

ORDINANCE NO. 2006-58

AN ORDINANCE AMENDING CHAPTER 5, TITLE 4 OF THE GENEVA CITY CODE BY PROVIDING FOR THE FRANCHISING AND REGULATION OF CABLE TELEVISION SYSTEMS AND MULTICHANNEL VIDEO COMMUNICATIONS SYSTEMS IN THE CITY OF GENEVA, KANE COUNTY, ILLINOIS

WHEREAS, municipalities of the State of Illinois are authorized pursuant to the Illinois Compiled Statutes Chapter 65, Section 5/11-42-11 *et seq.* to franchise community antenna television services; and

WHEREAS, the City of Geneva is authorized pursuant to the Cable Communications Policy Act of 1984, [P.L. 98-549], the Cable Television Consumer Protection and Competition Act of 1992 [P.L. 102-835] and the Telecommunications Act of 1996 [P.L. 104-104] now or hereafter amended, to regulate cable television within its boundaries;

WHEREAS, the City Council of the City of Geneva desires to amend the provisions of Chapter 5, Title 4 of the Geneva City Code by replacing the text therein with the following provisions; and

WHEREAS, this ordinance shall take effect immediately upon its passage due to the urgency of implementing amended Cable Communications Regulations as a result of the existing temporary moratorium on the construction of certain above ground and under ground utility installations.

NOW, THEREFORE BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF GENEVA, KANE COUNTY, ILLINOIS as follows:

Section 1 Amendment and Short title

Chapter 5 (Cable Communications) of Title 4 of the Geneva City Code is and the same is hereby amended by substituting, instantler, the following ordinance provisions which shall be known and may be cited as the "City of Geneva Cable and Multichannel Video Communications Ordinance."

Section 2 Purposes

The purpose of this Ordinance is to:

- A. Provide for the franchising and regulation of cable television systems and multichannel video communications systems within the City of Geneva; and
- B. Provide for the payment of franchise fees and multichannel video communications services fees based upon Gross Revenues and other valuable consideration for the costs associated with the use of municipal property, public streets, public ways, easements and other public lands, and to compensate the City

for costs incidental to the award and implementation of any and all cable television and multichannel video communications franchises; and

- C. Provide for the regulation under this Ordinance by the City Council of rates for the delivery of basic cable service and rates for any associated equipment or services charged by Grantees as allowed by applicable law; and
- D. Provide for the development of cable television and multichannel video communications as a means to improve communication by and between and among the citizens, businesses, organizations, and public institutions of the City; and
- E. Provide Grantees with standards for conducting work or construction of facilities in municipal rights-of way;
- F. Provide customer service standards and consumer protection provisions which protect the public welfare and public interest;
- G. Provide remedies and prescribe penalties for violation of this Ordinance and any Franchise granted hereunder.

Section 3 Definitions

For the purpose of this chapter the following terms, phrases, words, and their derivations shall have the meaning given herein unless the context clearly indicates that another meaning is intended. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The word "may" is permissive.

"Act" means the Cable Communications Policy Act of 1984 [P.L. 98-549], as amended by the Cable Television Consumer Protection and Competition Act of 1992 [P.L. 102-835] and the Telecommunications Act of 1996 [P.L. 104-104], now or hereafter amended.

"Affiliate" means any Person that directly or indirectly owns or controls a Grantee, any Person that a Grantee directly or indirectly owns or controls or any Person under common ownership or control with a Grantee.

"Basic Cable Service" means all Subscriber services provided by the Grantee in one or more service tiers for an established regular monthly fee, which includes at a minimum the delivery of local broadcast stations, and public, educational and government access channels. Basic Service does not include optional program and satellite service tiers, a la carte services, to the extent that such services are not Basic Cable Service under FCC rules, per channel, per program, or auxiliary services for which a separate charge is made. However, Grantee may include other satellite signals on the Basic Service tier.

“Cable and Multichannel Video Communications Ordinance” means the City of Geneva Cable and Multichannel Video Communications Ordinance (see “Ordinance”)

“Cable Operator” means any Person or Persons, including but not limited to, corporations, partnerships, and joint ventures, who provide Cable Services through means of a Cable System, or any Person or Persons who manage, control, coordinate, or direct the operations of a Cable System.

"Cable Service" means the one-way transmission to subscribers of (i) video programming or (ii) other programming service, and Subscriber interaction, if any, which is required for the selection or use of such programming or other programming service.

“Cable System” or “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 (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any public Right-of-Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Telecommunications Act of 1996, except that such facility shall be considered a Cable System (other than for purposes of Section 621 (c)) to the extent that 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; (D) an open video system that complies with Section 653 of the Telecommunications Act of 1996 (P.L. 104-104) ; or (E) any facilities of any electric utility used solely for operating its electric utility services.

“City” means the City of Geneva, Illinois and all the territory within its present and future corporate boundaries.

“City Administrator” means the City Administrator of the City of Geneva, Illinois, or his or her designee.

“City Council or Council” means the City Council of the City of Geneva, Illinois.

“Channel” means a signaling path provided by a cable communications system to transmit signals of any type from a Subscriber terminal to another point in the cable communications system.

“Complaint” means any written or verbal communication from any Person, by telephone, or by electronic mail, from any individual, business, unit of government, or institution to the City or a Grantee regarding a matter or matters pertaining to the service or other function of the Cable System or the Franchise.

“Construct” means the installation of lines, fibers, or facilities that are in or cross any of the Public Streets or Public Ways within the City’s corporate limits for use as part of a Multichannel Video Communications System or the direct or indirect connection of other

facilities to previously existing lines, fibers, or facilities that are in or cross any Public Streets or Public Ways within the City's corporate limits for use as a Multichannel Video Communications System.

"Converter" means an electronic device provided by the Grantee to Subscribers for the purpose of converting signals transmitted by the Cable System to a form that can be received by a Subscribers' television set or video display.

"Dwelling Unit" means a single-family or multi-family residential place of occupancy or business place of occupancy.

"Educational Access Channel" means a non-commercial Educational Access Channel or Channels set aside and so designated for the use of Schools and related educational institutions.

"FCC" means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

"Franchise" means the non-exclusive, revocable rights allowed to any Grantee as described hereunder, or the granting of authority as described in a Franchise Agreement entered into between the City and a Grantee, to own, operate, construct, reconstruct, upgrade, dismantle, test, and use a Cable System or Multichannel Video Communications System along the Public Streets and Public Ways in the City, and is not intended to include any license or permit required for the privilege of transacting and carrying on a business within the City as may be required by other ordinances and laws of the City.

"Franchise Agreement" or "Multichannel Video Communications Service Agreement" means an agreement executed by the City and a Cable Operator or Multichannel Video Communications Service Provider pursuant to this Ordinance.

"Franchise Fee" means any assessment imposed herein by the City on a Grantee solely because of its status as a Grantee. The term "Franchise Fee" does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed upon both utilities and Cable Operators or their services) but not including a tax, fee, or assessment which is unduly discriminatory against the Grantee or cable Subscribers; capital costs which are required by the Franchise to be incurred by Grantee for the establishment of and operation of Public, Educational, or Governmental Access Facilities; requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, liquidated damages; or any fee imposed under Title 17, U.S. Code.

"Government Access Channel" means a non-commercial Channel or Channels set aside and so designated for the use of units of local government, as designated by the corporate authorities of the City of Geneva.

“Grantee” means any Person or Persons, including corporations, limited liability companies, partnerships, associations, joint ventures, or organizations of any type granted a Franchise hereunder, and its agents, employees, subsidiaries, assignees, transferees, or lawful successors.

“Grantor” means the City of Geneva, Illinois.

“Gross Revenues” means all revenues received by the Grantee or its Affiliates, which are derived from or which are attributable to the operation of Grantee’s Cable System/Multichannel Video Communications System within the Franchise Area, its Affiliates, or any other entity that is a Cable Operator of the System to provide Cable Services/Multichannel Video Communications Services, except where such revenues must be excluded pursuant to federal or state law, except those taxes and fees as specifically stated hereinbelow, and encompasses revenues that may develop in the future, whether or not anticipated.. Gross Revenues shall include by way of illustration and without limitation, fees for any Multichannel Video Communications Service, Cable Service, Basic Cable Service, Cable Programming Service, premium services, and pay-per-view services; change-in-service fees; and charges related for any equipment; Installation, disconnection, and reconnection fees; service call fees; game Channel fees; and auxiliary Channel equipment lease, rental, or sales fees, remote controls, Converter boxes, additional outlets, and other customer premises equipment; Administrative fees; Advertising revenues (including any commissions received by a third party); Revenue from “Infomercials” and home shopping Channels; revenues from program guides, and revenues from bank-at-home Channels. Other revenue not specifically identified with a particular Subscriber may be pro-rated based upon the proportion of Subscribers in the Franchise Area to the total number of Subscribers served by the Grantee in the area from which advertising, Home Shopping, and other non-Subscriber specific revenues were derived. Franchise Fees shall be recovered based upon the fair value of remuneration. This sum shall not include any taxes of general applicability on services furnished by the Grantee herein imposed directly upon any Subscriber by the State of Illinois, Kane County, municipal or other governmental unit and collected by the Grantee on behalf of said governmental unit. A Franchise Fee is not such a tax, and Franchise Fee expenses may not be deducted in determining the amount of the fee due to the City.

“Headend” means the control center of a Cable System or Multichannel Video Communications System, where incoming signals are amplified, converted, processed, and combined into a common cable for transmission to Subscribers. Headend usually includes antennas, preamplifiers, frequency converters, demodulators, processors, servers, and other related equipment.

“Installation” means the connection of the System from Subscriber Drop cables to subscribers' terminals.

“Leased Access Channel” means a cable television Channel or Channels or parts thereof designated for cable casting which is provided by means of a lease arrangement for cablecast air time between the Cable Operator and the lessee. Shall include without limitations all use pursuant to Section 612 of the Act (47 U.S.C. §532).

“May” is permissive.

“Monitoring” means observing a communications signal, or the absence of a signal, where the observer is neither the Subscriber nor the programmer, whether the signal is observed by visual or electronic means, for any purpose whatsoever; provided monitoring shall not include system-wide, non-individually addressed sweeps of the system for purposes of verifying system integrity, controlling return paths transmissions, or billing for pay services.

“Multichannel Video Communications Provider” or “Provider”, means a Person who meets one or more of the following criteria: 1) The Person is a Cable Operator as such term is defined in Title VI of the Telecommunications Act of 1996, 47 U.S.C. §521 and following, or is otherwise required to obtain a Franchise as such term is defined herein; 2) The Person is an “Open Video System Operator” as such system is defined in Title VI of the Telecommunications Act of 1996 and implementing regulations, 47 U.S.C. §573; 3) The Person provides Multichannel Video Communications Service where such service is transmitted in whole or in part via lines or wires that are in or cross any of the Public Streets or Public Ways within the corporate limits of the City. The preceding sentence shall apply whether the provider owns, leases, or otherwise obtains the right to use such wires or lines including wires or lines of a telecommunications provider used pursuant to tariff or otherwise for such purpose; 4) The Person provides Multichannel Video Communications Service and is otherwise required to obtain a Franchise or Multichannel Video Communications Service Agreement granting similar permissions under the Geneva City Code, state law, or federal law.

“Multichannel Video Communications Service” or “Service” means multiple channels of video programming where some or all of the video programming is generally considered comparable to programming provided by a television broadcast station, regardless of the technology used to provide it, including Internet protocol technology. Multichannel Video Communications Service specifically includes, but is not limited to, “Cable Service” as such term is defined in Title VI of the Telecommunications Act of 1996 and hereinabove. This definition does not include video programming provided by a commercial mobile service provider as such is defined in 47 U.S.C. §332(d).

“Multichannel Video Communications Service Agreement” or “Franchise Agreement” means an agreement executed by the City and a Cable Operator or Multichannel Video Communications Service Provider pursuant to this Ordinance

“Multichannel Video Communications Services Fee” – see “Franchise Fee”

“Multichannel Video Communications Service” or “System” means 1) A “Cable System” as such term is defined in Title VI of the Telecommunications Act of 1996, 47 U.S.C. §522(6); 2) An Open Video System as defined in Title VI of the Telecommunications Act of 1996 and implementing regulations, specifically, 47 CFR §76.1500(A); 3) A system which provides Multichannel Video Communications Service where such service is transmitted in whole or in part via wires or lines that are in or cross any Public Streets

or Public Ways within the corporate limits of the City. The preceding sentence shall apply whether the Provider owns, leases, or otherwise obtains the right to use such wires or lines, including wires or lines of a telecommunications providers used pursuant to tariff or otherwise for such purpose; and 4) any other system providing Multichannel Video Communications Service within the corporate limits of the City where under applicable law a Franchise or similar permission or authorization from the City is required.

“Normal Business Hours” means those hours during which businesses are normally open to serve customers. In all cases, normal business hours must include some evening hours at least one night per week, and some weekend hours.

“Normal Operating Conditions” means those service conditions that are within the control of the Grantee. Normal Operating Conditions includes those conditions which are ordinarily under the control of the Grantee including, but not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System. Normal Operating Conditions excludes those conditions which are not within the control of Grantee, including, but not limited to, natural disasters, civil disturbance, power outages, telephone network outages, and severe or unusual weather conditions.

“Ordinance” means the City of Geneva Cable and Multichannel Video Communications Ordinance as may be amended from time to time.

"Person" means any individual, partnership, corporation, limited liability partnership, limited liability corporation, association, joint stock company, trust, or governmental entity.

“Public Access Channel” means a cable television Channel or Channels specifically designated as a Channel or Channels available to the public for the production of non-commercial programming as subject to applicable law.

“Public Street” means the surface, the air space above the surface, and the area below the surface of any Public Street, road, highway, lane, path, alley, sidewalk, boulevard, drive, or bridge, now or hereafter held by the City. No reference herein, or in any Franchise, to the Public Street shall be deemed to be a representation or a guarantee by the City that its title or interest to any property is sufficient to permit its use for such purpose, and a Grantee shall, by the use of such terms, be deemed to gain only such rights to use property in the City as the City may have the undisputed right and power to give.

"Public Way" means, except where expressly limited by this chapter or a Franchise and, in any event, only to the extent necessary to permit the installation and maintenance of a Cable System, the surface, the air space above the surface, and the area below the surface of any public driveway, conduit, tunnel, park, parkway, square, waterway, utility easement or other public right-of-way now or hereafter held by, or dedicated to, the City. No reference herein to the Public Way shall be deemed to be a representation or guarantee by the City that its title or interest in any property is sufficient to permit its use

for such purpose, and a Grantee shall, by the use of such term, be deemed to gain only such rights to use property in the City as the City may have the right and power to give.

“Service Area” means the corporate limits of the City of Geneva including all territory thereafter annexed to the City

“Service Call” means Grantee’s on-site visits to a Subscriber’s residence regarding Cable Service or Multichannel Video Communications Service.

“Service Interruption” or “Outage” means the loss of either picture or sound or both for any channel for single or multiple subscriber(s).

“Shall” is mandatory.

“Subscriber” means any Person who legally receives one or more of the services provided by a Grantee’s Cable System/Multichannel Video Communications System, and does not further distribute such services.

“Subscriber Drop” means a cable which connects the tap of a feeder cable to a ground block at the Subscriber’s premises.

“User” means a party utilizing a cable television system or multichannel video communications system channel for purposes of production or transmission of material to subscribers, as contrasted with receipt thereof in a subscriber capacity.

Section 4. Rights and privileges of Grantee

- (a) Any cable television franchise or Multichannel Video Communications Service Agreement granted by the City shall grant to the Grantee the right and privilege to erect, construct, operate, and maintain in, upon, along, across, above, over, and under the Public Streets and Public Ways now in existence and as may be created or established during its terms any poles, wires, cable, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation of a Cable System/Multichannel Video Communications System to provide Cable Service/Multichannel Video Communications Service, but only in strict compliance with the provisions of such Franchise or Multichannel Video Communications Service Agreement and this Ordinance.
- (b) No Person may construct a Cable System/Multichannel Video Communications System in the City to provide Cable Service/Multichannel Video Communications Service without first obtaining a Franchise or Multichannel Video Communications Service Agreement authorizing the construction of such a system.

- (c) No Cable Operator/Multichannel Video Communications Provider may provide Cable Service/Multichannel Video Communications Service to any Person in the City unless a Franchise or Multichannel Video Communications Service Agreement from the City authorizing same is in full force and effect at all times while such service is being provided.
- (d) The City shall act expeditiously upon any request for a Franchise or Multichannel Video Communications Service Agreement so as to allow the prompt provision of service while insuring that the public interest is met, in accordance with applicable state laws, and that residents are not discriminated against based on race, ethnic status, income, area in which they live, or other inappropriate basis.
- (e) Each such Franchise or Multichannel Video Communications Service Agreement shall include the following terms: (1) a Franchise Fee not less than the fee required pursuant to Section 26 of this Ordinance; (2) performance security not less than the security required pursuant to Section 17 of this Ordinance; (3) a Franchise or Multichannel Video Communications Service Agreement term as provided in Section 7 of this Ordinance; and (4) specially designated noncommercial channels for use by local governmental, educational, and the public as provided in Section 37 of this Ordinance.

No Cable System/Multichannel Video Communications System shall be allowed to operate or to occupy or use any Public Street or Public Way for system installation and maintenance purposes without a Franchise or Multichannel Video Communications Service Agreement.

Section 5 Agreement and incorporation of application by reference

- (a) The execution of a Franchise Agreement or Multichannel Video Communications Service Agreement by the Grantee shall be agreement and acknowledgment of the Grantee to be bound by all the terms and conditions contained in this Ordinance.
- (b) Where a Grantee has submitted an application in order to receive an initial Franchise or Multichannel Video Communications Services Agreement, the Grantee shall provide all services specifically set forth in its application and shall provide Cable Service/Multichannel Video Communications Service within the confines of the City; and by its acceptance of the Franchise, the Grantee specifically grants and agrees that its application is thereby incorporated by reference and made a part of the Franchise or Multichannel Video Communications Services Agreement.

Section 6 Service Area

Each Franchise or Multichannel Video Communications Service Agreement shall be for the incorporated area of the City, including all territory thereafter annexed to the City.

Section 7 Duration and acceptance of Franchise or Multichannel Video Communications Service Agreement

Any Franchise or Multichannel Video Communications Service Agreement and the rights, privileges and authority hereby authorized shall take effect and be in force from and after the signing of a Franchise Agreement or Multichannel Video Communications Service Agreement by the City, and shall continue in force and effect for a term to be specified in the Agreement. A Franchise Agreement or Multichannel Video Communications Services Agreement shall not become effective by either a date certain established in the Agreement, or the date upon which both parties have signed and executed the Agreement if a date certain is not specifically mentioned.

Section 8 Franchise or Multichannel Video Communications Services Agreement renewal

- (a) To the extent applicable, current federal procedures and standards pursuant to 47 U.S.C. §546 shall govern the renewal of any Franchise or Multichannel Video Communications Service Agreement awarded under this Ordinance.
- (b) In the event that Section 626 of the Cable Act (47 U.S.C. §546) is repealed, and no successor is enacted, then the City and the Grantee shall follow the terms and conditions of 47 U.S.C. §546 as if it were still in effect.

Section 9 Franchise Agreement or Multichannel Video Communications Service Agreement review and modification

- (a) To the extent applicable, the modification provisions of the Cable Act (47 U.S.C. §545), as the same may be amended from time to time, shall govern the procedures and standards for modification of a Franchise or Multichannel Video Communications Services Agreement. The Grantee may file a request for modification with the City in accordance with said modification provisions at any time during the term of the Franchise.
- (b) To the extent that the modification provisions of the Cable Act, as the same may be amended from time to time, are repealed or otherwise not applicable, a Franchise or Multichannel Video Communications Services Agreement may be modified to the extent permitted by applicable law, according to the standards set forth in Subsection (c) below and in other applicable provisions of this Ordinance.
- (c) Any modification to a Franchise Agreement or Multichannel Video Communications Services Agreement shall require the approval of the City Council in the form of an ordinance.

Section 10 Rights reserved to the City.

- (a) The City hereby expressly reserves the following rights which shall not be deemed to be waived or abrogated by any Franchise granted pursuant to this Ordinance:
1. To exercise its governmental powers, now or hereafter, to the full extent that such powers may be vested in or granted to the City.
 2. To adopt, in addition to the provisions contained herein, in any Franchise Agreement or Multichannel Video Communications Services Agreement, and in any applicable ordinance, such additional regulations as it shall find necessary in the exercise of its police power. Any conflict between the provisions of a Franchise or Multichannel Video Communications Services Agreement and any other present or future lawful exercise of the City's police powers affecting the public health, safety, and welfare, shall be resolved in favor of the latter, provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof, any Franchise Agreement, Multichannel Video Communications Services Agreement, or applicable state and federal laws, rules and regulations.
 3. To amend this Ordinance or any Franchise Agreement or Multichannel Video Communications Services Agreement pursuant to Section 9 of this Ordinance, to require reasonable and appropriate modifications in a Grantee's Franchise Agreement, or Multichannel Video Communications Services Agreement of a nature that would not result in effectively terminating same; provided that the City Council shall not make any amendments or modifications to this Ordinance or a Franchise Agreement, or Multichannel Video Communications Services Agreement granted hereunder which would alter the provisions concerning renewal or revocation contained herein, or which would materially impact the terms and conditions of the Franchise Agreement or Multichannel Video Communications Services Agreement to the detriment of the Grantee.
 4. To renegotiate the terms of any Franchise or Multichannel Video Communications Services Agreement granted pursuant to this Ordinance should section(s) of the Ordinance or Franchise Agreement or Multichannel Video Communications Services Agreement be rendered void by the FCC, or by subsequent changes in applicable federal or state laws.

Section 11 Use of existing facilities

A Grantee shall utilize existing poles, conduits, or other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities in the Public Streets or Public Ways or on privately owned property within the City without the written approval of the City or the property owner.

Section 12 Initial Cable System/Multichannel Video Communications System Construction

(a) Initial Franchises/Initial Multichannel Video Communications System - Required Documents and Construction Schedule

- (1) Upon accepting an initial Franchise or Multichannel Video Communications Service Agreement, a Grantee shall, within sixty (60) days, file the documents required to obtain all necessary federal, state, and local licenses, permits, and authorizations required for the conduct of its business, and shall submit monthly reports to the City Council on progress in this respect until all such documents are in hand. Failure of the Grantee to pursue all necessary steps to secure the aforementioned authorizations with due diligence shall constitute a violation of this Ordinance.
- (2) Franchise applications shall include a general timetable for construction of the Cable System/Multichannel Video Communications System, including commencement of Cable Service/Multichannel Video Communications Service to Subscribers. Said timetable shall be incorporated into the Franchise Agreement or Multichannel Video Communications Services Agreement and shall be enforceable as to the Grantee under the provisions of this Ordinance.
- (3) Within ninety (90) days after accepting a Franchise or Multichannel Video Communications Services Agreement, the Grantee shall furnish the City a copy of the preliminary engineering drawings and an operating construction schedule setting forth target dates by areas for construction activity. The drawings and schedule shall be updated whenever substantial changes become necessary. For a Multichannel Video Communications System which is providing Multichannel Video Communications Service over the system plant of an existing common carrier, the requirements of this subsection shall apply.
- (4) Every two (2) months after the start of construction, or more frequently if requested by the City, the Grantee shall furnish the City Council a report on progress of construction until complete. The report shall include a map that clearly defines the areas wherein Cable Service/Multichannel Video Communications Service to Subscribers is available.

(b) New construction timetable.

- (1) Within two (2) years from the date of the award of an initial Franchise or Multichannel Video Communications Services Agreement, the Grantee must make Cable Television Service/Multichannel Video Communications Service available to every Dwelling Unit within the Franchise Area.

- a. The Grantee must make Cable Television Service/Multichannel Video Communications Service available to at least 20 percent (20%) of the Dwelling Units within the Service Area within six (6) months from the date of the award of the Franchise.
 - b. The Grantee must make Cable Television Service/Multichannel Video Communications Service available to at least 50 percent (50%) of the Dwelling Units within the Franchise Area within one (1) year from the date of the award of the Franchise.
- (2) The Grantee, in its application, may propose a timetable of construction which will make Cable Service/Multichannel Video Communications Service available in the Service Area sooner than the above minimum requirements, in which case said schedule, will be made part of the Franchise Agreement or Multichannel Video Communications Services Agreement, and will be binding upon the Grantee.
- (3) Any delay beyond the terms of this timetable, unless specifically approved by the City, will be considered a violation of this Ordinance for which the provisions of Section 43 shall apply, as determined by the City.
- (4) Upon a showing of legal, technical or other valid causes that make it impossible or unreasonable for the services provided for in this Section to be furnished by a Grantee, the City Administrator may give time extensions. Any such extensions shall be in writing and in response to a request in writing by the Grantee with detailed justification.
- a. A Grantee will not deny access to Cable Service or Multichannel Video Communications Service within the City because of the income or minority status of the residents within the City.
 - b. A Grantee's construction, operation, maintenance, repair and upgrade of its Cable System or Multichannel Video Communications System within the Service Area is subject to the following technical and operational limitations: (A) for periods of Force Majeure; (B) for periods of delay caused by the City; (C) for periods of delay resulting from Grantee's inability to obtain authority to access the Public Streets or Public Ways in the Service Area; (D) in areas where developments or buildings are subject to claimed exclusive arrangements with other providers; (E) in developments or buildings that Grantee cannot access under reasonable terms and conditions after good faith negotiation, as determined by the Grantee; (F) in areas, developments or buildings where a Grantee is unable to provide video service for technical reasons or that require non-standard facilities that are not available on a

commercially reasonable basis; and (G) in areas where the occupied residential household density does not meet average density (average density is equal to or greater than twenty (20) occupied residential dwelling units per mile as measured in strand footage from the nearest technically feasible point on the active network trunk or feeder line).

Section 13 Line Extensions

Following completion of construction within the Service Area, each Grantee shall extend its Cable System/Multichannel Video Communications System and make Cable Service/Multichannel Video Communications Service available to areas newly annexed by the City which do not yet receive Cable Service/Multichannel Video Communications Service. A Grantee shall extend its Cable System/Multichannel Video Communications System along Public Streets or parts of Public Streets of newly annexed areas, beginning at the boundary of the prior Service Area or at any trunk or feeder line extension beyond the prior Service Area within one (1) month after any such Public Street reaches a minimum density of twenty (20) Dwelling Units per strand footage mile. Where possible, such installation shall be concurrent with the installation of utility lines to newly annexed developing areas.

A Grantee shall extend and make Cable Service/Multichannel Video Communications Service available to any isolated resident located within the Franchise Area requesting connection at the standard connection charge, if the connection to the isolated resident would require no more than a standard one hundred twenty-five (125) foot drop line.

Where the proposed extension is longer than one hundred twenty-five (125) feet, the Grantee shall provide an estimate of its costs required to extend service to the potential Subscriber.

Upon agreement of the Subscriber to pay such costs, the Grantee shall then extend service. The Grantee may require advance payment or a satisfactory assurance of payment. In the event the area subsequently reaches the density required for mandatory extension, such payments shall be refunded to the Subscriber.

Section 14 Use of Public Streets and Public Ways

A Grantee shall follow the provisions and requirements of Title 8, Chapter 1, Sections 1-5 of the Geneva City Code regarding the use of Public Streets and Public Ways.

Section 15 System Construction Requirements

The following construction standards shall apply to all Grantees operating a Cable System/Multichannel Video Communications System within the Franchise Area:

- (a) Construction, installation and maintenance of the Cable System/Multichannel Video Communications System shall be performed in an orderly and workmanlike manner. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.
- (b) The Grantee shall at all times comply with the most recent version adopted by the City of:
 - 1. National Electrical Safety Code (National Bureau of Standards);
 - 2. National Electrical Code (National Bureau of Fire Underwriters);
 - 3. Applicable FCC or other federal, state and local regulations.

A Grantee shall allow the City to make inspections of any of Grantee's facilities and equipment located in the ROW at any time upon one (1) business day's prior notice, or in the case of emergency, upon demand without prior notice.

- (c) In any event, the System shall not endanger or interfere with the safety of persons or property in the Service Area or other areas where the Grantee may have equipment located.
- (d) Any antenna structure used in the System shall comply with construction, marking, and lighting of antenna structure, required by the United States Department of Transportation.
- (e) All towers, antennas, satellite receiving stations, and other exposed equipment, including Subscriber Drops and power supplies of Grantee used in the provision of Cable Service/Multichannel Video Communications Service shall be properly grounded in accordance with the National Electrical Code.
- (f) All working facilities and conditions used during construction, installation and maintenance of the System shall comply with the standards of the Occupational Safety and Health Administration and the Illinois Department of Labor.
- (g) The Grantee regularly shall check radio frequency leakage at reception locations for emergency radio services to prove that no interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no interference to airborne navigational reception in the normal flight patterns. Applicable FCC rules and regulations shall govern.

- (h) A Grantee shall maintain equipment capable of providing standby power to its System for a minimum of four (4) hours.

Section 16 Notices

- (a) All notices from the Grantee to the City pursuant to any Franchise or Multichannel Video Communications Services Agreement shall be sent to the Office of the City Administrator. The Grantee shall maintain with the City, throughout the term of the Franchise, an address for service of notices by mail. The Grantee shall maintain a central office to address any issues relating to operating under this Ordinance.
- (b) The City shall provide written notice to the Grantee by means of Certified United States Mail, return receipt requested, overnight mail services (e.g., Federal Express, UPS), electronic mail, or by facsimile transfer (“fax”). Notice shall be deemed to have been given to the Grantee upon the date of transmittal; however, this shall not preclude the City from allowing the Grantee to act upon such notice, where action is applicable, within a specified time period starting from the date of receipt by the party to which the notice was sent.
- (c) In the event that a Grantee is notified to appear at a public meeting regarding matters regarding this Ordinance its Franchise, or its Multichannel Video Communications Services Agreement, including, but not limited to, renewal, modification, and Agreement or Ordinance violations, the City shall not take any final action unless the City Council has:
 - (1) Called a public meeting for the purpose of taking such action as specified above;
 - (2) Complied with the Public Notice provisions of the Open Meetings Act (5 ILCS 120/1 et seq.); and
 - (3) Advised the Grantee in writing by either certified United States Mail or delivery by hand, at least seven (7) days prior to such meeting as to its time, place, and purpose; and
 - (4) The Grantee and any interested Person are given an opportunity to be heard at such meeting.
- (d) Minimum public notice of any public meeting relating to the Franchise or Multichannel Video Communications Services Agreement shall follow state statutory requirements and shall be placed on the Government Access Channel of the Cable System/Multichannel Video Communications System for five consecutive days prior to the meeting.

Section 17 Forms of Security

- (a) A Grantee shall comply with the requirements of Title 8, Chapter 1, Section 1 of the Geneva City Code regarding the posting of security for losses or damages resulting from the work of the Grantee.
- (b) Initial Franchises or Multichannel Video Communications Service Agreements only: Within fifteen (15) days after the award of an initial Franchise or Multichannel Video Communications Service Agreement, the Grantee shall deposit with the City either a cash escrow deposit, a faithful performance bond, or an irrevocable letter of credit from a financial institution running to the City in the penal sum of two hundred thousand dollars (\$200,000.00) which may be used for removal of the Cable System/Multichannel Video Communications System plant in the event of the termination or revocation of a Franchise or Multichannel Video Communications Services Agreement, and a cash security deposit in the amount of ten thousand dollars (\$10,000.00.) The form and content of any such escrow agreement, bond, or letter of credit shall be reviewed by the City Attorney and approved by the City Council.
- (c) If the Grantee fails to pay to the City any compensation within the time fixed herein; or fails to pay to the City any penalties assessed on taxes due and unpaid; or fails to repay the City any damages, costs or expenses which the City incurs as a result of the Grantee's failure to comply with all rules, regulations, orders, permits, and other directives of the City issued pursuant to a Franchise Agreement, Multichannel Video Communications Services Agreement, or which the City is compelled to pay by reason of any act or default of the Grantee in connection with a Franchise; or fails to properly and adequately restore any Public Street, Public Way, public property or private property disturbed by the Grantee's activities; or fails to pay any costs incurred by the City in connection with the award of any Franchise or Multichannel Video Communications Services Agreement or renewal of same; or otherwise fails to faithfully perform the duties and responsibilities of a Franchise or Multichannel Video Communications Services Agreement, then the City may withdraw money from the bond or cash security fund in accordance with the procedures set forth in Subsection (d) below.
- (d) The City shall provide Grantee with written notice informing Grantee that such amounts are due to the City. The written notice shall describe, in reasonable detail, the reasons for the assessment. The Grantee shall have thirty (30) days subsequent to receipt of the notice within which to cure every failure cited by the City or to notify the City that there is a dispute as to whether Grantee believes such amounts are due the City. Such notice by the Grantee to the City shall specify with particularity the basis of Grantee's belief that such monies are not due the City.

Section 18 Liability and insurance

- (a) The Grantee shall maintain and by its acceptance of a Franchise or a Multichannel Video Communications Services Agreement specifically agrees that it will maintain throughout the term of the Franchise or Multichannel Video Communications Services Agreement, general comprehensive liability insurance insuring the Grantee and the City and the City's officers, boards, commissions, elected and appointed officials, agents, and employees, with regard to all claims mentioned hereinbelow in the minimum amounts of:
- (1) \$5,000,000.00 for bodily injury or death to any one Person, within the limit of ten million dollars (\$10,000,000) for bodily injury or death resulting from any one accident
 - (2) \$2,000,000.00 for property damage, including damage to City property, from any one accident;
 - (3) \$2,000,000.00 for all other types of liability resulting from any one occurrence;
 - (4) Workers Compensation Insurance within statutory limits of not less than \$100,000.00.
 - (5) The Grantee shall carry and maintain in its own name automobile liability insurance as reasonably required by the City with respect to owned and non-owned automobiles for the operation of which the Grantee is responsible.
- (b) All policies of insurance required by this Section shall be placed with companies which are qualified to write insurance in the State of Illinois and which maintain throughout the policy term a General Rating of "A-" and a Financial Size Category of "B+XIII" as determined by Best Insurance Rating Services unless otherwise specified by the Franchise Agreement or Multichannel Video Communications Services Agreement.
- (c) Certificates of Insurance obtained by the Grantee in compliance with this Section must be approved by the City Attorney and such insurance policy certificate of insurance shall be filed and maintained with the City Clerk during the term of the Franchise. The Grantee shall immediately advise the City Attorney of any litigation that may develop that would affect this insurance.
- (d) Should the City Attorney find a document to be in non-compliance, then the City Attorney shall so notify a Grantee and Grantee shall be obligated to cure the defect.
- (e) A Grantee may self-insure all or a portion of the insurance coverage and limit requirements required by Subsection (A) of this Section. If Grantee self-insures, it is not required, to the extent of such self-insurance, to

comply with the requirement for the naming of additional insurers under Subsection (e) hereinbelow or the requirements of Subsections (d) and (g) of this Section. If a Grantee elects to self-insure, it shall provide to the City evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage and limit requirements under Subsection (A) of this Section, such as evidence that a Grantee is a “private self insurer” under the Workers Compensation Act.

- (f) Neither the provisions of this Section, nor any damages recovered by the City thereunder, shall be construed to nor limit the liability of the Grantee under any Franchise issued hereunder or for damages.
- (g) Such insurance policies provided for herein shall name the Grantor, its officers, boards, commissions, agents and employees as additional insured, and shall be primary to any insurance carried by the Grantor. The insurance policies required by this Section shall be carried and maintained by the Grantee throughout the term of the Franchise and such other period of time during which the Grantee operates or is engaged in the removal of its cable system. Each policy shall contain a provision providing that the insurance policy may not be canceled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the City, by registered mail, of written notice of such intention to cancel or not to renew.
- (h) If a Grantee uses any subcontractors (“Subcontractors”) to perform any work relating to the Cable System/Multichannel Video Communications System, Grantee will be responsible for supervision, quality control, payment, and insurance of and for all work performed by the Subcontractors. Grantee will insure that all Subcontractors are operating in compliance with all applicable federal and state laws and local ordinances. Subcontractors will be as specified in required permits if the work to be done requires a permit.

Section 19 Indemnification

- (a) The Grantee shall save and hold harmless the City, its Corporate Authorities, officers (elected and appointed), boards, commissions, employees, and agents, and all associated entities of the City now existing or hereinafter created, and their boards, commissions, employees, and agents (hereinafter referred to as “Indemnitees) from and against:
 - (1) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, fees and expenses of attorneys and experts), which may be imposed upon, incurred by or asserted against the Indemnitees by reason of any act or omission of the Grantee, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any

Person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any Person, which may be in any way connected with the construction, installation, operation, maintenance, use or condition of the Cable System/Multichannel Video Communications System caused by Grantee, its subcontractors or agents or the Grantee's failure to comply with any federal, state or local statute, ordinance or regulation.

- (2) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, fees and expenses of attorneys and experts), which are imposed upon, incurred by or asserted against the Indemnitees by reason of any claim or lien arising out of work, labor, materials or supplies provided or supplied to the Grantee, its contractors or subcontractors, for the installation, construction, operation or maintenance of the Cable System/Multichannel Video Communications System. Upon the written request of the City such claim or lien shall be discharged or bonded upon such request.
 - (3) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, fees and expenses of attorneys and, experts), which may be imposed upon, incurred by or asserted against the Indemnitees by reason of any financing or securities offering by Grantee or its Affiliates for violations of any laws, statutes or regulations of the State of Illinois or of the United States, whether by the Grantee or otherwise; excluding therefrom, however, claims which are solely based upon and arise solely out of information supplied by the City to the Grantee in writing and included in the offering materials with the express written approval of the City prior to the offering.
- (b) Damages shall include, but not be limited to, penalties arising out of copyright infringements and damages arising out of any failure by the Grantee to secure consents from the owners, authorized distributors or licensees, or programs to be delivered by the Grantee's Cable System/Multichannel Video Communications System.
 - (c) The Grantor shall give immediate notice to the Grantee of any claim or facts which might give rise to a claim under this Ordinance. Said notice shall state particulars sufficient to identify the claim and shall contain reasonably obtainable information respecting the time, place, and circumstances of the occurrence underlying the claim or potential claim. However, the City shall not be held liable in any way should said notice not be given to the Grantee.

- (d) The Grantee undertakes and assumes for its officers, agents, contractors and subcontractors and employees all risk of dangerous conditions, if any, on or about any City-owned or controlled Public Streets and Public Ways, and the Grantee hereby agrees to indemnify and hold harmless the Indemnitees against and from any claim asserted or liability imposed upon the Indemnitees for personal injury or property damage to any Person arising out of the installation, operation, maintenance or condition of the Cable System/Multichannel Video Communications System or the Grantee's failure to comply with any federal, state or local statute, ordinance or regulation, except for any claim asserted or liability imposed upon the Indemnitees that arises or is related to gross negligence by the Indemnitees.
- (e) In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, the Grantee shall, upon written notice from any of the Indemnitees, at the Grantee's sole cost and expense, resist and defend the same, provided further, however, that the Grantee shall not admit liability in any such matter on behalf of the Indemnitees without the written consent of the City Attorney or his or her designee.
- (f) The City shall give the Grantee prompt notice of the making of any written claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section.
- (g) Nothing in this Ordinance or in any Franchise or Multichannel Video Communications Services Agreement is intended to, or shall be construed or applied to, express or imply a waiver by the City of statutory provisions, privileges or immunities of any kind or nature as set forth in Illinois Statutes, including the limits of liability of the City as exists presently or as may be increased from time to time by the Legislature.

Section 20 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, national origin, income, gender, marital status, sexual preference or age. The Grantee shall comply at all times with all other applicable federal, state and local laws and regulations and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this Ordinance by reference.
- (b) The Grantee shall strictly adhere to the equal employment opportunity requirements of the Federal Communications Commission and of state and local governments, and such may be amended from time to time.
- (c) Privacy.

- (1) A Grantee shall not, nor shall it knowingly permit any person, agency, or entity, without the Subscriber's consent, to tap, or to 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, polling with audience participation, judicial order, or audience viewing surveys to support advertising research regarding viewers where individual viewer behavior cannot be identified.
- (2) In the conduct of providing its services or pursuit of any collateral commercial enterprise resulting therefrom, a Grantee shall take any and all necessary action to prevent an invasion of a Subscriber's or general citizen's right to privacy or other personal rights as such rights are defined by applicable law. A Grantee shall not without lawful court order utilize the Multichannel Video Communications Service System's interactive two-way equipment or capability for unauthorized personal surveillance of any Subscriber or general citizen.
- (3) Except to the extent permitted by law, the Grantee shall not sell or otherwise make available to any third parties, lists of the names and addresses of Subscribers, or any list which identifies, by name, Subscriber viewing habits, or personalized data pertaining to a Subscriber's use of any of Grantee 's services without the express written consent of the Subscriber to which the personalized data pertains. For the purposes of this Section, "personalized data" shall mean the name and address of an individual subscriber directly associated with data obtained on his or her use of specific services provided by or through the Grantee.

Nothing herein shall be construed to prevent, as a normal incident of commercial enterprise, the sale or availability of "non-personalized" or "aggregated data" which is not personalized data as defined herein.

Section 21 Service availability and record request.

The Grantee shall keep a record for at least three (3) years of all requests for service received by the Grantee. Requests for service shall include telephone and written requests for Installations, including new Cable Service/Multichannel Video Communications Service, disconnections, and repairs. This record shall be available for inspection by the City, or its designee, upon reasonable notice, at the Grantee's office located nearest to the City during normal business hours.

Section 22 Availability of books and records

- (a) The City shall have the right, upon reasonable notice to a Grantee and at reasonable times, hours, dates and frequencies, to inspect all or any part of

Grantee's records and documents of every kind in connection with any sums due, all construction and with respect to the Agreement and Grantee shall cooperate in allowing the City to conduct such inspections. Such records shall be available in the business office of Grantee. Where Grantee is unable to locate books or records specific to the Franchise Area at a location in the Chicago metropolitan area, Grantee may maintain such books and records at a remote location with the provision that in the event that the City or its designee requests to inspect such records, Grantee shall permit the inspection of such records within fourteen (14) days of such request.

- (b) The Grantee shall file with the City, upon written request, a semiannual report on construction of areas annexed to the City for the period preceding January 1 and July 1 of each year. Such report shall include information concerning the areas in which construction is completed, the area in which construction is under contract but is not completed, together with a projected completion date for construction in such areas, and such other information as may from time to time be requested by the City.
- (c) A full and complete reproducible set of plans, records, and post-construction maps showing the location of all of its Cable System or Multichannel Video Communications System equipment installed or in use within the City, as built exclusive of Subscriber service drops, shall be provided sixty (60) days after construction is completed. The maps shall be provided in computer readable format of the type used by City's system.
- (d) The Grantee shall file the following reports with the City within sixty (60) days after the end of its fiscal year.
 - 1. A summary list of all complaints received and System "down time" experienced during the year; and
 - 2. A report showing or containing the total number of hours of utilization of each of its interactive channels.

Upon request of the City, A Grantee shall provide the City with a copy of any report on this list within one (1) week of the request.

- (e) A Grantee shall file with the City, within sixty (60) days of each calendar quarter, a certified statement showing itemized "Gross Revenues Derived From the Operation of the System during the preceding quarter, including but not limited to any IP products contained in a bundled product.
- (f) The Grantee shall file within one hundred twenty (120) days of the end of its fiscal year, an annual report certified by its chief financial officer. The Grantee shall file annually with the City, no later than one hundred twenty (120) days after the end of Grantee's fiscal year, copies of all changes in rules, regulations,

terms and conditions established or imposed by Grantee in connection with the establishment, construction, operation, and maintenance of its System. A Grantee shall at all times maintain on file with the City a complete and current schedule showing all service being provided under its Agreement with the City, the fees and charges for each of such services, the charges for connections or disconnections, and any other charges which may be made by Grantee relative to the System. Such schedule shall also show the components of each service package. The filing of any report or the submission of any other document to the City shall be accompanied by the verification of an authorized officer of the Grantee that the information contained in such report or other document is true and correct.

- (g) A Grantee shall file with the City all of its policies in connection with the handling of inquiries, requests, and complaints on a quarterly basis.
- (h) A summary of the previous year's (or in the case of the initial reporting year, the initial year's) activities and development of the Cable System or Multichannel Video Communications System, including, but not limited to services begun or discontinued, total number of Subscribers, and Subscribers added or discontinued during the reporting year. A Grantee may designate this information as a trade secret or as proprietary. The City shall follow the requirements of the Illinois Freedom of Information Act in the utilization of such information.

Section 23 Petitions and Applications to Regulatory Agencies

Copies of all petitions, applications, communications and reports submitted by the Grantee to federal, state or local authorities having jurisdiction in respect to any matters affecting the Cable System/Multichannel Video Communications System in the Franchise Area, and authorized pursuant to this Ordinance or a Franchise Agreement or Multichannel Video Communications Services Agreement or received from such agencies shall be provided to the City within (1) week. The Grantee shall file with the City a list of all responses received to all documents referred to in Section 23.

Section 24 Franchise or Multichannel Video Communications Services Fee

- (a) A Grantee shall pay to the City a Franchise Fee or Multichannel Video Communications Services Fee of not less than five percent (5%) of the Grantee's Gross Revenues or such other maximum amount as allowed by law. If the City desires to increase the Franchise Fee or Multichannel Video Communications Services Fee in that event, then the City shall provide at least sixty (60) days written notice to the Grantee. The City shall impose the same Franchise Fee requirements stated in this Section upon any other similarly situated Cable Operator or Multichannel Video Communications Provider over which the City has jurisdiction to impose such fees.

- (b) The Franchise Fee or Multichannel Video Communications Services Fee payment shall be in addition to any other tax or payment owed to the City by the Grantee and shall not be construed as payment in lieu of municipal property taxes or other state, City or local taxes.
- (c) The Franchise Fee or Multichannel Video Communications Services Fee and any other costs or penalties assessed shall be payable quarterly on a calendar year basis to the City within thirty (30) days after the end of each quarter. The Grantee shall also file a complete and accurate statement, verified by an authorized financial officer of the Grantee of all gross receipts as previously defined within said thirty (30) days.
- (d) The City shall have the right to inspect and be provided copies of the Grantee's income records and the right to audit and to recompute any amounts determined to be payable under this Ordinance. Any additional amount due the City as a result of an inspection shall be paid within thirty (30) days following written notice to the Grantee by the City, which notice shall include a copy of the inspection report. The cost of said inspection, including any travel expenses incurred by the City or its designee where such inspection necessitated travel outside the Chicago metropolitan area, shall be borne by the Grantee if it is properly determined that Grantee's annual payment due to the City for the preceding year is increased thereby by more than four percent (4%), otherwise such costs shall be borne by the City and the Grantee equally.
- (e) In the event that any Franchise Fee or Multichannel Video Communications Services Fee payment or recomputed amount is not made on or before the applicable dates heretofore specified, interest shall be charged from such date at an annual rate of two (2) percentage points (or 200 basis points of interest) over the prime rate cited by as of the date of default.
- (f) The Grantee shall maintain books and records of its operations within the Service Area in sufficient detail to show gross revenue, by service category. Where revenue data is aggregated, such data shall be kept in a manner where it can be pro-rated based on the number of Subscribers in the Service Area. Said books and records shall be retained in accordance with the Grantee's document retention policies, but in no event less than five (5) years.
- (g) In the event that the Franchise or the Multichannel Video Communications Services Agreement is revoked or expires, the Grantee shall file with the City, within thirty (30) days of such revocation or expiration, a statement clearly showing the Gross Revenues received by the Grantee since the end of the previous fiscal quarter. The Grantee shall pay such partial Franchise Fees or Multichannel Video Communications Services Fees due at the time such statement is filed or within thirty (30) days of such revocation or expiration.

- (h) The acceptance by the City of any Franchise Fee or Multichannel Video Communications Services Fee payment shall not in any way be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of any payment be construed as a release of any claim the City may have for further or additional sums payable under the provisions of the Franchise or the Multichannel Video Communications Services Agreement.
- (i) A Grantee shall acknowledge that the Franchise Fee or Multichannel Video Communications Services Fee is not a tax, and that the Franchise Fee or Multichannel Video Communications Services Fee shall be in addition to any and all taxes, other applicable fees or charges that the Grantee or any Affiliate shall be required to pay to the City or to any state or federal agency or authority, all of which shall be separate and distinct obligations of the Grantee and its Affiliates. No part of a Franchise Fee or Multichannel Video Communications Services Fee shall be claimed as a deduction from or credit to any other municipal taxes, fees, or charges except as may be identified and authorized by federal or state law. Provided, however, this Ordinance shall not affect any requirement of a Cable Operator or a Multichannel Video Communications Provider with respect to payment of the City's simplified municipal telecommunications tax as it applies to any telephone service provided by a Cable Operator or Multichannel Video Communications Provider.

Section 25 Annual Gross Revenues reports

The Grantee shall, annually within ninety (90) days after the close of the Grantee's fiscal year, prepare and submit to the City, a statement of Gross Revenues audited by a certified public accounting firm.

Section 26 Requests for service and temporary service drops

- (a) Where a Person living within a newly annexed area of the City requests Installation of Cable Service/Multichannel Video Communications Service, such Installation shall be performed within the terms of the line extension policy stated in Section 13(c) hereinabove.
- (b) Temporary Service Drops: The Grantee shall put forth every effort to bury temporary drops within fourteen (14) working days after placement between April 1 and December 1, weather permitting, unless the Grantee receives permission to delay burial. Temporary drops will be buried by the Grantee as expeditiously as possible, and in no event, will a drop which has been placed between November 15th of the prior year and April 1st of the current year be left unburied beyond May 1st of the same year. Any delays for any other reason than weather, ground conditions, street construction, or system redesign will be communicated to the City and copied to the Subscriber.

- (c) A report including statistics on all temporary Subscriber Drops installed, including “snow drops”, which includes the location, date of installation, and date of burial shall be sent by the Grantee to the City within fourteen (14) calendar days after the end of each calendar quarter.

Section 27 Required services and facilities

- (a) A Grantee shall, as a part of an initial Franchise or Multichannel Video Communications Services Agreement, provide the City with a written description of the Cable System/Multichannel Video Communications System within the Service Area, including technical characteristics, Channel capacity, Channel carriage, and a strand map.
- (b) Any Cable System/Multichannel Video Communications System shall provide active bandwidth dedicated to video transmission without regard to method of delivery, stereo sound reproduction capacity, where a stereo signal is provided by the programmer, and platform expansion capability, without regard to technological format, that enables a Grantee to respond to marketplace conditions for enhanced Cable Services/Multichannel Video Communications Services.
- (c) A Grantee’s Cable System/Multichannel Video Communications System shall be equipped with power generation equipment which starts automatically in the event of a power failure or loss to provide electric service to the Cable System/Multichannel Video Communications System. Battery backup power to the Cable System/Multichannel Video Communications System shall be provided in accordance with Section 14(h). Other portable power generation equipment serving nodes shall have a capacity to operate the Cable System/Multichannel Video Communications System served by that node for at least four (4) hours.

Power generation equipment serving the Headend or other central signal distribution location, such as a central office, shall have a capacity to operate for at least eight (8) hours during a period of electric service interruption.
- (d) A Grantee shall install electronic status Monitoring equipment at locations consistent with the Grantee’s engineering practices.
- (e) A Grantee shall design said Cable System/Multichannel Video Communications System with the capability to provide upstream and downstream transmission capacity. A Grantee shall also operate and maintain said Cable System/Multichannel Video Communications System in a manner which will enable continuous twenty-four (24) hour operation of all services.
- (f) Upon request of the Subscriber, a Grantee shall make available a “parental control” mechanism or device that permits the Subscriber to “lock out” audible and visual

reception of programming of the Subscriber's choice. For purposes of this Ordinance, a Converter or set-top box which contains a microprocessing chip, passcode enabled software, or other software which blocks content based on Subscriber command, or hardware that enables blocking or scrambling of cablecast signals, shall meet the requirements of this Section.

Section 28 Periodic testing and compliance with FCC Standards

- (a) A Grantee shall construct and operate the Cable System/Multichannel Video Communications System to comply with the FCC technical standards as contained in 47 C.F.R. §76, Subpart K as measured at the input to the "Subscriber terminal" as defined at 47 C.F.R. §76.5(v) of the Commission's rules and regulations, as updated and amended from time to time.
- (b) A Grantee shall perform all tests necessary to determine compliance with the FCC technical standards. Tests shall include, at minimum, proof-of-performance tests required by FCC Rule Section 76.601 (47 C.F.R §76.601). Where warranted, additional tests involving specific Subscriber terminals may be required to determine compliance with the FCC technical standards.
- (c) Written records of test results shall be maintained at a Grantee's local office and made available for inspection by the City or its representative, upon request of the City.
- (d) The City or its representative may monitor and facilitate the enforcement of the FCC technical standards referenced herein in accordance with the *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, Report and Order in CS Docket No. 96-85, FCC 99-57, released March 29, 1999* as directed by the City.
- (e) When there have been Complaints made, including during the course of a performance evaluation, or where there exists other evidence, which, in the judgment of the City, in consultation with the Grantee, casts doubt on the reliability or quality of Cable Service or Multichannel Video Communications Service, the City shall have the right and authority to require the Grantee to test, analyze and report on the performance of the system. Such tests shall be required only when the City has reasonable grounds to believe that the Complaints or other evidence require testing to be performed in order to determine the extent to which video and/or audio quality may have been degraded.

The Grantee shall fully cooperate with the City in performing such testing and shall prepare results and a report, if requested, within thirty (30) days after notice. Such report shall include the following information:

- (1) The nature of the Complaint or problem that precipitated the special tests; and
- (2) The system component(s) tested; and
- (3) The equipment used and procedures employed in testing; and
- (4) The method, if any, in which such Complaint or problem was resolved; and
- (5) Any other information pertinent to the tests and analysis which may be required.

If, after receiving Grantee's report, and after the Grantee has completed any corrective action identified in the report, the City determines that reasonable evidence still exists of inadequate Cable System/Multichannel Video Communications System performance, then the City may enlist an independent engineer at Grantee's expense to perform tests and analysis directed toward such suspected failures to meet the requirements of this Ordinance. Grantee shall cooperate and permit such testing.

Section 29 Customer service standards

- (a) A Grantee shall be subject to the following customer service standards consistent with 47 CFR §76.309:
 - (1) A Grantee will maintain a local, toll-free, or collect telephone access line which will be available to its Subscribers 24 hours a day, seven days a week.
 - a. Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.
 - b. After Normal Business Hours, the access line may be answered by a service or 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.
 - (2) 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 as measured on a quarterly basis.

- (3) 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.
- (4) Under Normal Operating Conditions, the customer will receive a busy signal less than three (3) percent of the time.
- (5) Customer service centers and bill payment locations will be open at least during Normal Business Hours and will be conveniently located.
- (6) 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 as 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 within 125 feet of the existing distribution system.
 - 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 either be at a specific time or, at maximum, a four-hour time block during Normal Business Hours. A Grantee may schedule Service Calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.
 - d. A Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If a Grantee 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. The appointment will be rescheduled as necessary, at a time which is convenient for the customer.
- (7) Communications between a Grantee and Subscribers.
 - a. Notification to Subscribers. A Grantee shall provide written information on each of the following areas at the time of Installation 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/Multichannel Video Communications Service.
 - v. Channel positions of programming carried on the system:
and,
 - vi. Billing and complaint procedures, including the address and telephone number of the franchising authority's cable office.
- b. 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 thirty (30) days in advance of such changes if the change is within the control of the Cable Operator or the Multichannel Video Communications Service Provider.

In addition, a Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by paragraph (a)(7)a. of this Section.

Notwithstanding any other provision of Part 76 of the FCC Cable Television Regulations, a Grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, Franchise Fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, state, or franchising authority on the transaction between a Grantee and the Subscriber.

- c. Billing.
- i. 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.
 - ii. In case of a billing dispute, a Grantee must respond to a written complaint from a Subscriber within thirty (30) days.

- d. Refunds. Refund checks will be issued promptly, but no later than either:
 - i. The customer's next billing cycle following resolution of the request, or thirty (30) days, whichever is earlier, or
 - ii. The return of the equipment supplied by a Grantee if service is terminated.
 - e. 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) Nothing in this Section shall be construed to prevent or prohibit:
- (1) A franchising authority and a Grantee from agreeing to customer service standards that exceed the FCC customer service standards;
 - (2) The franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted herein; or
 - (3) The establishment or enforcement of any State or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by the FCC customer service standards.

Section 30 Consumer protection

- (a) In the event that a Subscriber experiences a Service Interruption totaling four (4) hours or more for up to three (3) days in any calendar month, then the Grantee shall provide a credit to that Subscriber equal to one-thirtieth of one month's total fees paid by that Subscriber for each day on which such a Service Interruption occurs. If a Subscriber experiences a Service Interruption totaling four (4) hours or more on four (4) or more days in any calendar month, then the Grantee shall provide a credit to that Subscriber equal to one (1) month's total fees paid by that Subscriber; provided, however, that such credit shall not apply to a Subscriber disconnected because of non-payment or excessive signal leakage. Such credit shall be provided by the Grantee automatically upon notice from that Subscriber of such Service Interruption.
- (b) A Grantee may impose a late, administrative or other fee on a customer for non-payment of a bill in accordance with statutory provisions or judicial decisions.
- (c) The Grantee shall provide advance written or other notice to residents when performing scheduled system construction in the public easements, utility

easements, or otherwise on the residents' private property. Said notice may utilize door hangers, letters, bill stuffers, or personal communications from a Grantee representative to a resident. Further, a Grantee shall use its best efforts utilizing door hangers, letters, or other personal communications to notify residents when performing non-scheduled system construction. Upon completion of a Service Call, Installation, or Installation-related activity, the Subscriber shall receive a notification of the Service Call.

- (d) Identification of customer service representatives and technicians:
 - (1) Identification of Customer Service Representatives and Technicians: Upon telephone contact by a customer, customer service representatives of the Grantee shall identify themselves by first name. Technicians representing the Grantee or its contractors or subcontractors shall wear a company uniform, or display a bona fide company identification badge.
 - (2) Vehicle Identification: Technicians of the Grantee and its contractors or subcontractors shall identify vehicles used for technical services with the name of the Grantee and contractor or subcontractor of the Grantee. Where practicable, such vehicles shall also be identified with the Grantee's name located in a conspicuous place. The type of identification need not be of a permanent nature.
- (e) In the event that a Grantee leases accessory equipment for receiving Cable Service/Multichannel Video Communications Service:
 - (1) A Grantee may assess a reasonable deposit for the acquisition of Cable Service/Multichannel Video Communications Service by a Subscriber, and for the rental of Converter or set-top boxes, remote control, and related equipment necessary for the reception or interdiction of Cable Service/Multichannel Video Communications Service.
 - (2) Upon the termination of Cable Service/Multichannel Video Communications Service by the Subscriber and return of Converter or set-top boxes, remote control units, and related equipment in reasonable condition, deposits for said service and equipment shall be returned to the Subscriber within thirty (30) days of the date that the equipment supplied by the Grantee is returned.
- (f) A Grantee shall adhere to the following Installation standards:
 - (1) A Subscriber shall have the option to connect a standard Subscriber Drop to the Dwelling Unit by either:

- a. Connection of the aerial drop to the Dwelling Unit at a minimum of twelve (12) feet above ground level; or
 - b. Attachment of the drop to the side of the utility pole and buried from the base of the utility pole to the Dwelling Unit.
- (g) A Subscriber shall have the ability to disconnect service at any time at no charge. The Grantee shall cease charging the Subscriber for service on the date service is terminated.
- (h) A Grantee shall be subject to the following Complaint procedures:
 - (1) As Subscribers are connected or reconnected to the System, the Grantee shall, by appropriate means such as a card or brochure, furnish information concerning the procedures for making inquiries or Complaints, including the name, address and telephone number of the department of the Grantee's Cable System/Multichannel Video Communications System operations where inquiries or Complaints are to be addressed.
 - (2) The City, including its staff or designated representative, shall have the authority to investigate Complaints tendered by Subscribers to the City.
- (i) When the City or its designated representative, refers a Complaint from a Subscriber to a Grantee for resolution, a Grantee shall investigate such Complaint within two (2) working days from the date of a Grantee's receipt of such referral. A Grantee's investigation shall include contact to the Subscriber where possible, and a written response to the City, with a copy to the City's designated representative if the Complaint is referred from that source.

At the discretion of the City, the referral may be sent to the Grantee. In such case, the resolution response shall be provided by the Grantee.
- (j) Upon completion of investigation of an unresolved Subscriber Complaint, the City, in accordance with a Franchise Agreement or Multichannel Video Communications Services Agreement, shall provide to a Grantee notice and an opportunity to cure any error, deficiency, or violation of the Franchise Agreement, Multichannel Video Communications Services Agreement, or this Ordinance found in the course of such investigation.
- (k) If a Grantee's response to the Complaint is not satisfactory to the complainant, the complainant shall be referred to a Grantee's appropriate Cable System/Multichannel Video Communications System management personnel or complaint resolution division. Grantee shall make a good faith effort to resolve the Complaint and shall notify the City and its representative, if applicable, in writing of its effort to resolve the Complaint. If a Grantee's management or complaint

resolution division cannot resolve the Complaint, a Grantee shall provide the name, address, and telephone number of the appropriate management personnel at the next level of operations.

- (l) The Grantee shall render efficient service, make a good faith effort to make repairs within twenty-four (24) hours, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall occur during periods of minimum System use.
- (m) The Grantee shall not allow its operations to interfere with television reception of Persons not served by the Grantee, nor shall the Cable System/Multichannel Video Communications System interfere with, obstruct or hinder in any manner the operation of the City's electrical utility and other various utilities serving the residents in the Service Area nor shall the City's electric or other utilities interfere with the Grantee's Cable System/Multichannel Video Communications System.
- (n) A Grantee shall establish a repair service available on a twenty-four (24) hour, seven (7) day a week basis, capable of identifying, locating, and correcting major Cable System/Multichannel Video Communications System malfunctions in an expeditious manner. Said repair service shall be staffed with a workforce of skilled technicians and keep and maintain an inventory of maintenance and repair parts.
- (o) The Grantee shall provide a copy of the Customer Service Standards included in this Section to every Subscriber via a bill insert at least once every calendar year. The Grantee shall also provide a copy of these Customer Service Standards to every new customer within thirty (30) days of connection.

Section 31 Continuity of service mandatory

- (a) In the event of revocation, expiration, or transfer of a Franchise or Multichannel Video Communications Services Agreement between the existing Grantee and a successor Grantee, the existing Grantee shall continue to provide Cable Service/Multichannel Video Communications Service to its Subscribers for a reasonable period of time in the same manner and with the same types of programming, customer service, and repair capabilities under the same terms and conditions as provided by a Franchise Agreement or Multichannel Video Communications Services Agreement and this Ordinance prior to the change in the status of the Franchise or Multichannel Video Communications Services Agreement.
- (b) If there is a change of Franchise or Provider of Multichannel Video Communications Services, or if a new Cable Operator acquires the Cable System or a new Multichannel Video Communications Provider acquires the Multichannel Video Communications System, the Grantee shall cooperate with the City, and new

Grantee in maintaining continuity of service. During such period, the Grantee shall be entitled to the revenues for any period during which it operates the system.

Section 32 Transfer of ownership or control

- (a) Except or as otherwise provided in the Franchise Agreement or a Multichannel Video Communications Services Agreement, the Franchise or Multichannel Video Communications Services Agreement shall not be assigned, transferred, pledged, leased, sublet, hypothecated, or mortgaged, either in whole or in part, disposed of, transferred in trust, pledged, in whole or in part, by voluntary sale, merger, sale and leaseback consolidation or otherwise, or by forced or involuntary sale, without prior consent of the City expressed by ordinance and then on such conditions as therein may be prescribed. Any sale, transfer, or assignment not made according to the procedures set forth in this Ordinance shall render the Franchise Agreement or the Multichannel Video Communications Services Agreement void.

- (b) Any sale, transfer, or assignment authorized by the City shall be memorialized through a transfer agreement between the City, the transferor, and the transferee, and an enabling ordinance. An executed copy of the transfer agreement shall be filed with the City within thirty (30) days after such sale, transfer, or assignment is approved by the City. The transferee must, at a minimum, satisfy the legal, financial, and technical qualifications as established by the Act (47 U.S.C. §537), and character qualifications as established for new Franchise applicants as stated in Section 50 hereinbelow. The Grantee shall assist the City in such inquiry regarding these qualifications.
 - (1) In no event shall a transfer of ownership or control be approved without the successor(s) in interest to the Franchise Agreement or Multichannel Video Communications Services Agreement consenting in writing to comply with the terms and conditions of this Ordinance and the Franchise Agreement or Multichannel Video Communications Services Agreement.

- (c) Unless otherwise stated in a Franchise Agreement or Multichannel Video Communications Services Agreement, prior approval of the City shall be required where ownership or control of more than ten percent (10%) of the right of control of the Grantee is acquired during the term of the Franchise or Multichannel Video Communications Services Agreement in any transaction or series of transactions by a Person or group of Persons acting individually or in concert, none of whom owned or controlled ten percent (10%) singularly or collectively, on the effective date of the Franchise Agreement or Multichannel Video Communications Services Agreement.

The word “control” as used herein is not limited to major stockholders but also includes actual working control in whatever manner exercised. By its acceptance of

the Franchise Agreement or Multichannel Video Communications Services Agreement , the Grantee specifically grants and agrees that any such acquisition occurring without prior legislative approval of the City shall render the Franchise or Multichannel Video Communications Services Agreement void.

- (d) The Grantee may transfer or assign the Franchise or Multichannel Video Communications Services Agreement to a wholly owned subsidiary of the Grantee and such subsidiary may transfer or assign the Franchise back to the Grantee with notice to the City, but without such consent, providing that such assignment is without any release of liability of the Grantee.
- (e) The Grantee shall submit FCC Form 394 or a successor form to the City requesting the City's approval at least one hundred twenty (120) days before the Grantee takes any action toward the transfer of ownership or control of the Cable System/Multichannel Video Communications System. The FCC 394 Form or its successor shall be accompanied by such information as is required in accordance with FCC regulations. The City shall have thirty (30) days from the date of receipt of FCC Form 394 or its successor to request additional information to determine the financial, legal, and technical qualifications of the transferee.
 - (1) In the event that the FCC 394 Form or its successor is facially incomplete, the City shall expeditiously request such information that would complete the application. Upon receipt of the requested information, the effective date of delivery of a complete FCC 394 Form or successor form would commence.

Until such information is received by the City, the one hundred twenty (120) day period shall be tolled in accordance with FCC regulations.

The City shall have one hundred twenty (120) days from the date of delivery of a completed FCC 394 Form or successor form to act upon the request for transfer of ownership or control. The City shall be deemed to have consented to a transfer or ownership or control if its refusal to consent is not communicated in writing to the Grantee within the one hundred twenty (120) day period unless the requesting party and the City agree to an extension of time.

- (f) The consent or approval of the City to any sale, transfer, lease, trust, mortgage, or other instrument of hypothecation shall not constitute a waiver or release of the rights of the City under this Ordinance and the Franchise Agreement or Multichannel Video Communications Services Agreement.
- (g) In the absence of extraordinary circumstances, the City shall not be required to approve any transfer or assignment of a new Franchise or Multichannel Video

Communications Services Agreement prior to substantial completion of construction of the proposed System.

Section 33 City acquisition or removal of Cable System or Multichannel Video Communications System

- (a) In the event that a Franchise or Multichannel Video Communications Services Agreement has been terminated by the City and the City acquires ownership of the Cable System/Multichannel Video Communications System, or effects a transfer of ownership of the Cable System/Multichannel Video Communications System to another Person, any such acquisition or transfer shall be governed by Section 627 of the Cable Act (47 U.S.C. §547) or its successor provision.
- (b) If, upon revocation of a Grantee's Franchise or Multichannel Video Communications Services Agreement, The City does not elect to purchase the Cable System/Multichannel Video Communications System, and no sale of the Cable System/Multichannel Video Communications System is made to a successor Grantee, then the City shall require that Grantee terminate and dismantle the Cable System/Multichannel Video Communications System, including its wiring, equipment, Headend facilities, if the Headend is located within the boundaries of the City, and related appurtenances except that in the event that the Grantee is providing telecommunications and/or information services as defined by the Telecommunications Act of 1996, the Grantee shall not be required to remove those facilities which provide said services. Upon completion of termination and dismantling of the Cable System/Multichannel Video Communications System, Grantee shall, upon direction of the City, restore any property, public or private, to as good as the condition in which it existed prior to the installation of the Cable System/Multichannel Video Communications System, including any improvements made to such property subsequent to construction of the System. Restoring of Public Streets and Public Ways, shall be in accordance with the directions and specifications of the City and all applicable laws. A Grantee shall restore said Public Streets and Public Ways at its expense.

Section 34 Programming

- (a) Categories of Service to be provided: A Grantee shall provide on the Cable System/Multichannel Video Communications System all Over-the-Air broadcast stations required to be carried by federal law or FCC regulations.

A Grantee shall enable Subscribers to receive a wide range and diversity of programming for Subscribers residing in the Service Area. Unless otherwise provided by a Franchise Agreement, or Multichannel Video Communications Services Agreement, categories of programming comparable in quality, mix, and

level to be made accessible by a Grantee to Subscribers shall include without limitation, the following:

- (1) Local, regional, national, and international news programs
 - (2) Local, regional, national, and international sports and sporting events
 - (3) Local, regional, and national weather
 - (4) Educational programming
 - (5) Children's programming
 - (6) Music programming
 - (7) Public affairs programming
 - (8) General entertainment programming, including movies
 - (9) Cultural and foreign language programming
 - (10) Pay-Per-View programming
 - (11) Financial and business-related programming
- (b) A Grantee shall comply with all applicable laws concerning the transmission of obscene programming.
- (c) Unless otherwise provided in a Franchise Agreement or Multichannel Video Communications Services Agreement, a Grantee shall dedicate a sufficient amount of bandwidth capacity on its Cable System/Multichannel Video Communications System for Public Access Channel programming, Educational Access Channel programming, and for Government Access Channel programming. Grantee shall, wherever possible, cluster access programming Channels together.

Where tiers of programming are provided by a Cable Operator or Multichannel Video Communications Service Provider, in no event shall the Grantee place any access programming Channel on any expanded Basic Cable Service, on-demand tier or digital service tier of programming without the express written consent of the City Council.

- (1) Public Access, regardless of whether it is operated by the Grantee, the City, or a non-profit organization, shall be made available to residents of the City on a first-come, first-served, non-discriminatory basis. Any operating rules for the production of Public Access programming, shall prohibit the presentation of any advertising material designed to promote the sale of

commercial products or services, including advertising by candidates for public office, lottery information, and programming in violation of any federal, state, or local law.

- (2) Educational Access bandwidth capacity shall be made available for the use of all Schools serving the residents of the City of Geneva which have been granted a certificate of recognition by the Illinois State Board of Education, and public libraries, free of charge. Consistent with Section 612 of the Cable Act (47 U.S.C. §532), an Educational Access Channel shall not carry paid advertising to the extent that it would be considered a Channel for commercial use.
 - (3) The Governmental Access Channel shall be made available for the use of units of local governments serving the Service Area free of charge. This Channel may be shared between units of local government including the City of Geneva and the City of St. Charles.
- (d) Distribution of Government Produced Programming: In the event that there is more than one (1) provider of Video Service or Cable Service to the Service Area, the City shall not be precluded from providing or causing to be provided, programming produced by the City to any Cable Operator or Multichannel Video Communications Provider if such Cable Operator or Multichannel Video Communications Provider provides a separate, direct link to the point of origination and such Cable Operator or Multichannel Video Communications Provider conveys financial support for such access programming in accordance with the terms of a Franchise Agreement or Multichannel Video Communications Services Agreement and applicable state and federal law. Where a Grantee controls the content of and supervises the production of any access programming, the Grantee shall be exempt from the requirements of this Subsection.
- (e) The content of Public, Educational, and Governmental Access programming shall not be controlled by the Grantee. In the event that a Grantee controls and supervises Public Access programming, the Grantee shall be exempt from the requirements of this Subsection.
- (f) Studios and associated production equipment will be located at Geneva High School in order to meet the public's need for access programming, and to accommodate the specially designated capacity described in this Paragraph. Financial and technical support and replacement and maintenance of equipment for such facilities shall be separately incorporated into the Franchise or a Multichannel Video Communications Services Agreement by mutual agreement between the City and a Grantee.

- (g) A Grantee shall provide Leased Access bandwidth capacity or a portion of Channel space for leased programming consistent with the Cable Act and FCC regulations.

Section 35 Emergency Override

- (a) The Grantee shall configure the Cable System/Multichannel Video Communications System to enable carriage of audio and video emergency override cable casting over all Channels of the Cable System in accordance with FCC regulations. The Emergency Alert System (EAS) or its successor shall transmit a visual EAS message on a designated channel (which may be the Government Access Channel) which will be used for emergency broadcasts of both audio and video and that cable television and Multichannel Video Communications Systems also provide video interruption and audio EAS messages on all Channels with the video informing Subscribers of the designated emergency channel at least daily on at least one channel (which may be the Government Access Channel) of the Cable System or Multichannel Video Communications System. The Grantee shall, in accordance with FCC or other applicable regulations, cooperate with the City on the use and operation by the City of the EAS.
- (b) A Grantee shall maintain all-channel video blanking capability able to be activated remotely by security measures deemed mutually agreeable by the City and the Grantee, test the emergency override system not less than every month, and cooperate with the City on the use and operation of the emergency alert override system.
- (c) In the event of emergencies which are not subject to the provisions of the EAS regulations established by the FCC, the City shall have the ability to create emergency notification by the Mayor or the Mayor's designee by telephone. Upon declaration of a public emergency, the Grantee shall transmit a visual message on at least one (1) Channel and provide video interruption by means of a "crawl" message and an audio message on all Channels with the video further stating which Channel is carrying the visual message.
- (d) A Grantee and the City shall jointly develop an emergency notification plan which shall be integrated into the City's disaster or emergency operations plan, and which plan shall be coordinated with the Kane County Emergency Alert Services plan. A Grantee and the City shall also develop a reasonable and practical plan in order to provide continuity of multichannel service, and response to service calls in the event of a natural or man-made emergency.
- (e) The City shall indemnify and hold harmless the Grantee for any liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, fees and expenses of attorneys and experts), which

may be asserted against the Grantee as a result of any improper use of the Emergency Alert System or the emergency override system by the City.

Section 36 Annual meeting

- (a) A Grantee shall participate in an annual meeting to be held each calendar year with representatives of the City to discuss Grantee's provision of Cable Service or Multichannel Video Communications Service within the City and other matters related to a Grantee's obligations under this Ordinance and a Franchise Agreement or Multichannel Video Communications Services Agreement.
- (b) Meetings shall be open to the public and transcribed. The City shall notify the Grantee, in writing, at least sixty (60) days in advance of each annual meeting. Notice to the public shall be in accordance with the provisions of the Illinois Open Meetings Act.
- (c) Special meetings may be held at any time during the term of the Franchise or the Multichannel Video Communications Services Agreement at the request of the City or the Grantee.
- (d) The City shall notify its Subscribers of annual and special meetings, including adjourned meetings, by announcements on the Government Access Channel.
- (e) During any review or evaluation by the City of a Franchise Agreement or Multichannel Video Communications Services Agreement, the Grantee shall fully cooperate with the City and shall provide such information and documents as the City may request to reasonably perform its review.

Section 37 Rates and fees

- (a) **Uniformity:** Rates for Cable Service/Multichannel Video Communications Service and charges for equipment necessary for the reception of Cable Service/Multichannel Video Communications Service shall be uniform throughout the Service Area in accordance with applicable law and regulation. A Grantee may establish different rates for tiers of programming, and may establish a rate schedule appropriate to commercial enterprises which differ from such rates provided to residential Dwelling Units.

A Grantee may also establish separate rates for Subscribers living in congregate Dwelling Units for which bulk billing rates may be established.

- (b) **Non-Discrimination:** A Grantee shall not, in its rates or charges, or in the availability of the services or facilities of its Cable System/Multichannel Video Communications System, or in any other respect, discriminate against any Persons, or group of Persons protected by applicable non-discrimination laws; provided,

however, the Grantee may offer promotional discounts in order to attract or maintain Subscribers, provided that such discounts are offered on a non-discriminatory basis to similar classes or types of Subscribers in the City.

- (c) Filing of Rate Schedule: A Grantee shall file annually with the City, a full, written schedule of all Subscriber and User rates and all other rates, fees, or charges. In the event that a Grantee announces an increase to its rates and charges, it shall notify its Subscribers and the City no less than thirty (30) days prior to the date such changes are to take effect.
- (d) A Grantee may refuse to offer service to any Person because of due or owing accounts between such Person and the Grantee.
- (e) Reservation of rights to regulate Cable Service:
 - (1) The City reserves the right to regulate rates for Basic Cable Service and equipment of the Grantee as allowed by the FCC. The City shall adopt by separate ordinance, in accordance with 47 U.S.C. §76.910, such regulations consistent with the FCC regulations governing the Basic tier of Cable Service.
 - (2) In the event that the United States Congress or the FCC allows the City to regulate rates beyond the Basic tier of Cable Service, the City may, at that time, reserve the right to regulate said rates in accordance with FCC regulations, and shall notify the Grantee thirty (30) days in advance of the date that the City intends to begin regulation of said rates.

Section 38 Forfeiture and termination

- (a) In addition to all other rights and powers retained by the City under this Ordinance or otherwise, the City reserves the right to terminate the Franchise or Multichannel Video Communications Services Agreement and all rights and privileges of the Grantee hereunder in the event of a substantial breach of its terms and conditions. A breach by the Grantee shall include, but shall not be limited to the following:
 - (1) Failure to complete initial construction or reconstruction, including upgrade, of a Cable System/Multichannel Video Communications System as specified in a Franchise Agreement or Multichannel Video Communications Services Agreement.
 - (2) Repeated failure, after notice and opportunity to cure, to comply with the material provisions of this Ordinance or to comply with the material terms of a Franchise Agreement or Multichannel Video Communications Services Agreement.

- (3) Failure to restore service after seventy-two (72) consecutive hours of interrupted service provided the Grantee's failure to restore system-wide service is not caused by circumstances or events beyond the Grantee's reasonable control.
 - (4) Attempts to evade any provision of the Ordinance or a Franchise Agreement, or Multichannel Video Communications Services Agreement, or practice of fraud, deceit or misrepresentation upon the City or its Subscribers.
 - (5) Repeated failure to pay taxes, Franchise Fees, Multichannel Video Communications Service Fees, costs or penalties when and as due the City.
 - (6) Failure to maintain required insurance coverage.
 - (7) Transfer of the Franchise or Multichannel Video Communications Services Agreement without City Council consent pursuant to Section 32 of this Ordinance
 - (8) The Grantee abandons the Franchise or its Multichannel Video Communications System. The Grantee shall be deemed to have abandoned its Franchise or its Multichannel Video Communications System if it willfully refuses or is unable to operate the Cable System/Multichannel Video Communications System as granted by a Franchise Agreement or Multichannel Video Communications Services Agreement pursuant to this Ordinance where there is no event beyond the Grantee's control that prevents the operation of the Cable System/Multichannel Video Communications System, and where operation would not endanger the health or safety of the public or property.
 - (9) The Grantee unreasonably refuses to provide Subscribers service insofar as their financial and other obligations to the Grantee are honored.
- (b) Notice of substantial breach: Written notice shall be given to the Grantee setting forth:
- (1) The nature of the substantial breach or default by the Grantee;
 - (2) A written demand that the Grantee correct the violation;
 - (3) Notice that any failure to correct the remedy, the substantial breach, or default within thirty (30) days, or other such period as may be stipulated in a Franchise Agreement or Multichannel Video Communications Services Agreement or as the parties may agree, may be cause for revocation of the Franchise.

- (c) Answer to notice of breach: Within thirty (30) days after the City's written notice to the Grantee, the Grantee shall respond in writing to the City, together with documentation in support of its response:
- (1) That it contests the City's notice of substantial breach and requests an opportunity to be heard as provided herein;
 - (2) That corrective action has been implemented by the Grantee and the substantial breach or default has been cured;
 - (3) That corrective action has been implemented by the Grantee and is being actively and diligently pursued in accordance with a written corrective action plan to be submitted to the City.
- (d) Determination: The City Council shall determine, at a public meeting with Grantee having the opportunity to be present and heard, whether or not a substantial breach or default by the Grantee has occurred, whether it has been cured, or a satisfactory corrective action plan has been submitted and is being actively and diligently pursued and whether cause exists to revoke the Franchise or terminate the Multichannel Video Communications Services Agreement or impose a lesser sanction. In the event that the City determines that it has cause to revoke the Franchise or terminate the Multichannel Video Communications Services Agreement, it shall send notice of revocation to the Grantee within ten (10) business days of the City's determination. The City shall not exercise any right without a resolution approved by the City Council.
- (e) Judicial Relief: No provision of this Section shall be deemed to delay, bar, or otherwise limit the right of the City to seek or obtain judicial relief to enforce the provisions of this Ordinance, a Franchise Agreement, or a Multichannel Video Communications Services Agreement.
- (f) In the event Grantee continues operation of all or any part of the Cable System or the Multichannel Video Communications System beyond the revocation or expiration of the Franchise Agreement or Multichannel Video Communications Services Agreement, Grantee shall pay to the City the compensation set forth in Section 24(g) hereinabove at the rate in effect at the time of such revocation or expiration, and in the manner set forth herein, together with any taxes it would have been required to pay had its operation been duly authorized in addition to any damages or other relief to which the City may be entitled in Section 39 hereinbelow.

Section 39 Penalties

A Grantee shall comply with the requirements of this Ordinance the Franchise Agreement, or Multichannel Video Communications Services Agreement at all times during the term of its Franchise or Multichannel Video Communications Services Agreement. If the City has reason to believe that a Grantee has committed a certain violation of this Ordinance, the Franchise Agreement, or the Multichannel Video Communications Services Agreement, the City may act to remedy the violation.

- (a) Remedies retained. No provision of this Ordinance shall be deemed to bar or otherwise limit the right of the City to seek or obtain judicial relief from a violation of any provision of the Franchise, or any rule, regulation, requirement, or directive promulgated thereunder. Neither the existence of other remedies identified in this Ordinance nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages, except where liquidated damages are otherwise prescribed, for such violation by the Grantee, or judicial enforcement of the Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy available contractually, at law, or in equity.
- (b) Fine imposed: Unless otherwise provided, any Person convicted of violating any provision of this Ordinance or any rule or regulation promulgated hereunder shall, upon conviction, be subject to a fine not to exceed seven hundred fifty dollars (\$750.00) and costs for each offense. Each day of a continuing violation shall constitute a separate and distinct offense.
- (c) Liquidated damages: A Franchise Agreement or Multichannel Video Communications Services Agreement shall include provisions for liquidated damages to be paid by the Grantee in amounts set forth in the Franchise Agreement or Multichannel Video Communications Services Agreement and chargeable to a security fund.
- (d) Violation procedures:
 - (1) Notice of violations: Written notice shall be given to a Grantee setting forth the nature of the violation and a reasonable period of time for a Grantee to correct the violation. Unless the City determined that the violation is of such a nature that a lesser period of time is warranted for remedying the violation, a Grantee shall be given thirty (30) days after receipt of such notice to remedy the violation.
 - (2) Answer to notice of violations: Within thirty (30) days, or other such period of time specified by the City in its notice to a Grantee, a Grantee shall respond in writing to the City:

- a. That it contests the City's notice of violation and requests an opportunity to be heard as provided herein. A Grantee shall submit supporting documentation with its response to the notice.
 - b. That it contests the City's notice of violation for the reasons that the violation was beyond the reasonable control of the Grantee and requests an opportunity to be heard as provided herein. A Grantee shall submit supporting documentation with its response to the notice.
 - c. That the Grantee will remedy the violation within the time specified by the City in its notice to the Grantee.
 - d. If a Grantee contends that an extended period of time is reasonably needed to remedy the violation, it shall submit a written request for an extension, together with supporting documentation that a Grantee cannot reasonably remedy the violation within the time specified by the City in its notice to a Grantee. The City shall not unreasonably deny an extension of time to remedy the violation. If the City grants the extension, a Grantee shall proceed to remedy the violation within the extended time period prescribed, provided that a Grantee also informs the City on a regular basis of the steps being taken to remedy the violation.
- (3) Opportunity to be heard: The City shall give a Grantee not less than fourteen (14) days written notice of the date, time, and place of the public meeting to be held before the City Council. The Grantee shall be entitled to the right to present evidence and the right to be represented by counsel.

At the public meeting, the City Council shall hear and determine the issues and render its findings and decision.

- (4) Determination: If the Grantee fails to submit a written response to the City's notice of violation as provided in Subsection (2) hereinabove, or if a Grantee fails to remedy the violation within the time period specified by the City in its notice to a Grantee, or any extensions granted thereto by the City, or if the City Council is persuaded after a Grantee's opportunity to be heard in a public meeting that a Grantee has committed a violation as provided herein, the City Council may, after giving a Grantee an opportunity to be heard:
- a. Order a Grantee to remedy the violation within a reasonable period of time specified by the City Council.

- b. Assess liquidated damages against a Grantee in accordance with a Franchise Agreement or Multichannel Video Communications Services Agreement and to exercise any other remedy provided in this Ordinance or the Franchise Agreement or Multichannel Video Communications Services Agreement.
 - c. Impose any lesser sanction permitted by a Franchise Agreement or Multichannel Video Communications Services Agreement.
- (5) Judicial relief: No provision of this Section shall be deemed to bar or otherwise limit the right of the City to seek or obtain judicial relief to enforce the provisions of this Ordinance.

Section 40 Force majeure

Whenever a period of time is provided for in the Franchise or a Multichannel Video Communications Services Agreement for either the City or the Grantee to do or perform any act or obligation, neither party shall be liable for any delays or inability to perform due to causes beyond the control of said party such as war, riot, insurrection, rebellion, strike, sabotage, telephone network outage, unavoidable casualty or damage to personnel, materials or equipment, failure of a utility provider to provide pole attachments on reasonable terms or conditions therefore, fire, flood, storm, earthquake, tornado, orders of a court of competent jurisdiction, or any act of God; provided, however, that said time period shall be extended for only the actual amount of time said party is so delayed. An act or omission shall not be deemed to be "beyond the Grantee's control" if committed, omitted, or caused by the Grantee, the Grantee's employees, officers, or agents or a subsidiary, Affiliate, or parent of the Grantee, or by any corporation or other business entity that holds a controlling interest in the Grantee, whether held directly or indirectly.

Further, the failure of the Grantee to obtain financing or to pay any money due from it to any Person, including the City, for whatever reason, shall not be an act or omission "beyond the Grantee's control." The failure of the Grantee to obtain necessary permits from applicable governmental or utility agencies shall be deemed "beyond the Grantee's control" only if the Grantee has made a timely and complete request and application for said permit and is diligently pursuing the issuance of said permit.

Section 41 Bankruptcy, Receivership and Foreclosure

- (a) In the event that a Grantee shall declare bankruptcy, and a federal Bankruptcy Court or other court of competent jurisdiction allows for the dissolution of a Grantee's Franchise or termination of permission to operate in the City as part of a Multichannel Video Communications Services Agreement, the City may, at its discretion, petition the Bankruptcy Court or other court of competent jurisdiction within the timeframe established by the Court, to take over and conduct the

business of the Grantee, whether in receivership, reorganization, bankruptcy or other related action or proceeding. A Grantee must submit a copy and brief explanation of any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the Grantee or by any partnership or corporation that owns or controls the Grantee directly or indirectly.

- (b) To the extent not prohibited by the United States Bankruptcy Code, a franchise or Multichannel Video Communications Services Agreement approved pursuant to this Ordinance shall terminate automatically by force of law one hundred twenty calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee (including a debtor-in-possession in a reorganization) to take over the business of the owner or operator, whether in bankruptcy or under a state law proceeding; provided, however, that such franchise or Multichannel Video Communications Services Agreement shall not so terminate if, within that one-hundred-twenty-day period:
 - (1) Such assignment, receivership or trusteeship has been vacated; or
 - (2) Such assignee, receiver, or trustee has cured any defaults and has fully complied with the terms and conditions of this Ordinance and any applicable agreement and has executed an agreement, approved by any court having jurisdiction, under which it assumes and agrees to be bound by the terms and conditions of this Ordinance and any applicable agreement.
 - (3) In the event of foreclosure or other judicial sale of any of the facilities, equipment, or property of an owner or operator of facilities in the Public Streets or Public Ways, its Franchise or permission to operate under a Multichannel Video Communications Services Agreement pursuant to this Ordinance shall automatically terminate thirty (30) calendar days after such foreclosure or sale, unless:
 - a. The City has approved a transfer to the successful bidder; and
 - b. The successful bidder has covenanted and agreed with the City to assume and be bound by the terms and conditions binding its predecessor.
 - (4) Any mortgage, pledge, or lease of facilities in the Public Streets or Public Ways shall be subject and subordinate to the rights of the City under this Ordinance, any applicable agreement, and other applicable law.
- (c) Upon the foreclosure or other judicial sale of all or a substantial part of the Cable System, or upon the termination of any lease covering all or a substantial part of the

Cable System or Multichannel Video Communications System, a Grantee shall notify the City of such fact, and such notification shall be treated as a notification that a change in control of a Grantee has taken place, and the provisions of this Ordinance and a Franchise or Multichannel Video Communications Services Agreement governing the consent of the City to such change in control of a Grantee shall apply.

Section 42 Compliance with state and federal laws

- (a) Notwithstanding any other provisions of the Franchise or a Multichannel Video Communications Services Agreement to the contrary, the Grantee shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies thereof; provided, however, if any such state or federal law or regulation shall allow or compel the Grantee to perform any service, or prohibit the Grantee from performing any service in conflict with the terms of the Franchise or Multichannel Video Communications Services Agreement or of any law or regulation of the City, then as soon as possible following knowledge thereof, the Grantee shall notify the City of the point of conflict believed to exist between such regulation or law and the laws or regulations of the City or the Franchise or Multichannel Video Communications Services Agreement.
- (b) If the City determines that a material provision of this Ordinance is affected by any subsequent action of the state or federal government, the City and the Grantee shall negotiate to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this agreement in accordance with then applicable law.

Section 43 Notice to comply

- (a) Compliance periods: Unless otherwise stated in this Ordinance, a Franchise Agreement, or a Multichannel Video Communications Services Agreement, the Grantee shall comply with the terms and conditions of the Ordinance, the Franchise Agreement, or the Multichannel Video Communications Services Agreement with respect to compliance periods.
- (b) Designation of agent for notification: A Grantee shall designate a Person who shall have the authority to receive and respond to notifications sent by the City relating to the Franchise or Multichannel Video Communications Services Agreement.

Section 44 Landlord and tenant

- (a) Neither the owner of any multiple unit residential dwelling nor his agent or representative shall interfere with the right of any tenant or lawful resident thereof to receive Cable Service/Multichannel Video Communications Service, cable

installation or maintenance from a Grantee having a valid Franchise or permission to operate under a Multichannel Video Communications Services Agreement.

- (b) Neither the owner or any multiple unit residential dwelling nor his agent or representative shall penalize, charge or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident, or discriminate in any way against such tenant or resident who requests or receives Cable Service/Multichannel Video Communications Service from a Grantee operating under a valid Franchise or permission to operate under a Multichannel Video Communications Services Agreement.
- (c) Nothing in this Ordinance shall prohibit a landlord or residential dwelling unit building owner from requiring that Cable System/Multichannel Video Communications System facilities conform to laws and regulations and reasonable conditions necessary to protect safety, functioning, appearance and value of premises or the convenience and safety of persons or property.
- (d) Nothing in this Ordinance shall prohibit a Grantee from indemnifying the owner, or his agents or representatives for damages or from liability for damages caused by the installation, operation, maintenance or removal of Cable Service or Multichannel Video Communications Service facilities.

Section 45 Prohibited Acts

- (a) It shall be unlawful for any Person to install, attach, wire, program, or connect, or cause to be installed, attached, wired, programmed, or connected any equipment, device, or computer hardware or software, which enables the use of Cable Services/Multichannel Video Communications Services transmitted by a Grantee without compensation to said Grantee. This Section shall not prohibit the recording of programming as allowed under applicable state and federal laws. No Person receiving within the Franchise Area any Cable Service/Multichannel Video Communications Service, program, or signal transmitted by any Grantee operating under a Franchise or permission to operate under a Multichannel Video Communications Services Agreement shall resell such service, program, or signal without the expressed, written consent of the Grantee.
- (b) Violations of the provisions of this Section shall be punishable by a fine of no less than seven hundred fifty dollars (\$750.00) per day per occurrence, and where applicable, incarceration as so prescribed by statutory provisions concerning theft of services. The Grantee and the City may, upon mutual agreement, work together on programs designed to prevent the theft of Cable Services or Multichannel Video Communications Services.

Section 46 Applicants' bids for initial Cable or Multichannel Video Communications Service

- (a) After receiving applications for a Cable Service Franchise or Multichannel Video Communications Service, the City Council, after considering financial, legal, technical, and programming proposals, and the character qualifications of the applicant, may, by ordinance, grant non-exclusive authority and permission creating a right to construct and operate a Cable System/Multichannel Video Communications System within the Public Streets and Public Ways of the City. Such authority and permission shall be granted pursuant to the requirements of 65 ILCS 5/11-42-11(e). No provision of this Ordinance shall be deemed or construed to require the City Council to grant a Franchise or permission and authority to operate a Multichannel Video Communications System.
- (b) The application for a cable television/Multichannel Video Communications System Franchise shall be submitted to the City Council or its designee, on a written application in the form specified in a Request For Proposal (RFP) furnished by the City, and in accordance with procedures and schedules to be established by the City. The application form may request facts and information the City deems appropriate. Applicants shall pay a non-refundable fee of no less than two thousand five hundred dollars (\$2,500.00) for the application forms to be determined by the Council to offset direct expenses in preparing the application documents.

Applications submitted to the City Council shall be accompanied by a non-refundable application fee in an amount to be determined by the City Council, which amount shall be used by the City to offset direct expenses incurred in the franchising and evaluation procedures, including, but not limited to, staff time and legal or advisory assistance.

An applicant to whom the City Council grants a non-exclusive Franchise or permission and authority to operate a Multichannel Video Communications System shall, in addition to the non-refundable fee specified hereinabove, pay to the City at the time of acceptance of the Franchise or Multichannel Video Communications Services Agreement, an amount based on direct costs, to be used to reimburse all direct, reasonable expenses actually incurred by the City in granting the Franchise or Multichannel Video Communications Services Agreement which are not fully defrayed by fees forthcoming from the provisions cited in this subsection hereinabove.

- (c) All questions regarding the meaning or intent of this Ordinance or application documents shall be submitted to the City in writing. Replies will be issued by addenda mailed or delivered to all parties recorded by the City as having received the application documents. The City reserves the right to make extensions of time for receiving applications as it deems necessary. Questions received less than

fourteen (14) days prior to the deadline date for the application will not be answered. Only replies to questions by written addenda will be binding. All applications must contain an acknowledgment of receipt of all addenda.

- (d) Applications must be sealed, and submitted at the time and place indicated in the Request For Proposal. No Application shall be opened or inspected prior to the deadline for applications.
- (e) Before submitting an application, an applicant shall:
 - (1) Examine this Ordinance and the application documents thoroughly; and
 - (2) Familiarize himself/herself with local conditions that may in any manner affect performance under the Franchise or a Multichannel Video Communications Services Agreement; and
 - (3) Familiarize himself/herself with federal, state and local laws, ordinances, rules and regulations affecting performance under the Franchise or Multichannel Video Communications Services Agreement; and
 - (4) Carefully correlate the application with the requirements of this Ordinance and the application documents.
- (f) The City may make such investigations as it deems necessary to determine the ability of an applicant to perform under the Franchise or a Multichannel Video Communications Services Agreement, and the applicant shall furnish to the City all such information and data for this purpose as the City may request.

The City reserves the right to reject any application if the evidence submitted by, or investigation of, such applicant fails to satisfy the City that such applicant is properly qualified to carry out the obligations of the Franchise or a Multichannel Video Communications Services Agreement and to complete the work contemplated therein. Conditional applications will not be accepted.

Section 47 Financial, contractual, shareholder, and system disclosure.

- (a) No Cable System Franchise or permission and authority to operate a Multichannel Video Communications System will be granted to any applicant unless all requirements and demands of the City regarding financial, legal, and technical requirements, and character, contractual, shareholder and system disclosure have been met.
- (b) Initial applicants shall fully disclose all agreements and undertakings, whether written or oral, or implied with any Person with respect to the Franchise or permission and authority to operate a Multichannel Video Communications

System, and the proposed Cable System/Multichannel Video Communications System. The Grantee shall disclose all other contracts to the City as the contracts are made. This Section shall include, but not be limited to, any agreements between local applicants and national companies.

- (c) Applicants shall submit all requested information as provided by the terms of this Ordinance or the application documents, which are incorporated herein by reference. The requested information must be complete and verified as true by the applicant.
- (d) Initial applicants, if organized as a corporation, shall disclose the numbers of shares of stock, and the holders thereof, and shall include the amount of consideration for each share of stock and the nature of the consideration.
- (e) Initial applicants, shall disclose any information required by the application documents regarding other Cable Systems/Multichannel Video Communications Systems in which they hold an interest of any nature, including, but not limited to, the following:
 - (1) Locations of all other Systems and the dates of award for Franchises or permission to operate at each location; and
 - (2) Estimated construction costs and estimated completion dates for each System; and
 - (3) Estimated number of miles of construction and number of miles completed in each System as of the date of this application; and
 - (4) Date for completion of construction as promised in the application for each System.
- (f) Initial applicants, shall disclose any information required by the application documents regarding pending applications for other Cable Systems/Multichannel Video Communications Systems, including, but not limited to, the following:
 - (1) Location of other Franchise applications or applications for permission to operate a Multichannel Video Communications System and date of application for each System; and
 - (2) Estimated dates of Franchise awards or dates of awards of authority and permission to operate a Multichannel Video Communications System; and
 - (3) Estimated number of miles of construction; and
 - (4) Estimated construction costs.

Section 48 Limits on Grantee recourse

To the extent that the Local Government Tort Immunity Act and any other laws immunize the City and its officials, boards, commissions, agents, or employees, a Grantee shall have no recourse against the City or its officials, boards, commissions, agents, or employees for any loss, costs, expense, or damages arising out of any provision or requirement of the Ordinance or the Franchise Agreement, or Multichannel Video Communications Services Agreement. A Grantee shall expressly acknowledge that upon accepting the right, privilege, and authority to operate granted pursuant to the Ordinance, it does so relying upon its own investigation and understanding of the power and authority of the City. By the acceptance of a Franchise or a Multichannel Video Communications Services Agreement, a Grantee shall agree that it will not at any time set up against the City in any claim or proceeding, any provision, condition, or term of the Ordinance the Franchise Agreement, or the Multichannel Video Communications Services Agreement as unreasonable, arbitrary, or void or that the City had no authority to make such provision, term, or condition as part of or pursuant to the Ordinance, except as to those matters preempted by federal or state law.

Section 49 Rights and remedies

In the event of a violation or an alleged violation of the Franchise or Multichannel Video Communications Services Agreement by the Grantee, the City, by any action in law or in equity, may enforce or compel the performance of the terms of the Franchise or the Agreement to the full allowable extent. In the event of a judicial proceeding, the prevailing party shall be entitled to reimbursement of all costs and expenses, including reasonable attorneys fees, incurred in connection with such judicial proceeding.

Section 50 Conditions of Waiver

The City may, on its own motion or at the request of an applicant for a Franchise or permission to operate a Multichannel Video Communications System or a Grantee for good cause shown, waive any requirement of this Ordinance. Subject to the provisions of this Ordinance, a Grantee shall not be relieved of its obligations to comply with any of the rules, regulations, or directives as stated in this Ordinance, a Franchise Agreement, or a Multichannel Video Communications Services Agreement by reason of any failure of the City, or its officers, agents, or employees to enforce prompt compliance, nor shall such be considered a waiver thereof.

Section 51 Time is of the essence

Whenever any provision of this Ordinance, Franchise Agreement, or Multichannel Video Communications Services Agreement shall set forth any time for any act to be performed by a Grantee, such time shall be deemed to be of the essence.

Section 52 Sexual Harassment Policy

Any Grantee holding a Franchise or who has entered a Multichannel Video Communications Services Agreement with the City on the Effective Date of this Ordinance, or which is awarded a Franchise, or permission and authority to operate a Multichannel Video Communications System under the conditions of this Ordinance, shall be required to have in force a written policy regarding sexual harassment which complies in all respects with the Illinois Human Rights Act, 775 ILCS 5/2-105(A)(4)(1997).

Section 53 Bid rigging and bid rotating prohibited.

As a condition of award of an initial Franchise or authority to operate a Multichannel Video Communications System to a Grantee if required by law, the Grantee shall certify to the City that it is not barred from contracting with a unit of local government as a result of either the Illinois law prohibiting bid-rigging (720 ILCS 5/33 (E)(3) (1989)) or bid-rotating (720 ILCS 5/33(E)(4) (1989)).

Section 54 Savings Clause

The express provisions of this Ordinance will prevail over conflicting or inconsistent provisions of other municipal ordinances or conflicting or inconsistent provisions in a Franchise Agreement or a Multichannel Video Communications Services Agreement unless a Franchise Agreement or Multichannel Video Communications Services Agreement expresses an explicit intent to waive or modify strict compliance with a requirement of this Ordinance; provided, however that no change in this Ordinance made by the City after the effective date of a Franchise Agreement or a Multichannel Video Communications Services Agreement shall amend the express provisions of a Franchise Agreement or a Multichannel Video Communications Services Agreement without an amendment to the Franchise Agreement or a Multichannel Video Communications Services Agreement. Neither party may take any unilateral action which materially changes the explicit performance promised in a Franchise Agreement or a Multichannel Video Communications Services Agreement unless modified or altered by a superior regulatory authority.

Section 55 Repeal

Any ordinance or part of ordinance conflicting with the provisions of this Ordinance is hereby repealed so far as the same affects this Ordinance.

Section 56 Delegation of powers

Except for the powers of revocation, imposition of penalties, transfer of control or ownership, and rate regulation, any right, power, or duty of the City Council of the City of Geneva, the agency or any official of the City, under this Ordinance may be transferred or delegated by ordinance, resolution, or other appropriate action of the City to an appropriate officer, employee, or

department of the City, or any legal authority created for the purpose of regulating the operation and development of the Cable System/Multichannel Video Communications System.

Section 57 Severability

The provisions of this Ordinance are severable, and if any provision or application is held to be illegal, unconstitutional, or invalid by a court of competent jurisdiction, such holding shall not affect the remaining provisions. It is the legislative intent of the City that the Ordinance would have been adopted if such illegal provision had not been included or any illegal application would not have been made. In the absence of specific legislation prohibiting enforcement of one or more terms of this Ordinance, or a binding judicial determination issued by the Seventh Circuit Court of Appeals, or the United States Supreme Court, the terms of this Agreement shall remain in full force and effect.

Section 58 No waiver of rights bestowed by virtue of law

The City does not waive or release rights bestowed upon it by virtue of law or statute.

Section 59 Governing law

This Ordinance shall be governed in accordance insofar as applicable with the applicable laws of the United States Government or the State of Illinois. Venue shall be in the Circuit Court of Kane County for actions involving state law. For actions involving federal law, the venue shall be in the United States District Court, Northern District of Illinois, Eastern Division.

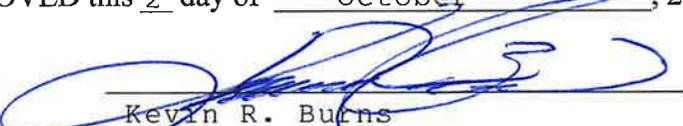
Section 60 Effective date

This Ordinance shall become effective from and after its passage, approval, and publication in accordance with the requirements of law. Publication of the Ordinance is hereby approved to be in pamphlet form.

PASSED this 2nd day of October, 2006.

AYES: 9
NAYS: 0
ABSENT: 1

APPROVED this 2nd day of October, 2006.

Mayor 
Kevin R. Burns

ATTESTED AND FILED IN MY OFFICE:

City Clerk 