and operate the cable television system, in the event of a default in the payment or performance of the debts, liabilities or obligations of the grantee or its affiliates to such financial institution. Further, said financial institution shall also submit a plan for such operation of the system within 30 days of assuming such control that will ensure continued service and compliance with all franchise requirements during the term the financial institution or its designee exercises control over the system. The financial institution or its designee shall not exercise control over the system for a period exceeding one year unless extended by the grantor in its discretion and during said period of time it shall have the right to petition the grantor to transfer the franchise to another grantee.

(f) In addition to the aforementioned requirements in this section, the city and the grantee shall, at all times, comply with the requirements of Minn. Stats. § 238.083 regarding the sale or transfer of a franchise and with all other applicable laws.

(Ord. No. 99-1998, § 1100.40, 6-23-1998)

Sec. 66-72. City's right to purchase system.

The city shall have a right of first refusal to purchase the cable system in the event the grantee receives a bona fide offer to purchase the cable system from any person. The term "bona fide offer," as used in this section, means a written offer which has been accepted by the grantee, subject to the city's rights under this article and any franchise agreement. The price to be paid by the city shall be the amount provided for in the bona fide offer, including the same terms and conditions as the bona fide offer. The city shall notify the grantee of its decision to purchase within 60 days of the city's receipt from the grantee of a copy of the written bona fide offer and such other relevant and pertinent information as the city shall deem appropriate.

(Ord. No. 99-1998, § 1100.45, 6-23-1998)

Sec. 66-73. Purchase by city upon expiration or revocation.

Consistent with section 627 of the Cable Act and all other applicable laws, at the expiration, cancellation, revocation or termination of any franchise agreement, the city shall have the option to purchase, condemn or otherwise acquire and hold the cable system.

(Ord. No. 99-1998, § 1100.50, 6-23-1998)

Sec. 66-74. Nonexclusive.

Any franchise granted under this article shall be nonexclusive. The grantor specifically reserves the right to grant, at any time, such additional franchises for a cable television system as it deems appropriate on terms and conditions no more favorable nor less burdensome than those imposed in previously granted franchises, subject to applicable laws. The grantor also specifically reserves the right to operate a municipal cable television system pursuant to applicable laws.

(Ord. No. 99-1998, § 1100.65, 6-23-1998)

Sec. 66-75. Violation of provisions.

(a) In the event the grantor believes that the grantee has breached or violated any material provision of this article or a franchise granted hereunder, the grantor may act in accordance with the procedures in subsection (b) of this section.

(b) The grantor may notify the grantee of the alleged violation or breach and demand that the grantee cure the same within a reasonable time, which shall not be less than ten days in the case of an alleged failure of the grantee to pay any sum or other amount due the grantor under this article or the grantee's franchise and 30 days in all other cases. If the grantee fails either to cure the alleged violation or breach within the time prescribed or to commence correction of the violation or breach within the time prescribed and thereafter diligently pursue correction of such alleged violation or breach, the grantor shall then give written notice of not less than 14 days of a public hearing to be held before the Council. Said notice shall specify the violations or breaches alleged to have occurred. At the public hearing, the Council shall hear and consider relevant evidence and thereafter render findings and its decision. In the event the Council finds that a material violation or breach exists and that the grantee has not cured the same in a satisfactory manner or has not diligently commenced to cure such violation or breach after notice thereof from the grantor and is not diligently proceeding to fully cure such violation or breach, the Council may impose penalties from any security fund required in a franchise agreement or may terminate the grantee's franchise and all rights and privileges of the franchise. If the city chooses to terminate the grantee's franchise, the following additional procedure shall be followed:

- (1) The city shall provide the grantee with written notice of the city's intention to terminate the franchise and specify in detail the reason or cause for the proposed termination. The city shall allow the grantee a minimum of 15 days subsequent to receipt of the notice in which to cure the default.
- (2) The grantee shall be provided with an opportunity to be heard at a regular or special meeting of city prior to any final decision of the city to terminate the grantee's franchise.
- (3) In the event the city determines to terminate the grantee's franchise, the grantee shall have an opportunity to appeal said decision in accordance with all applicable laws.
- (4) If a valid appeal is filed, the franchise shall remain in full force and affect while said appeal is pending, unless the term of the franchise sooner expires.

(Ord. No. 99-1998, § 1100.150, 6-23-1998)

Sec. 66-76. Force majeure; grantee's inability to perform.

In the event the grantee's performance of any of the terms, conditions or obligations required by this article or a franchise granted hereunder is prevented by a cause or event not within the grantee's control, such inability to perform shall be deemed excused for the period of such

inability and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this section, causes or events not within the control of the grantee shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, restraints imposed by order of a governmental agency or court, failure or loss of utilities, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides and fires.

(Ord. No. 99-1998, § 1100.155, 6-23-1998)

Sec. 66-77. Extended operation and continuity of services.

Upon termination or forfeiture of a franchise, the grantee shall remove its cable, wires, and appliances from the streets, alleys, or other public places within the service area if the city so requests. Failure by the grantee to remove its cable, wires, and appliances as referenced herein shall be subject to the requirements of section 66-36.

(Ord. No. 99-1998, § 1100.165, 6-23-1998)

Sec. 66-78. Receivership and foreclosure.

(a) A franchise granted hereunder shall, at the option of the grantor, cease and terminate 120 days after appointment of a receiver or receivers or trustees, to take over and conduct the business of the grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days, or unless:

- (1) Such receivers or trustees shall have, within 120 days after their election or appointment, fully complied with all the terms and provisions of this article and the franchise granted pursuant hereto, and the receivers or trustees within said 120 days shall have remedied all the defaults and violations under the franchise and/or this article or provided a plan for the remedy of such defaults and violations which is satisfactory to the grantor; and
- (2) Such receivers or trustees shall, within said 120 days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the franchise and this article.

(b) In the case of a foreclosure or other judicial sale of the franchise property, or any material part thereof, the grantor may give notice of termination of any franchise granted pursuant to this article upon the grantee and the successful bidder at such sale, in which the event the franchise granted and all rights and privileges of the grantee hereunder shall cease and terminate 30 days after such notice has been given, unless:

- (1) The grantor shall have approved the transfer of the franchise in accordance with the provisions of the franchise and this article; and
- (2) Such successful bidder shall have covenanted and agreed with the grantor to assume and be bound by all terms and conditions of the franchise.

(Ord. No. 99-1998, § 1100.170, 6-23-1998)

Sec. 66-79. Rights reserved to grantor.

In addition to any rights specifically reserved to the grantor by this article, the grantor reserves to itself every right and power which is required to be reserved by a provision of any ordinance or under the franchise.

(Ord. No. 99-1998, § 1100.175, 6-23-1998)

Sec. 66-80. Severability.

If any provision of this article is held by any governmental authority of competent jurisdiction, to be invalid as conflicting with any applicable laws now or hereafter in effect, or is held by such governmental authority to be modified in any way in order to conform to the requirements of any such applicable laws, such provision shall be considered a separate, distinct, and independent part of this article, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such applicable laws are subsequently repealed, rescinded, amended or otherwise changed, so that the provision hereof which had been held invalid or modified is no longer in conflict with such laws, said provision shall thereupon return to full force and effect and shall thereafter be binding on the grantor and the grantee, provided that the grantor shall give the grantee 30 days' written notice of such change before requiring compliance with said provision or such longer period of time as may be reasonably required for the grantee to comply with such provision.

(Ord. No. 99-1998, § 1100.185, 6-23-1998)