

Ordinance Governing
CABLE TELEVISION
in the
CITY OF ARLINGTON
TEXAS

Amended by Ordinance No. 99-21
(February 9, 1999)

(Chapter Designator: CABLE TELEVISION)

ORDINANCE HISTORY

<u>Number</u>	<u>Date of Adoption</u>	<u>Comments</u>
93-23	03/09/93	Adopt new Cable Television ordinance.
93-116	11/02/93	Amend Article IV, Section 29 , relative to FCC rate regulations for Service.
98-71	06/09/98	Amend Article I, General Provisions, Section 1, Definitions , relative to the addition of the definitions of "Complaint", "Franchise fees", "Normal business hours", "Normal operating conditions", and "Service interruption"; Amend the definition of "Gross Revenues" and reformat the entire section; Amend Section 3, Limits on a GRANTEE's Recourse, Subsection (E) , relative to waivers, exceptions or declaratory rulings; Amend Article III, Franchise Conditions, Section 25, Liquidated Damages, Subsection (C) , relative to notice to cure problem; Amend Article V, System Operations, Section 36, Operating Procedures , by the addition of Subsection (H), relative to above ground wires in underground service areas; Amend Section 39, Service, Adjustment and Complaint Procedures, Subsection (B) , relative to customer service standards; Amend Section 39, Subsection (C) , relative to customer service reports and compliance; Amend Section 39, Subsection (D) , relative to exceptions; Amend Section 39, Subsection (E) , relative to subscriber complaint procedures; Amend Section 39, Subsection (F) , relative to repetitive complaints; Amend Section 40, Use of Streets, Subsection (F) , relative to removal or trimming of trees.

ORDINANCE HISTORY

<u>Number</u>	<u>Date of Adoption</u>	<u>Comments</u>
99-21	02/09/99	Amend Article IV , <u>Subscriber Rates, Section 29, Subscriber Fees, Rates or Charges</u> , by the addition of Subsection (E), relative to the offense of failure to comply with rate order; Amend Article V , <u>System Operations, Section 39, Service, Adjustment and Complaint Procedures</u> , by the addition of Subsection (E) (3), relative to the frequency of customer complaints to the City.

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ARTICLE I

GENERAL PROVISIONS

Section 1 Definitions

For the purposes of this ordinance, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein.

"Basic Service" shall mean as set forth in the Communications Act of 1934, as amended.

"Cable Services" shall mean the one-way transmission to subscribers of video programming and other programming services, together with subscriber interaction, if any, which is required for the selection of such programming and programming services that the GRANTEE makes available to all subscribers generally and may not include information that is subscriber specific. If information transmitted on a cable system is made available only to an individual subscriber or to a discrete group of subscribers, the transmission of this information is not a cable service. Information that is of interest or use to only a particular class of customers may still be offered over a cable system as a cable service as long as it is made generally available to all subscribers (i.e., transmission or downloading of computer software, video games, statistical packages to all subscribers generally). Examples of cable services would be video programming, pay-per-view, voter preference polls in the context of video program rating services, teletext, one-way transmission of any computer software and one way video text services such as news services, stock market information, and on-line airline guides and catalog services that do not allow customer purchases.

"Cable System" shall mean any 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 the City, except that such term shall not include:

1. a facility that serves fewer than twenty (20) subscribers:
2. a facility that serves only to transmit the television signals of one (1) or more television broadcast stations:

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3. a facility that serves only subscribers in one (1) or more multiple unit dwellings under common ownership, control or management, unless such facility or facilities uses any public right-of-way;
4. a facility of a common carrier which is subject, in whole or part, to the provisions of the Communications Act of 1934, 47 U.S.C. Section 521 et. seq., as amended, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or
5. any facility of an electric utility used solely for operating its electric utility systems.

"City" shall mean the City of Arlington, Texas.

"City Manager" shall mean the present or succeeding chief executive officer of the City who is appointed by the City Council or any person designated by the City Manager to act in his or her behalf for the purpose of fulfilling the responsibilities imposed by this ordinance.

"Complaint" shall mean any verbal or written communication received by the City from a resident, subscriber, I-Net user or other, which expresses concern or dissatisfaction with any portion of a GRANTEE's product and/or services, any written correspondence received by a GRANTEE from a subscriber which expresses concern or dissatisfaction with any portion of the GRANTEE's products and/or services, or any verbal communication from a subscriber to the GRANTEE which cannot be handled in the normal course of business and must be resolved by a management employee of the GRANTEE.

"Converter" shall mean an interface device may be furnished to subscribers in order that nonstandard television channels carried on a cable system may be received on a conventional home television receiver or to prevent interference from strong broadcast signals. The device may be used on top of the TV a television ("TV") set ("set-top"), attached to the back of the TV set, or installed at a remote location.

"Council" shall mean the governing body of the City of Arlington, Texas.

"Depreciated Value" shall mean the original cost of all of the cable system's tangible assets less all accumulated depreciation recorded on the GRANTEE's books and audited financial statements in accordance with generally accepted accounting principles, unless otherwise defined or regulated by federal, state or local statutes or regulations with specific application in effect at or on the date the City exercises its purchase option rights under this Ordinance.

The depreciated value shall be calculated to the end of the GRANTEE's last fiscal year and shall not include "goodwill" or any value attributed to the Franchise.

"Fair Market Value" shall mean the price that a willing buyer would pay to a willing seller for a going concern based on the system valuation and sale multiples prevailing in the industry at the time at which the Council elects to exercise its option but with no value allocated to the Franchise itself.

"Fair Rate of Return" shall mean the level of return calculated by using the net present value technique and shall at least equal a GRANTEE's cost of capital.

"Federal Communications Commission or FCC" shall mean that federal agency as presently constituted by the Communications Act of 1934, as amended, or any successor agency.

"Franchise" shall mean the nonexclusive rights, whether an initial authorization or a renewal thereof, to construct and operate a cable system along the public ways in the City or within specified areas in the City. It is not intended to include or supersede or otherwise affect 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 or laws of the City.

"Franchise fees" are the price paid by a GRANTEE to rent use of public rights-of-way in accordance with this ordinance and any applicable franchise, contract or agreement.

"GRANTEE" shall mean a natural person, partnership, domestic and or foreign corporation or entity, association, joint venture or organization of any kind granted a franchise by the City Council under this ordinance and its lawful successor, transferee or assignee.

"GRANTOR" shall mean the City of Arlington, Texas.

"Gross Revenues" shall mean all revenues derived from cash sales, customer credit account sales, property of any kind or nature or from any source whatever received or accruing to a GRANTEE directly or indirectly arising from or attributable to the sale or exchange of cable or non-cable services by a GRANTEE within the City from the operation of its cable system recorded and reported on a full accrual basis of accounting in accordance with generally accepted accounting principles. Gross revenues shall include, but not be limited to, all cable and non-cable service fees, franchise fees, pay television and pay-per-view fees, leased channel fees, connector rentals or sales, studio rentals, Internet services, and advertising revenue. Except that gross revenue shall not include converter deposits (unless the deposit is forfeited or is non-refundable after a specified period of time), refunds to subscribers by a GRANTEE, or receipts from sales or use taxes or any other taxes that a GRANTEE collects on behalf of any taxing authority.

"Net Income" shall mean the balance remaining to stockholders, partners, or owner after deducting from gross revenues all direct and indirect operating expenses associated with the operation of a cable system, including the Franchise Fee, interest, depreciation, amortization and federal, state and local taxes determined in accordance with generally accepted accounting principles.

"Non-Cable Communications Services" shall mean all services offered over a cable system that go beyond providing generally available video programming or other programming are non-cable services. Non-cable communications services include private line data transmission or voice communications that compete with services provided by telephone companies. In general, services providing subscribers with the capacity to engage in transactions or to store, transform, forward, manipulate, or otherwise process information or data would not be cable services. Examples of non-cable services would include, but not be limited to: shop at home and bank at home services, electronic mail, one way and two way transmission of non-video data and information not offered to all subscribers, data processing, video conferencing, and all voice communications.

"Normal business hours" shall mean those hours during which most similar businesses in the community are open to serve

customers, and in no event fewer than nine (9) hours a day and four (4) hours on Saturdays.

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

"Passed by the CATV System" shall mean the construction of the System in a given area has been completed such that no major construction is required to provide regular subscriber service upon request.

The word **"Person"** shall extend and be applied to associations, firms, partnerships and bodies political and corporate as well as to individuals.

"Regular Subscriber Service" shall mean the distribution to subscribers of signals over a cable system on all channels except leased access channels, those services for which a per-program or per-channel charge is made, two-way services and those services intended for reception by equipment other than a television broadcast receiver.

"Service interruption" shall mean the loss of picture or sound on one (1) or more cable channels.

"State of the Art" shall mean a cable system with production facilities, technical performance, capacity, equipment, components and service equal to that which has been developed and demonstrated to be more modern than generally accepted and used in the cable television industry for comparable areas of equivalent population.

"Subscriber" shall mean any person who contracts to purchase, orally or in writing, the regular subscriber service and/or any one or more other services as may be provided by a GRANTEE's cable system.

"Total Number of Subscribers" shall mean the number of subscribers determined as follows: In the event a single fee is paid for service to a multiple dwelling unit the number of equivalent subscribers shall be determined by dividing such fee by the then prevailing Regular Subscriber Service Rate and rounding the resulting quotient to the nearest whole number. To this number shall be added the number of all other subscribers. (Amend Ord 98-71, 6/9/98)

Section 2 Franchise Required to Operate

A nonexclusive franchise to construct, operate and maintain a cable system within all or any portion of the City is required of anyone desiring to provide cable television service in the City. A franchise may be granted by the City Council to any person, firm, corporation, association, joint venture or organization, whether operating under an existing franchise or not, who or which offers to furnish and provide such cable system under and pursuant to the terms and provisions of this ordinance and a Franchise Agreement acceptable to the Council. Insofar as it is not inconsistent with or otherwise pre-empted by federal or state regulations, a franchise shall also grant the right and privilege to the GRANTEE to provide non-cable communications services. The City Council shall retain all authority to regulate non-cable communications services to the extent necessary to protect the public health, safety and welfare and to ensure compliance with all provisions of this ordinance.

Section 3 Limits on a GRANTEE's Recourse

- A. GRANTOR shall have the immunity from damages afforded by the Communications Act of 1934, as amended.
- B. A GRANTEE, by accepting a franchise, shall acknowledge that it has not been induced to accept the franchise by any promise, oral or written, by or on behalf of the City or by any third person regarding any term or condition of this ordinance or the franchise not expressed therein. A GRANTEE further shall pledge that no promise or inducement, oral or written, has been made to any City employee or official regarding receipt of a cable television franchise.
- C. A GRANTEE shall further acknowledge by acceptance of a franchise that it has carefully read the terms and conditions of this ordinance and the franchise and

accepts the obligations imposed by the terms and conditions herein regardless of whether their obligations are contained in the franchise documents.

- D. The decision or decisions of the City Council concerning the selection of one or more GRANTEES and the award of one or more franchises is final and all applicants shall agree as a condition of application not to contest the Council's decision in any Court of law or before the Federal Communications Commission.
- E. A GRANTEE shall not apply for any waivers, exceptions or declaratory rulings from the Federal Communications Commission or any other federal or state regulatory agency affecting the City of Arlington without providing the City Manager copies of all filings. (Amend Ord 98-71, 6/9/98)
- F. Nothing in this section or in Section 635A of the Communications Act of 1934, as amended, shall be construed as creating or authorizing liability of any kind, under any law, for any action or failure to act relating to cable service or the granting of a franchise by City or any official, member, employee or agent of such authority or entity.

Section 4 Special Licenses to Traverse Franchise Area

The City reserves the right to issue a license, easement or other permit to anyone other than a GRANTEE to permit that person to traverse any portion of a GRANTEE's franchise area within the City in order to provide service outside the City. Such license or easement, absent a grant of a franchise in accordance with this ordinance, shall not authorize or permit such person to provide cable television service of any nature to any home or place of business within the City or to render any service or connect any subscriber within the City to a GRANTEE's cable system.

Section 5 Acceptance of Terms and Conditions by a GRANTEE

GRANTEE agrees, by the acceptance of this franchise, to accept the validity under present law of the terms and conditions of this franchise agreement in its entirety and that it will not, at any time, proceed against the City in any claim or proceeding under present law challenging any term or provision of this franchise as unreasonable, arbitrary or void or that the City did not have the authority to impose such term or condition, provided however, GRANTEE and City

each reserve the right to challenge the interpretation, enforcement and exercise of the rights and obligations set forth hereunder, and the conformity of the terms hereof with state and federal law established after the date hereof.

Section 6 Failure of City to Enforce Compliance

A GRANTEE shall not be excused from complying with any of the terms and conditions of this ordinance or a franchise by any failure of the City, upon any one or more occasions, to insist upon the GRANTEE's performance or to seek GRANTEE's compliance with any one or more of such terms or conditions.

Section 7 Rights Reserved to City

The City hereby expressly reserves the following rights:

- A. To exercise its governmental powers, now or hereafter, to the full extent that such powers may be vested in or granted to the City.
- B. To adopt, and promulgate ordinances as it shall find reasonably necessary in the lawful exercise of its police power. Such power shall include the absolute right of the City to maintain control over its streets and public ways, and to adopt such reasonable regulations relating to streets and public ways as the City and/or its departments shall hereinafter provide. GRANTEE may reserve such rights as are stated in a Franchise.
- C. The powers of the City may be exercised through amendment of this ordinance as well as through enactment of separate ordinances and regulations.

Section 8 GRANTEE'S Employment Practices

Equal opportunity in employment shall be afforded by GRANTEE to all qualified persons and no person shall be discriminated against in employment by such entity because of race, color, religion, national origin, age, disability or sex. A GRANTEE shall establish, maintain and carry out a positive continuing program of specific practices designed to assure equal opportunity to every aspect of cable system employment policy and practice. Compliance with Federal Communications Commission's equal employment opportunity regulations, including EEO program requirements, recruiting,

promotions, contracting with minority and female entrepreneurs and reporting requirements, shall be deemed compliance with this Ordinance.

Section 9 Time is of the Essence

Whenever this ordinance or a franchise sets forth any time for any act to be performed by or on behalf of a GRANTEE, such time shall be deemed of the essence and the GRANTEE's failure to perform within the time allotted, in all cases, shall be sufficient grounds for the City to invoke liquidated damages, default proceedings, or revocation of a franchise.

Section 10 Unlawful Acts; Penalties

- A. It shall be unlawful for any person, firm or corporation to establish, operate or carry on the business of distributing to any persons in the City any television signals or radio signals by means of a cable system unless a franchise therefore has first been obtained pursuant to the provisions of this ordinance, and unless such franchise is in full force and effect.
- B. It shall be unlawful for any person, firm or corporation to construct, install or maintain within any public street in the City, or within any other public property of the City, or within any privately-owned area within the City which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by the City, any equipment or facilities for distributing any television signals or radio signals through a cable system, unless a franchise authorizing such use of such street or property or area has first been obtained pursuant to the provisions of this ordinance, and unless such franchise is in full force and effect.
- C. It shall be unlawful for any person, firm or corporation to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a franchised cable system within the City for the purpose of enabling himself or herself or others to receive any television signal, radio signal, picture, program or sound, without payment to the owner of the cable system.

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- D. It shall be unlawful for any person, firm or corporation without the consent of the owner, to willfully tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, programs or sound.
- E. Any person, firm or corporation violating any subsection of this section shall be punished by a fine or by imprisonment or by both fine and imprisonment in accordance with federal, state or local law.

ARTICLE II

APPLICATIONS AND REQUIRED SERVICES

Section 11 Authority to Grant; Criteria for Granting

- A. After examining all applications submitted pursuant to procedures to be established by the City Council designed to assure the legal, financial, technical and character qualifications of an applicant to provide cable service, the Council is authorized, after a full hearing affording due process, to grant a nonexclusive franchise conveying the right to construct and operate a cable system within the public ways of the City. A franchise will be awarded to the applicant which in the Council's judgment will best serve the public interest and whose construction and financial plans and arrangements are both feasible and adequate to fulfill the conditions set forth in this ordinance and incorporated into any franchise granted.
- B. The Council is further authorized to award additional franchises as it deems appropriate, if it finds that the public welfare will be enhanced by such awards after a public hearing and based upon testimony concerning economic considerations, the impact on private property rights, the impact on public convenience, the public need and potential benefit and such other factors as are relevant.
- C. No overlapping franchise shall be granted on terms or conditions more favorable or less burdensome than those in any existing franchise. The prohibitions of the foregoing sentence shall not apply when the area in which the overlapping franchise is being sought is not actually being served by an existing GRANTEE holding a franchise for the area. As used in this section the term "actually being served" means that cable service is actually available to subscribers to such extent that the only act remaining in order to provide cable service is the physical connection to the individual subscriber location as of fifteen (15) days prior to any subsequent application for a franchise.
- D. No provisions in this ordinance shall be deemed or construed to require the Council to grant a franchise following receipt of any franchise application.

Section 12 Form; Contents; Procedures; Fees; Payment Upon Grant (Not applicable to renewals)

- A. The application for a cable television franchise shall be submitted to the Council, or its designee, on a written application form furnished by the City, and in accordance with the procedures and schedule to be established and published by the Council. The application will request facts and information the Council deems appropriate. Applications shall be accompanied by a nonrefundable application fee of five thousand dollars (\$5,000.00) payable to the order of the "City of Arlington" 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 consulting assistance.
- B. An applicant to whom the Council grants a nonexclusive franchise, in addition to the nonrefundable fee specified hereinabove, shall pay to the City, within thirty (30) days of receipt of notice of the amount, an amount set by the Council, or its designee, which shall represent the remaining out-of-pocket costs incurred by the City, in granting the franchise and not defrayed by fees forthcoming from the provisions of subsection A of this section.

Section 13 Required Services and Facilities to be Included in Franchise Agreement

- A. A franchise agreement shall include a description of the GRANTEE's cable system design and description of programming and cable services offered, or to be offered, as the case may be, including any optional premium cable services, a description of facilities proposed for local origination programming, and facilities offered or to be offered to various community institutions. A GRANTEE shall maintain the mix, level and quality of programming within the broad categories of video programming or other services set forth in the Franchise Agreement.
- B. Where there has been a substantial failure to maintain the mix, level or quality of services within the broad categories of video programming or other services as set forth in a GRANTEE's franchise, the Council may, following due notice and public hearing, direct the GRANTEE to comply with its obligations in this regard. Written notice of such hearing shall be provided to the GRANTEE and the public at least (30) days prior to such hearing.

ARTICLE III

FRANCHISE CONDITIONS

Section 14 Term

The term of a franchise shall be not more than fifteen (15) years from the date the franchise is accepted by the GRANTEE by written agreement with the City or from the expiration of a Grantee's previously existing franchise, whichever is later, unless terminated earlier in accordance with this Ordinance.

Section 15 Notice of Meetings

The Council shall not hold any meeting involving the renewal, revocation or termination of a GRANTEE's franchise unless the City Manager has (1) advised the GRANTEE in writing, at least sixty (60) days prior to such meeting, unless otherwise provided by mutual agreement between GRANTOR and GRANTEE as to its time, place and purpose and (2) has caused notice of such meeting to be provided in accordance with law.

Section 16 State of the Art Modifications

- A. The Council shall have the authority to order a public hearing on the provision of additional channel capacity by a GRANTEE or on the inclusion in a GRANTEE's cable system of "state of the art" technology or upgraded facilities. Notice of such hearing shall be provided to the GRANTEE and the public not later than thirty (30) days prior to such hearing.
- B. If, after such hearing, the Council determines that (1) there exists a reasonable need and demand for additional channel capacity and/or "state of the art" technology or upgraded facilities, and (2) provision has been made or will be made for adequate rates which will not preclude a GRANTEE from achieving a positive net present value on its investment in the City over the term of the franchise and will allow a GRANTEE a fair rate of return on its total investment (including the investment required to provide the additional channels and/or the "state of the art" technology or upgraded facilities), and (3) the additional channel capacity and/or "state of the art" technology or upgraded facilities will not result in economic waste for the GRANTEE, the Council may order the GRANTEE to

provide a specified number of additional channels and/or specified "state of the art" technology or upgraded facilities. In considering the economic feasibility of required cable system improvements, the City shall consider whether to extend the term of the franchise to permit the recovery of the cost of the improvements as set forth in (2) above. Any proposed extension of franchise shall be treated procedurally in accordance with the procedure for franchise renewal, as set forth in Section 17.

Section 17 Renewal of Franchise

A. A franchise may be renewed by the City upon application of a GRANTEE pursuant to the procedure established in subsection (B) of this section and in accordance with the then applicable law.

B. Renewal

1. During the six-month period which begins with the thirty-sixth month before franchise expiration, the City may on its own initiative, and shall at the request of a GRANTEE, commence proceedings which afford the public appropriate notice and participation for the purpose of:

- i. Identifying the future cable-related community needs and interests; and
- ii. Reviewing the performance of the GRANTEE under the franchise during the then current franchise term.
- iii. Hearing any interested persons during said meeting and determining whether or not the GRANTEE did reasonably comply with the terms and conditions imposed by this ordinance and the franchise.

2. i. Upon completion of a proceeding under subsection (B)(1) of this section, the GRANTEE seeking renewal of a franchise may, on its own initiative or at the request of the City, submit a proposal for renewal.

- ii. Any such proposal shall contain such material as the City may require, including proposals for an upgrade of the cable system.

- iii. The City may establish a date by which such proposal shall be submitted.
- 3.
- i. Upon submittal by the GRANTEE of a proposal to the City for the renewal of a franchise, the City shall provide public notice of such proposal and, during the 4-month period which begins on the completion of any proceedings under subsection B(1) of this section, renew the franchise or, issue a preliminary assessment that the franchise should not be renewed. If the City determines that the GRANTEE has been in reasonable compliance with the terms and conditions imposed by this ordinance and the franchise, the Council may renew the GRANTEE's franchise for a period not to exceed fifteen (15) years, under such terms and conditions as may be mutually agreed in a new Franchise Agreement. The City shall have the right to recoup from the GRANTEE those direct expenses above normal administration costs incurred pursuant to renewal of the franchise.
 - ii. If the City issues a preliminary assessment that the franchise should not be renewed, then at the request of the GRANTEE or on its own initiative, the City shall commence an administrative proceeding, after providing public notice of such proceeding, in accordance with subsection B(3)(iii) of this section to consider whether:
 - A. The GRANTEE has substantially complied with the material terms of the existing franchise and with applicable law;
 - B. The quality of the GRANTEE's cable service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality or level of cable services or other services provided over the cable system, has been reasonable in light of community needs;
 - C. The GRANTEE has the financial, legal, and technical ability to provide the

cable services, facilities, and equipment as set forth in the GRANTEE's proposal; and

- D. The GRANTEE's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.
- iii. In any proceeding under subsection B(3)(ii) of this section, the GRANTEE shall be afforded notice and the GRANTEE and the City, or its designee, shall be afforded fair opportunity for full participation, including the right to introduce evidence, including evidence related to issues raised in the proceeding under Subsection B(1) of this section, to require the production of evidence, and to question witnesses. A transcript shall be made of any such proceeding.
- iv. At the completion of a proceeding under this subsection, the Council shall adopt an ordinance granting or denying the proposal for renewal based upon the information presented during the proceeding, and transmit a copy of such ordinance to the GRANTEE. Such ordinance shall state the reasons for the decision.
4. Any denial of a proposal for renewal shall be based on one or more adverse findings made with respect to the factors described in subparagraphs (A) through (D) of subsection B (3)(ii), pursuant to the record of the proceeding under subsection B(3)(ii) of this section. The City may not base a denial of renewal on a failure to substantially comply with the material terms of the franchise under subsection B(3)(ii)(A) or on events considered under subsection B(3)(ii)(B) unless the City has provided the GRANTEE with notice and the opportunity to cure, or in any case in which it is documented that the City has waived its right to object, or has effectively acquiesced.
5. Notwithstanding the provisions of subsections B(1) through B(4) of this section, a GRANTEE may submit

a proposal for the renewal of a franchise pursuant to this subsection at any time, and the City may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time (including after proceedings pursuant to this section have commenced). The provisions of subsections B(1) through B(4) of this section shall not apply to a decision to grant or deny a proposal under this subsection. The denial of a renewal pursuant to this subsection shall not affect action on a renewal proposal that is submitted in accordance with subsections B(1) through B(4) of this section.

6. For the purposes of this section, the term "franchise expiration" means the date of the expiration of the term of a franchise as provided under the franchise.
7. Notwithstanding the fact that the City may determine that the GRANTEE has been in reasonable compliance with the terms and conditions imposed by this ordinance and the franchise, it shall have the right, if provided by the franchise, not to renew the franchise in which event the City shall, on the expiration date of the franchise, have the option to either purchase the assets of the GRANTEE's system at its then fair market value or, select a new GRANTEE, after a full public proceeding, and cause such new GRANTEE to take the assets at fair market value.

Section 18 Revocation Procedures

- A. Whenever a GRANTEE shall willfully refuse, neglect, or fail to construct, operate or maintain its cable system in accordance with the terms of this ordinance and its franchise, or to comply with the conditions of occupancy of any public ways, or to make required extensions of service, or willfully or knowingly make false statements on or in connection with its franchise application or proposal for renewal, or in any other way substantially violate the material terms or the material conditions of this ordinance or its franchise, or becomes insolvent, or unable or unwilling to pay its debts, or seeks or obtains relief under the bankruptcy laws, then as may otherwise be permitted by law, the franchise may be revoked.

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- B. In addition to all other rights and powers retained by the City under a franchise or otherwise, the City reserves the right to revoke and terminate a franchise and all rights and privileges of the GRANTEE thereunder in the event of a substantial breach of its terms and conditions. A substantial breach by a GRANTEE shall include, but shall not be limited to, the following:
1. Violation of any material provision of a franchise or any material rule, order, regulation or determination of the City made pursuant to a franchise;
 2. Attempt to evade any material provision of a franchise or commit or attempt to commit any fraud or deceit upon the City or GRANTEE's subscribers or customers;
 3. Failure to begin or complete system construction or system extension.
 4. Failure to provide the services promised in a Franchise Agreement.
 5. Failure to restore service after ninety-six (96) consecutive hours of interrupted service, except when approval of such interruption is obtained from the City; or
 6. Material misrepresentation of any fact in the application for or negotiation of a franchise.
- C. The foregoing shall not constitute a major breach if the violation occurs but it is without fault of a GRANTEE or occurs as a result of circumstances beyond its control. GRANTEE shall not be excused by mere economic hardship nor by misfeasance or malfeasance or omissions of its directors, officers, or employees.
- D. Prior to invoking revocation procedures, The City Manager shall make a written demand that a GRANTEE comply with any such provision, rule, order, or determination under or pursuant to a franchise. If the violation by a GRANTEE continues for a period of thirty (30) days following such written demand without written proof that corrective action has been taken or is being actively and expeditiously pursued, the City Manager may place the issue of termination of the

franchise before the City Council. The City shall cause to be served a GRANTEE, at least twenty (20) days prior to the date of such City Council meeting, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and issue which the City Council is to consider.

- E. The City Council shall hear and consider the issue and shall hear any person interested therein, and shall determine in its discretion whether or not any violation by the GRANTEE has occurred.
- F. If the City Council shall determine the violation by a GRANTEE was the fault of GRANTEE and within its control, the City Council may, by resolution, declare that the franchise of the GRANTEE shall be forfeited and terminated unless there is compliance within such period as the City Council may fix, such period not to be less than sixty (60) days, provided no opportunity for compliance need be granted for fraud or misrepresentation.
- G. The issue of forfeiture and termination shall automatically be placed upon the City Council agenda at the expiration of the time set by it for compliance. The City Council then may terminate the franchise forthwith upon finding that GRANTEE has failed to achieve compliance or may further extend the period, in its discretion.

Section 19 Purchase of Cable Television ("CATV") System by City

A. Conditions of Sale

- 1. If a renewal of a franchise held by a cable operator is denied and City acquires ownership of the cable system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be:
 - i. at fair market value, determined on the basis of the cable system valued as a going concern but with no value allocated to the franchise itself, or
 - ii. in the case of any franchise existing on the effective date of this ordinance, at a price

determined in accordance with the franchise if such franchise contains provisions applicable to such an acquisition or transfer.

2. If a franchise held by a cable operator is revoked for cause and the City acquires ownership of the cable system or effects a transfer of ownership of the system to another person, any such acquisition, or transfer shall be:
 - i. at an equitable price, or
 - ii. in the case of any franchise existing on the effective date of this ordinance, at a price determined in accordance with the franchise if such franchise contains provisions applicable to such an acquisition or transfer.

B. Date of Valuation

The date of valuation shall be no earlier than the day following the date of expiration or termination and no later than the date City makes a fair and reasonable offer for the system or the date of transfer of ownership, whichever occurs first.

C. Transfer to City

Upon exercise of the option of City (and payment of the above sum) to purchase the CATV System and its service of official notice of such action upon GRANTEE, the GRANTEE shall immediately transfer to the City possession and title to all facilities and property, real and personal, of the CATV system, free from any and all liens and encumbrances not agreed to be assumed by the City in lieu of some portion of the purchase price set forth above; and the GRANTEE shall execute such warranty deeds or other instruments of conveyance to the City as shall be necessary for this purpose.

D. Arbitration of Value and Costs

1. In the event City and GRANTEE cannot agree upon the value of the CATV system, either may give notice of a demand to the other for arbitration.

2. Arbitration shall commence and proceed according to law except as follows:
 - i. The parties shall, within fifteen (15) days, appoint one arbitrator each who is experienced and knowledgeable in the valuation of business property customarily used in cable television operations. Arbitrators shall each agree upon the selection of a third arbitrator, similarly qualified, within fifteen (15) days.
 - ii. Within thirty (30) days after appointment of all arbitrators and upon ten(10) days written notice to parties, the Board of Arbitrators shall commence a hearing on the issue of valuation.
 - iii. The hearing shall be recorded and transcribed at the request of either party. All hearing proceedings, debate and deliberations shall be open to the public and at such times and places as contained in the notice or as thereafter publicly stated in order to adjourn, except as otherwise authorized by the City Attorney.
 - iv. At the close of the hearings and within thirty (30) days, the Board of Arbitrators shall prepare findings and a decision agreed upon by a majority of the Board which shall be filed with the City and served by mail upon the GRANTEE. Unless the parties extend by mutual agreement the time which the Board has to make a decision, the proceedings shall become null and void and shall be started anew.
 - v. The decision of the Board shall be final and binding upon the parties.
 - vi. Either party may seek judicial relief in the following circumstances:
 - (A) a party fails to select an arbitrator;
 - (B) the arbitrators fail to select a third arbitrator;

- (C) one or more arbitrator(s) is unqualified;
- (D) designated time limits have been exceeded;
- (E) the Board has not proceeded expeditiously; and
- (F) based upon the record the Board abused its discretion.

vii. In the event a court of competent jurisdiction determines the Board has abused its discretion, it may order the arbitration procedure repeated and issue findings, orders and directions, with costs of suit to be awarded to the prevailing party.

viii. Cost of arbitration shall be borne equally unless the Board finds the offer of the City or the demand of the GRANTEE was unreasonable, in which case, cost may be apportioned so that less or none of the costs may be borne by one party.

Section 20 Transfer of Ownership to City; Transition Period

- A. Upon payment of the purchase price, the GRANTEE shall immediately transfer to the City all contracts, leases, licenses, permits and any other assignable rights necessary to maintain continuity of service to the public and transfer possession and title to all facilities and property, real and personal, related to its system free from any and all liens and encumbrances not agreed to be assumed by the City in lieu of some portion of the purchase price. The GRANTEE shall make it a condition of each contract entered into by it with reference to its operations under this ordinance and franchise, that the contract shall be subject to the exercise of its option by the City and that the City shall have the right to succeed to all privileges and obligations thereof upon the exercise of such option, if reasonably possible under current business practices without affecting the price.
- B. Until such time as the GRANTEE transfers to the City or to a new GRANTEE possession and title to all assets,

real and personal, related to its system, the GRANTEE shall, as trustee for its successor in interest, continue to operate the system under the terms and conditions of this ordinance and the franchise and to provide the regular subscriber service and any and all of the services that may be provided at that time. During such interim period, the GRANTEE shall not sell any of the system assets nor shall the GRANTEE make any physical, material, administrative or operational change that would tend to (1) degrade the quality of service to the subscribers, (2) decrease income, or (3) materially increase expenses without the express permission, in writing, of the City or its assignee. The City shall be permitted to seek legal and equitable relief to enforce the provisions of this section.

- C. For its management services during this interim period, the GRANTEE shall be entitled to receive as compensation, the net profit, as defined herein, generated during the period between the date the GRANTEE received written notice from the City of its intent to purchase the GRANTEE's system or the expiration date of the franchise, whichever is earlier, and the payment of the purchase price. Such management services shall not be continued without GRANTEE's consent for more than twelve (12) months. However, if the Council determines that the GRANTEE is responsible for any delay in transfer of ownership and control, the GRANTEE shall continue to operate the system without compensation for its services until the sales agreement is executed and ownership and control passes to the City or its assignee. In addition, the City shall also have the further right to (1) forthwith cancel GRANTEE's franchise and have the system removed or (2) to purchase the assets of the GRANTEE's system at its depreciated value.

Section 21 Arbitrary and Capricious Action by a GRANTEE

If, as a result of a dispute between a GRANTEE and the City and prior to a settlement of that dispute as provided for herein, the GRANTEE arbitrarily or capriciously discontinues all regular cable services to its subscribers, the GRANTEE shall forfeit its right of notice and a hearing as provided for herein, and the Council shall declare the GRANTEE's franchise immediately canceled and the City shall, forthwith, seek appropriate judicial injunctive relief and shall proceed to exercise its rights and powers as provided for herein.

Section 22 Franchise Fees

- A. A GRANTEE shall pay monthly to the City's Director of Finance, in consideration of the granting of a franchise to use the public ways for the operation of a cable system, five (5) percent of its annual gross revenues (as herein defined) or such higher rate as allowed by law for the period of its operation under the franchise. The five (5) percent or higher payment will be calculated for each calendar month ("calculation month") and will be due and payable on the last day of the month immediately after the calculation month. Any payment not made by the last day of the month following the calculation month will be late.
- B. A GRANTEE shall file with the City's Director of Finance, within thirty (30) days after the end of each of the GRANTEE's fiscal quarters, a financial statement reporting gross revenues earned during the current fiscal quarter and gross revenues earned for the fiscal year to date by the GRANTEE. The GRANTEE shall also file an annual audited financial statement prepared by an independent certified public accountant or accounting firm. In addition, the independent certified public accountant or accounting firm shall submit a certified statement that the GRANTEE's total gross revenues as herein defined were fairly stated and that the franchise fees were calculated in accordance with this Ordinance. In the event that additional franchise fees are due to the City, the GRANTEE will submit a check for payment of these fees on or before the date the audited financial statements are due to be submitted to the City's Director of Finance.
- C. The City shall have the right, consistent with the provisions of Section 30, to inspect a GRANTEE's books and records, the right of audit and the recomputation of any amounts determined to be payable under this ordinance; provided, that such audit shall take place within thirty-six (36) months following the close of each of the GRANTEE's fiscal years. Any additional amount due the City as a result of the audit shall be paid within thirty (30) days following written notice to the GRANTEE by the City, which notice shall include a copy of the audit report. The cost of such audit shall be borne by the GRANTEE if it is properly determined that the GRANTEE's annual payment to the City for

the preceding year is increased thereby by more than five (5) percent.

- D. In the event that any franchise payment or computed amount is not made on or before the applicable dates heretofore specified, interest shall be charged from such due date at the annual rate of twelve (12) percent or at the maximum rate allowed by law.
- E. In the event the franchise is canceled prior to its expiration date and the City invokes its right to purchase a GRANTEE's cable system, the GRANTEE shall file with the City, within sixty (60) days of the date that ownership and control passes to the City or its assignee, an audited financial statement clearly showing the gross revenues received by the GRANTEE since the end of the previous fiscal quarter. The GRANTEE shall pay the franchise fee due at the time such statement is filed.
- F. No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable under this ordinance.
- G. Nothing contained in this ordinance shall be construed to exempt the GRANTEE from any tax, business license tax, levy, or assessment which is now or which may hereafter be authorized by law.
- H. The City reserves the right to increase both the franchise fee rate and the revenues on which such fee is based so as to increase the franchise payments in the event that the current federal limitations as to the franchise fee rate and the revenues on which such fee may be levied are eliminated or changed as a result of superseding regulations, laws or court action. Any change in franchise fee rate or the revenues on which such fee is based shall be accomplished by amendment to this ordinance and to any ordinance other provision(s) granting a franchise hereunder, provided that such amendments shall be preceded by a public hearing affording due process.
- I. The City reserves the right to require the GRANTEE to collect any consumer or other tax of general applicability or other fee of general applicability that may be imposed on subscribers by the City.

Section 23 Liability for Damages, Insurance, Indemnification, Performance and Payment Bonds

- A. A GRANTEE shall pay all damages and penalties which the City may legally be required to pay as a result of granting a franchise. All damages, penalties and expenses incurred as a result of actions brought between GRANTEE and GRANTOR shall be borne by the respective parties in ordinary course, unless otherwise provided by court order or settlement between the parties.
- B. A GRANTEE shall pay all expenses incurred by the City in defending itself with regard to all damages and penalties mentioned in Paragraph 23 A above. These expenses shall include all out-of-pocket expenses such as attorney fees and shall also include the reasonable value of any services rendered by the City Attorney or his assistants and/or any representative of the City.
- C. Upon the granting of a franchise and at all times during the term of the franchise, including the time for removal of facilities or management as a trustee as provided for herein, a GRANTEE shall obtain, maintain, pay all premiums for and file with the City Manager and Risk Manager, written evidence of payment of premiums and executed duplicate copies of the following insurance:
1. Commercial General Liability: \$1,000,000 combined single limit per occurrence for death, bodily injury, personal injury and property damage. This policy shall have no coverages removed by exclusions. Coverage shall also include Explosion, Collapse and Underground Hazards;
 2. Automobile Liability: \$500,000 combined single limit per accident for bodily injury and property damage. Coverage should be provided as a "Code 1", any auto;
 3. Workers' Compensation and Employers' Liability: Statutory. Employers Liability policy limits of \$100,000 for each accident, \$500,000 policy limit - Disease.

D. Other Insurance Provisions:

1. The City shall be named as an additional insured on the Commercial General Liability and Automobile Liability Insurance policies. These insurance policies shall contain the appropriate additional insured endorsement signed by a person authorized by that insurer to bind coverage on its behalf.
2. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been provided to the City.
3. Insurance is to be placed with insurers with a Best rating of no less than A:VII or equivalent. The company must also be duly authorized to transact business in the State of Texas.
4. Workers' Compensation and Employers' Liability Coverage: The insurer shall agree to waive all rights of subrogation against the City, its officials, employees and volunteers for losses arising from the activities under a franchise.
5. Certificates of Insurance and endorsements reflecting coverage shall be forwarded to:

Risk Manager
City of Arlington
Post Office Box 231
Arlington, Texas 76004-0231

E. A GRANTEE shall, at its sole cost and expense, fully indemnify, defend and hold harmless the City, its officers, boards, commissions and employees against any and all claims, suits, actions, liability and judgments for damages (including but not limited to expenses for reasonable legal fees and disbursements and liabilities assumed by the City in connection therewith):

1. To persons or property, in any way arising out of or through the acts or omissions of Company, its servants, agents or employees, or to which a GRANTEE's negligence shall in any way contribute;

2. Arising out of any claim for invasion of the right of privacy, for defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation (excluding claims arising out of or relating to City programming); and
 3. Arising out of GRANTEE's failure to comply with the provisions of any federal, state, or local statute, ordinance or regulation applicable to Company in its business hereunder.
- F. The foregoing indemnity is conditioned upon the following: The City shall give a GRANTEE prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section, the City shall cooperate in the defense or settlement of any action, the City shall take all reasonable action to reduce or mitigate damages, and the GRANTEE shall have the right to settle. Nothing herein shall be deemed to prevent the City from cooperating with a GRANTEE and participating in the defense of any litigation by its own counsel at its sole cost and expense. No recovery by the City of any sum by reason of the Letter of Credit required in Section 24 hereof shall be any limitation upon the liability of GRANTEE to the City under the terms of this section, except that any sum so received by the City shall be deducted from any recovery which the City might have against a GRANTEE under the terms of this section.
- G. Performance and Payment Bonds
1. Within thirty (30) days after the award or renewal of a franchise, a GRANTEE shall file with the City Secretary and Risk Manager a performance and payment bond each in the amount of Five Hundred Thousand Dollars (\$500,000.00) in favor of the City. The corporate surety on each bond will be authorized to do business in Texas and acceptable to the City Attorney. Bonds shall be maintained throughout any construction and any reconstruction period and until such time as determined by the City Council.

2. In the event a GRANTEE fails to comply with any law, ordinance or regulation governing a franchise, or fails to well and truly observe, fulfill and perform GRANTEE's proposal, there shall be recoverable, jointly and severally, from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of a GRANTEE, plus a reasonable allowance for attorney fees, including the City's legal staff, and costs, up to the full amount of the bond. This section shall be an additional remedy for any and all violations outlined in Section 24 (Letter of Credit).
3. The City may, upon completion of construction or reconstruction of the cable system as approved by the City Council, waive or reduce the requirement of a GRANTEE to maintain bonds. However, the City may require a performance and payment bond to be posted by a GRANTEE for any construction subsequent to the completion of the initial service areas, in a reasonable amount and upon such terms as determined by the City Council.
4. The bond shall contain the following endorsement:
"It is hereby understood and agreed that this bond 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 Attorney, by registered mail, a written notice of such intent to cancel or not to renew."

Section 24 Letter of Credit

- A. Within thirty (30) days after the award or renewal of a franchise, a GRANTEE shall deposit with the City's Director of Finance an irrevocable letter of credit in a form satisfactory to the City's Director of Finance and the City Attorney. The amount of the letter of credit shall be one hundred thousand dollars (\$100,000.00) issued by a federally insured commercial lending institution with a credit rating of BAA or BBB+ or higher. The federally insured commercial institution on which the letter of credit is to be drawn shall be acceptable to the City. The letter of credit shall be used:

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1. To insure the GRANTEE's compliance with the terms and conditions of this ordinance and its franchise; and
 2. To insure the GRANTEE's payment of any liabilities arising out of the construction, operation or maintenance of the cable system, including the cost of removal or abandonment of any property of a GRANTEE.
- B. The letter of credit shall contain the following endorsement: "At least sixty (60) days' prior written notice shall be given to the City by the financial institution of any such intention to cancel, replace, fail or renew, or materially alter this letter of credit. Such notice shall be given by certified mail to the City's Director of Finance and City Attorney."
- C. The letter of credit may be drawn upon by the City by presentation of a draft at sight on the lending institution, accompanied by a written certificate signed by the City Manager certifying that a GRANTEE has failed to comply with this ordinance, its franchise or any other order, permit or direction of the City relating to this ordinance or the franchise stating the specific reasons therefor, and stating the basis for the amount being drawn. Examples of a basis for drawing upon the letter of credit include, but are not limited to, the following:
1. Failure of a GRANTEE to pay to the City any fees and or taxes or other payment after ten (10) working days' written notice of delinquency;
 2. Failure of a GRANTEE to pay to the City, within ten (10) working days after written notice, any amounts due and owing to the City by reason of the indemnity provisions of Section 23;
 3. Failure of a GRANTEE to pay to the City any liquidated damages due and owing to the City pursuant to Section 25.
 4. Failure by a GRANTEE to pay to the City within ten (10) working days any amounts due pursuant to Section 17B(3)(i).

- D. A GRANTEE shall agree to structure the letter of credit in such a manner so that if City draws upon the letter of credit and reduces the amount of available credit to a sum below seventy-five thousand dollars (\$75,000.00), the GRANTEE shall replenish the letter of credit to a minimum of seventy-five thousand dollars (\$75,000.00), within five (5) calendar days. The intent of this subsection is to ensure that the credit available to the City shall at no time fall below seventy-five thousand dollars (\$75,000.00). GRANTEE further agrees that the letter of credit will be replenished to one hundred thousand dollars (\$100,000.00) within sixty (60) days from the date the City draws against the letter of credit.
- E. The letter of credit shall become the property of the City in the event that the franchise is canceled by reason of default of a GRANTEE. The letter of credit shall be retained by the City and returned to a GRANTEE at the expiration of the franchise provided there is no outstanding default, unpaid franchise fees, ad valorem taxes or debts to the City on the part of a GRANTEE or GRANTEE's creditors.
- F. The rights reserved to the City with respect to the letter of credit are in addition to all other rights of the City, whether reserved by this ordinance, a franchise or otherwise authorized by law, and no action, proceeding or right with respect to the letter of credit shall affect any other right the City has or may have.

Section 25 Liquidated Damages

- A. Notwithstanding any other remedy provided for in this ordinance, the franchise, or otherwise available under law, the City shall have the power to recover monetary amounts from a GRANTEE under certain conditions, such monetary amounts being in the nature of liquidated damages, provided the City first complies with the notice requirements of subsection (C) herein.
- B. Franchise agreements shall include provisions for liquidated damages to be paid by a GRANTEE, in amounts set forth in franchise agreements (to be no less than the minimum amounts set out below) and chargeable to the letter of credit as follows:

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1. Failure to complete system construction or reconstruction, unless the Council specifically approves the delay by resolution, a GRANTEE shall pay five hundred dollars (\$500.00) per day for each day, or part thereof, the delinquency continues;
 2. Failure to provide, upon written request, data, documents, reports, or information, a GRANTEE shall pay fifty dollars (\$50.00) per day for each day, or part thereof, that each violation occurs or continues;
 3. Failure to test, analyze and report on the performance of the cable system pursuant to Section 37, a GRANTEE shall pay two hundred dollars (\$200.00) per day for each day, or part thereof, that the noncompliance continues.
 4. Failure to provide in a continuing manner the types of services set forth in a Franchise Agreement and required by this ordinance unless the Council specifically approves, by resolution, a delay or change or the GRANTEE has obtained modification of its obligation, a GRANTEE shall pay two hundred dollars (\$200.00) per day for each day, or part thereof, that the noncompliance continues.
 5. Any other action or nonaction by a GRANTEE, as agreed upon between the City and GRANTEE and set forth in the Franchise Agreement.
- C. If the City Manager, following thirty (30) days' written notice to a GRANTEE to cure any problem that might result in liquidated damages, concludes that a GRANTEE is in fact liable for liquidated damages pursuant to this section, he shall issue to the GRANTEE by registered or certified mail a Notice of Intention to Assess Liquidated Damages. The Notice of Intention to Assess shall set forth the basis of the assessment and shall inform the GRANTEE that liquidated damages will be assessed from the date of the Notice of Intention to Assess unless the assessment notice is appealed for hearing before the Council and the Council rules (1) that the violation has been corrected, or (2) that an extension of time or other relief should be granted. A GRANTEE desiring a hearing before the Council shall

send a written Notice of Appeal by registered or certified mail to the City Manager within ten (10) days of the date of the Notice of Intention to Assess Liquidated Damages. The hearing on the GRANTEE'S appeal shall be held within thirty (30) days of the date of the Notice of Intention to Assess Liquidated Damages. After the hearing, if the Council sustains in whole or in part the City Manager's assessment of liquidated damages, the City Manager may at any time thereafter draw upon the letter of credit required by Section 24. Unless the Council indicates to the contrary, the liquidated damages shall be assessed beginning on the date of the Notice of Intention to Assess and continuing thereafter until such time as the violation ceases, as determined by the City Manager in his sole discretion. (Amend Ord 98-71, 6/9/98)

Section 26 Transfer of Franchise

- A. A franchise granted under this ordinance shall be a privilege to be held in personal trust by a GRANTEE. It shall not be assigned, transferred, sold or disposed of, in whole or in part, by voluntary sale, merger, consolidation or otherwise or by forced or involuntary sale, without prior consent of the Council expressed by ordinance, and then only on such conditions as may therein be prescribed. The City is hereby empowered to take legal or equitable action to set aside, annul, revoke or cancel a franchise or the transfer of a franchise, if such transfer is not made according to the procedures set forth in this ordinance, or is not in the best interest of the City or the public.
- B. Any sale, transfer or assignment shall be made by a bill of sale or similar document, an executed copy of which shall be filed in the office of the City Manager, within thirty (30) days after any such sale, transfer or assignment. The Council shall not withhold its consent unreasonably, provided, however, the proposed assignee agrees to comply with all provisions of this ordinance and the franchise and such additional conditions as the Council may prescribe, and provided that the assignee is able to provide proof of financial responsibility, in the form of an audited financial statement prepared by an independent certified public accountant or a certified public accounting firm for its most recently completed fiscal year, legal qualifications and technical capability satisfactory to the Council.

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- C. No such consent shall be required for a transfer in trust, mortgage or other instrument of hypothecation, in whole or in part, to secure an indebtedness except that when such hypothecation shall exceed seventy-five (75) percent of the fair market value, (as defined in Section 1-I) of the property used by a GRANTEE in the operation of its cable system. Prior consent of the Council, expressed by resolution, shall be required for such transfer, and such consent shall not be withheld unreasonably.
- D. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of ten percent (10%) of the voting shares of a GRANTEE if such person or group of persons does not already own ten percent (10%) of the voting shares of GRANTEE. Every change, transfer, or acquisition of control of the GRANTEE shall make the franchise subject to cancellation unless and until the City shall have consented thereto, which consent will not be unreasonably withheld.
- E. The GRANTEE shall promptly notify the City Manager of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the GRANTEE. Every change, transfer, or acquisition of control of the GRANTEE shall make the franchise subject to cancellation unless and until the City Council shall have consented thereto. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the City Council may inquire into the qualifications of the prospective controlling party, and the GRANTEE shall assist the City Council in any such inquiry. If the City Council does not schedule a hearing on the matter within sixty (60) days after notice of the change or proposed change and the filing of a petition requesting its consent, it shall be deemed to have consented. In the event that the City Council adopts an ordinance denying its consent and such change, transfer or acquisition of control has been affected, the City Council may cancel the franchise unless control of the GRANTEE is restored to its status prior to the change, or to a status acceptable to the City Council.
- F. The consent of the Council to any sale, transfer, lease, trust, mortgage or other instrument of hypothecation shall not constitute a waiver or release of any

of the rights of the City under this ordinance or any franchise.

- G. In the absence of extraordinary circumstances, the City will not approve any transfer or assignment of a franchise prior to substantial completion of construction or reconstruction of a franchised system.
- H. In no event shall a transfer of ownership or control be approved without the successor in interest becoming a signatory to a franchise agreement.
- I. Nothing herein shall require approval for GRANTEE'S assigning the Franchise to or selling its stock to wholly owned subsidiaries or to affiliates under the same ultimate control and ownership as existed prior to the assignment.

Section 27 Foreclosure

Upon the foreclosure or other judicial sale of all or a substantial part of the system or upon the termination of any lease covering all or a substantial part of the system, a GRANTEE shall notify the City Manager 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 Section 26 of this ordinance, governing the consent of the City to such change in control of the GRANTEE shall apply.

Section 28 Receivership

The City shall have the right to cancel a franchise thirty (30) days after the appointment of a receiver, or trustee, to take over and conduct the business of the GRANTEE whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said thirty (30) days, or unless:

- 1. Within one hundred and twenty (120) days or a mutually agreed date after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this ordinance and remedied all defaults thereunder; and
- 2. Such receiver or trustee, within said one hundred and twenty (120) days or a mutually agreed date shall have executed an agreement, consented to by

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Council and duly approved by the Court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this ordinance and the franchise granted to an original GRANTEE.

ARTICLE IV

SUBSCRIBER RATES

Section 29 Subscriber Fees, Rates or Charges

- A. By accepting a franchise granted pursuant to the terms and conditions imposed by this ordinance, a GRANTEE agrees that the Council shall have the authority and right to regulate the GRANTEE's fees, rates or other charges in accordance with Federal law including but not limited to FCC Rate Regulations.
- B. The City will follow FCC Rate Regulations in regulation of the rates, charges or fees of any GRANTEE operating in City, notwithstanding any different or inconsistent provisions in this ordinance or GRANTEE's franchise; and
- C. In connection with such regulation, the City will ensure a reasonable opportunity for consideration of the views of interested parties; and
- D. The City Manager or his designee is authorized to execute on behalf of the City and file with the FCC such certification forms or other instruments as are now or may hereafter be required by FCC Rate Regulations in order to enable the City to regulate fees, rates or charges. (Amend Ord 93-116, 11/2/93)
- E. Penalty for Violation of Rate Order

It is an offense for any person, firm, corporation, agent or employee thereof to knowingly or intentionally fail to comply with a Rate Order issued by the City of Arlington. Any person, firm, corporation, agent or employee thereof who violates any of the provisions of a Rate Order shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Five Hundred Dollars (\$500.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense. (Amend Ord 99-21, 2/9/99)

Section 30 Books and Records

- A. A GRANTEE shall, within thirty (30) days following acceptance of a franchise, furnish and keep current with the City Secretary a list of its shareholders holding ten (10) percent or more of the outstanding stock or equivalent ownership interest as well as a roster of its principals or officers and directors and their addresses.
- B. A GRANTEE shall maintain an office in the City for so long as it continues to operate a system or any portion thereof and shall designate such office as the place where all notices, directions, orders, and requests may be served or delivered under this ordinance. The City Manager shall be notified of the location of such office or any change thereof.
- C. A GRANTEE shall keep a complete and accurate set of books of accounts and records of its business and operations in accordance with generally accepted accounting principles, under and in accordance with the Ordinances and Franchise. All books and records shall be made available at the GRANTEE's office in the City for a period of at least three (3) years.
- D. The City Manager or his designee (City's independent certified public accounting firm, City Auditor, Director of Finance, etc.) shall have reasonable access to all books of accounts and records of a GRANTEE for the purpose of ascertaining the accuracy of any and all reports required under this Ordinance and shall be given reasonable access to all other records of the GRANTEE relevant to the enforcement of the franchise or ordinance.
- E. Any false entry in the books of account or records of a GRANTEE or false statement in the reports to the City Manager as to a material fact, knowingly made by a GRANTEE shall constitute the breach of a material provision of the ordinance and franchise.
- F. Copies of GRANTEE's schedule of charges, contract or application forms for regular subscriber service, policies regarding the processing of subscriber complaints, delinquent subscriber disconnect and reconnect procedures and any other terms and conditions adopted as a GRANTEE's policy in connection with its subscribers

shall be filed with the City Secretary and conspicuously posted in a GRANTEE's local office.

Section 31 Fiscal Reports

A GRANTEE shall file annually with the City Manager and the City's Director of Finance, no later than one hundred twenty (120) days after the GRANTEE's fiscal year end, a copy of the GRANTEE's audited financial statement prepared by an independent certified public accountant or an independent certified public accounting firm.

In addition to the audited financial statements, a GRANTEE shall also provide a schedule of its properties and equipment devoted to CATV System operations, by category including its investment in such properties and equipment, and the original cost less accumulated depreciation of the properties and equipment. The audited financial statements and the report on property and equipment shall be submitted along with any other reasonable information the City may request with respect to the GRANTEE's properties and expenses related to its CATV System operations within the City. The GRANTEE shall also file a report with the City Manager relating to its CATV System operations that includes the following information specific to the City: number of homes passed, number of cable miles, number of subscribers for each revenue source attributable to the GRANTEE's operation within the City.

This report shall be certified as being correct by a responsible officer of the company. All proprietary information submitted pursuant to this section shall be treated as confidential to the extent permitted by law.

ARTICLE V

SYSTEM OPERATIONS

Section 32 Initial Franchise Area and Amendments Thereto

- A. A GRANTEE shall furnish to the City a map of suitable scale showing all streets and public buildings and indicating the initial franchise area to be served. The map also shall list the names of all neighborhoods, developments and communities served.
- B. A GRANTEE must extend and make cable television service available to every dwelling unit within one (1) year of any unserved area reaching the minimum density of at least twenty-five (25) dwelling units per street mile, as measured from the existing system.
- C. A GRANTEE and the public shall be afforded a reasonable opportunity to be heard and to submit documented comments or evidence either supporting or opposing the initial franchise area delineated by GRANTEE, or amendments thereto, prior to consideration and adoption or rejection by the City Council.

Section 33 Extension of Service Outside Initial Franchise Area

- A. Except as provided in paragraph B of this section, a GRANTEE shall extend its full service outside the initial franchise area, in accordance with the approved fee schedule, to any location within the City boundaries upon written request by five or more applicants living within one thousand (1,000) yards of each other.
- B. A GRANTEE shall be entitled to recover from the applicants requesting such service extensions the direct, total cost of that portion of the combined trunk and feeder line extension which exceeds an average of one hundred fifty (150) feet per subscriber, measured along the most practicable route from the nearest technically feasible point on the GRANTEE's system, not including the length of service drops.

Section 34 Areawide Interconnection

- A. Interconnection Required. A GRANTEE shall interconnect access channels of the cable system with any or all other CATV systems in adjacent areas, upon the

directive of the City in accordance with GRANTEE'S franchise. Interconnection of systems may be done by direct cable connection, microwave link, satellite or other appropriate method.

- B. Relief. A GRANTEE may be granted reasonable extensions of time to interconnect upon petition by the GRANTEE to the City. The City shall grant said request if it finds that the GRANTEE has negotiated in good faith and has failed to obtain an approval from the system or systems of the proposed interconnection or that the cost of the interconnection would cause an unreasonable or unacceptable increase in subscriber rates.
- C. Cooperation Required. A GRANTEE shall cooperate with any interconnection corporation, regional interconnection authority or city, county, state or federal regulatory agency which may be hereafter established for the purpose of regulating, financing, or otherwise providing for the interconnection of cable systems beyond the boundaries of the City.

Section 35 Service to Schools, Public Buildings, etc.

- A. A GRANTEE shall provide, without charge, within the initial franchise area and any extension made thereto, one service outlet to each fire station, public and private school, police station, public library and such buildings as used for municipal purposes as may be designated by the City pursuant to GRANTEE'S franchise agreement.

Section 36 Operating Procedures

- A. A GRANTEE shall construct, operate and maintain its cable system subject to the supervision of the City and in full compliance with the rules and regulations, including applicable amendments, of the Federal Communications Commission and all other applicable federal, state or city laws and regulations, including the latest editions of the National Electrical Safety Code and the National Electric Code as adopted by the National Fire Protection Association, Bell System Code of Pole Line Construction and the detailed standards submitted by GRANTEE as part of its application, proposal and/or franchise agreement. The cable system and all its parts shall be subject to inspection by the City.

- B. The system shall not endanger or interfere with the safety of persons or property in the franchise area or other areas where a GRANTEE may have equipment located.
- C. Any antenna structure used in the cable television system shall comply with construction, marking, and lighting of antenna structure, required by the United States Department of Transportation.
- D. All working facilities and conditions used during construction, installation and maintenance of the CATV system shall comply with the standards of the Occupational Safety and Health Administration.
- E. A GRANTEE shall maintain equipment capable of providing standby power for head end, transportation and trunk amplifiers for a minimum of two (2) hours.
- F. A GRANTEE shall incorporate into its cable television system the capacity which will permit the City, in times of emergency, to override, by remote control, the audio of all channels simultaneously. A GRANTEE shall designate a channel which will be used for emergency broadcast of both audio and video. A GRANTEE shall cooperate with the City in the use and operation of the emergency alert override system.
- G. In all areas of the City where all cables, wires, and other like facilities of public utilities are placed underground, a GRANTEE shall place its cables, wires, or other like facilities underground to the maximum extent that existing technology reasonably permits.
- H. Drop wires in underground service areas that are temporarily placed above ground shall be buried within ten (10) days of the date and time of the temporary installation, except in those situations, where conditions are beyond the control of the GRANTEE.
(Amend Ord 98-71, 6/9/98)

Section 37 Tests and Performance Monitoring

- A. Not later than one hundred eighty (180) days after any new or not later than ninety (90) days for any substantially rebuilt portion of the system is made available for service to subscribers and at least annually thereafter, technical performance tests shall be conducted by a GRANTEE to demonstrate full compliance with the

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technical standards of the Federal Communications Commission and subsection A of Section 36. Such tests shall be performed by or under the supervision of a qualified registered professional engineer or an engineer with proper training and experience. A copy of the report shall be submitted to City Manager, describing test results, instrumentation, calibration, test procedures and the qualifications of the engineer responsible for the tests.

- B. System monitor test points shall be established at or near the output of the last amplifier in the longest feeder line, at or near trunk line extremities, at not fewer than nine (9) widely scattered locations. At least once each month, the following data shall be obtained and recorded for each monitor test point, made available for City inspection and retained in a GRANTEE's files until the relevant portion of the system has been either substantially rebuilt or replaced:
1. Visual and aural carrier level on each active channel.
 2. Carrier-to-noise ratio on at least four (4) frequencies distributed across the pass band (to avoid interrupting service. These measurements may be approximate and will be used only to detect significant changes).
 3. Visual inspection of picture quality on all active channels to detect degradation in quality attributable to the system.
- C. At any time after commencement of service to subscribers, the City may require additional tests, full or partial repeat tests or tests involving a specific subscriber's terminal. Requests for such additional tests will be made on the basis of complaints received or other evidence indicating an unresolved controversy or significant noncompliance, and such tests will be limited to the particular matter in controversy. The City will endeavor to so arrange its requests for such special tests so as to minimize hardship or inconvenience to a GRANTEE or subscribers.
- D. A GRANTEE shall continue, through the term of its franchise, to maintain the technical, operational, and maintenance standards and quality of cable service set forth in this ordinance and the franchise. Should the

City Council find by resolution, that the GRANTEE has failed to maintain these standards and quality of cable service, and should it, by resolution, specifically enumerate improvements to be made, the GRANTEE shall make such improvements. Failure to make such improvements within thirty (30) days of adoption of such resolution will constitute a breach of condition for which the remedies of Sections 18 and 25 are applicable.

- E. The City shall have the right to employ qualified consultants if necessary or desirable to assist in the administration of this or any other section of this ordinance and, by acceptance of a franchise, a GRANTEE agrees to pay all reasonably incurred costs associated therewith.

Section 38 Performance Evaluation Sessions

- A. The City and a GRANTEE shall hold scheduled performance evaluation sessions every three (3) years from the anniversary date of a GRANTEE's award of a franchise and as may be required by federal and state law.
- B. Special evaluation sessions may be held at any time during the term of a franchise at the request of the City or a GRANTEE, and upon ninety (90) days written notice.
- C. All evaluation sessions shall be open to the public and shall be advertised in a newspaper of general circulation at least ten (10) days prior to each session. A GRANTEE shall notify its subscribers of all evaluation sessions by announcement displayed prominently on at least two (2) channels of its cable system during prime time, for five (5) consecutive days preceding each session.
- D. Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to, service rate structures; franchise fee, liquidated damages; free or discounted services; application of new technologies; system performance; services provided; programming offered; customer complaints; privacy; amendments to this ordinance; judicial and FCC rulings; line extension policies; and City or GRANTEE rules.

- E. Members of the general public may add topics either by working through the negotiating parties or by presenting a petition. If such a petition bears the valid signature of fifty (50) or more residents of Arlington, the proposed topic or topics shall be added to the list of topics to be discussed at the evaluation session.

Section 39 Service, Adjustment and Complaint Procedures

- A. A GRANTEE shall not deny cable service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, sex, age or disability. A GRANTEE shall comply at all times with all other applicable federal, state and local laws and regulations, and as amended from time to time relating to nondiscrimination.
- B. Customer Service Standards. A GRANTEE is subject to the following customer service standards or such higher applicable standard in accordance with current federal law or a GRANTEE's Franchise with City, whichever is the highest standard of customer service.
1. A GRANTEE shall maintain local, toll-free telephone access lines, which shall be available to its subscribers twenty-four (24) hours a day, seven (7) days a week, including holidays. Trained company representatives shall be available to respond to customer telephone inquiries regarding service and repair on a twenty-four (24) hour basis. An Automated Response Unit (ARU) is permitted but no use of an answering machine or contracting answering service shall be permitted.
 2. A GRANTEE shall obtain and maintain sufficient telephone lines and staffing so as to not unreasonably delay the answering of telephone calls. Under normal operating conditions, a GRANTEE shall connect callers desiring contact to a live, qualified personal representative of a GRANTEE within thirty (30) seconds. If the call needs to be transferred, the additional transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under normal operating conditions, measured on a quarterly basis. Under normal operating conditions, the customer will

receive a busy signal less than three percent (3%) of the time on average measured on a quarterly basis.

3. Appropriate records shall be made by GRANTEE of service calls showing when and what corrective action was completed. Such records shall be available to the City during normal business hours and shall be reported to the City quarterly, summarized by month, and retained for not less than three (3) years.
4. GRANTEE shall maintain in the City at least one (1) office to serve the purpose of receiving and resolving customer complaints regarding cable and telecommunications services, equipment malfunctions, billing and collection disputes and similar matters. Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located. The City Manager will be notified of the location of such office or any change thereof.
5. A GRANTEE shall keep an emergency system maintenance and repair staff capable of responding to and repairing system malfunctions or interruptions affecting the entire cable system on a twenty-four (24) hour basis under normal operating conditions.
6. A GRANTEE shall interrupt system service after 7:00 a.m. and before 1:00 a.m. only with good cause and for the shortest time possible and, except in emergency situations, only after publishing notice of service interruption at least twenty-four (24) hours in advance of the service interruption. Service may be interrupted between 1:00 a.m. and 7:00 a.m. for routine testing, maintenance and repair without notification on Mondays through Fridays, except on holidays.
7. Under normal operating conditions, each of the following standards shall be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:
 - a. Standard installation shall be completed within seven (7) business days after an order has been placed. "Standard" installations are

those that are located up to one-hundred twenty-five feet (125') from the existing distribution system.

- b. Excluding conditions beyond the control of a GRANTEE, a GRANTEE shall begin working promptly on "service interruptions" or outages affecting individual subscribers and in no event later than twenty-four (24) hours after the interruption becomes known.
 - c. A GRANTEE shall respond to outage reports affecting three (3) or more subscribers within two (2) hours of the first report of the incident.
 - d. A GRANTEE must begin action to correct other service problems no later than the next business day after notification of a service problem.
 - e. The "appointment window" alternatives for installations, service calls, and other installation activities shall be either a specific time or, at maximum, a four (4) hour time block during normal business hours. (A GRANTEE may schedule service calls and other installation activities outside of normal business hours for the expressed convenience of the customer.)
 - f. A GRANTEE shall not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If a GRANTEE's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer shall be contacted. The appointment shall be rescheduled, as necessary, at a time which is convenient for the customer. Installation fees will be reduced or waived if installers miss their appointments.
8. All personnel, agents and representatives of a GRANTEE, including subcontractors that have occasion to deal directly with subscribers in the field, shall wear identification badges visibly

displayed on their person when acting on behalf of a GRANTEE.

9. A GRANTEE and its contractors shall provide advance notice, in light of the circumstances, prior to entry whenever desiring to enter or access any private property within the City. GRANTEE shall provide at least twenty-four (24) hours of advance notice to affected businesses and residences (such as by mail or a door hanger) prior to major construction requiring entry on private property. During maintenance work, installation work, and outage repair, a GRANTEE shall attempt to notify affected residences (such as by knocking and, if no answer, leaving a door hanger) prior to entering the private property. Work performed in an emergency in easements and rights of way to repair a system outage is exempted.
10. 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:
 - a. Products and services offered;
 - b. Prices and options for programming services and conditions of subscription to programming and other services, including credit and/or rebate for system outages;
 - c. Parental control features;
 - d. Installation and service maintenance policies;
 - e. Instructions on how to use the Cable Services;
 - f. Channel positions of programming carried on the system;
 - g. The availability of the "AB" switch option; and
 - h. Billing and complaint procedures that clearly set forth a GRANTEE's business address and telephone numbers and procedures for placing

a service call or request for adjustment. Such instructions also shall include the name, address, telephone number of the City Manager or other designated employee and a reminder that the subscriber can call or write the City Manager or other designated employee for information regarding complaints and terms and conditions of a GRANTEE's Franchise if a GRANTEE fails to respond to the subscriber's request for installation, service, or adjustment within a reasonable period of time.

11. Between the time a new customer is signed up for service and the time service is installed, he or she shall be afforded a right of rescision.
12. Customers shall 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.
13. Bills shall be clear, concise and understandable. Except as may be provided for in the Franchise Agreement, bills shall be fully itemized with itemizations including, but not being limited, to, basic and premium service charges and equipment charges. Bill shall clearly delineate all activity during the billing period, including operational charges, rebates, and credits. In case of a billing dispute, a GRANTEE must respond to a written complaint from a subscriber within thirty (30) days.
14. A GRANTEE shall provide reasonable notice with at least five (5) days written notice by mail prior to discontinuance of service due to nonpayment and shall not terminate for nonpayment where the payment relates to service not yet provided. Where a GRANTEE has improperly discontinued service, it shall immediately provide free reconnection.
15. Refund checks shall be issued promptly, but not later than:

- a. The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier; or
 - b. Upon the return of the equipment supplied by the cable operator if service is terminated.
16. Credits shall be issued no later than the customer's next billing cycle following the determination that a credit is warranted.
 17. In cases where requests for service have been ignored or unfilled for whatever reason, the City Manager shall have the power to require the GRANTEE to provide service in response to all reasonable requests as the City Manager may reasonably determine. (Amend Ord 98-71, 6/9/98)

C. Customer Service Reports and Compliance

1. A GRANTEE shall report to the City on a quarterly basis regarding its compliance with customer service standards no later than thirty (30) days after the end of a calendar year quarter. A report form shall be developed in consultation between the City and a GRANTEE that will provide the detail necessary to monitor GRANTEE's compliance with customer service standards. A GRANTEE shall acquire any equipment needed to measure and verify compliance with all customer service standards.
2. Upon breach of any customer service standards set forth in this ordinance or relevant provisions of Federal law or GRANTEE's Franchise, and failure of a GRANTEE to remedy such breach in accordance with this ordinance and GRANTEE's Franchise, the City may invoke the liquidated damages provisions of this ordinance, without prejudice to any other remedy otherwise available to the City.
3. Should the report required by Section 39 (C)(1) indicate a failure to meet any of the customer service standards, within thirty (30) days of submitting the initial report, a GRANTEE shall file a cure plan with the City, indicating what actions are being taken to bring performance back into compliance. Subsequently filed quarterly

reports required by Section 39(C)(1) shall include updates on the cure plan until performance is in compliance. (Amend Ord 98-71, 6/9/98)

D. Exceptions. Nothing in this Ordinance is intended to prevent or prohibit:

1. The City and a GRANTEE from agreeing to customer service requirements that exceed the standards set forth in this Ordinance;
2. The City from enforcing through the end of the Franchise term pre-existing customer service requirements that exceed the standards;
3. The City from enacting or enforcing any consumer protection law; or
4. The establishment or enforcement of any ordinance or regulation concerning customer service that imposes customer service requirements that exceed or address matters not addressed by the standards set forth in the FCC rules. (Amend Ord 98-71, 6/9/98)

E. Subscriber Complaint Procedures. A GRANTEE shall comply with all procedures established by the City regarding the handling of complaints received directly by the City from City residents regarding cable television service. In the event a subscriber does not obtain a satisfactory response or resolution to his or her request for service or adjustment or other complaint within a reasonable period of time, he or she may advise the City Manager or other designated employee in writing of his or her dissatisfaction and the City Manager or other designated employee shall have an obligation to investigate the matter and to keep records with respect to all such complaints for the remaining life of the Franchise or three (3) years, whichever amount of time is of longer duration.

1. Complaints to GRANTEE:

- a. GRANTEE shall establish policies and procedures for processing subscriber complaints. The policies and procedures shall include, but shall not be limited to, guidelines for filing complaints with the GRANTEE and City, responding to filings and resolving subscriber complaint filings.

- b. GRANTEE shall publish or cause to be published a subscriber service information publication which contains the complaint filing information.
 - c. The publication shall describe in clear and ordinary language the manner in which a complaint may be filed with the GRANTEE and with the City.
 - d. The publication shall be made available upon subscriber request, when a subscriber initiates service, or when a customer files a complaint.
 - e. GRANTEE shall have up to fifteen (15) days after a complaint is received to respond. GRANTEE shall notify the complainant subscriber of the response to the complaint.
 - f. If GRANTEE is unable to respond within fifteen (15) days, GRANTEE shall notify the subscriber complainant of the reason for the delay and anticipated date of response.
2. Complaints to the CITY:
- a. Any subscriber who is dissatisfied with any response of a GRANTEE or who has not received a response within the fifteen (15) day period shall be entitled to have the complaint reviewed by the City.
 - b. The subscriber may initiate the review either by calling the City or by filing a written complaint together with the GRANTEE's written response, if any, with the City.
 - c. If the City Manager determines that further investigation is warranted, the City may request that the GRANTEE and subscriber submit, within ten (10) days of notice thereof, a written statement.
 - d. The GRANTEE shall produce and the subscriber shall be requested to produce any additional information, including any reports from the GRANTEE, which the City may request as

reasonably necessary to an understanding and determination of the complaint.

- e. The City shall issue a determination within fifteen (15) days after examining the materials submitted, setting forth City's basis for the determination. (Amend Ord 98-71, 6/9/98)
3. Frequency of Complaints to the City:
- a. Complaints to the City regarding any one provider, whether or not submitted in the first instance to GRANTEE or falling within the scope of Subsection 39(E)(2), may not exceed one per business day on average, measured on a calendar quarter basis.
 - b. The City will maintain a log of Complaints received by the City that fall within the scope of this Subsection 39(E)(3). The log will be available for inspection and copying by GRANTEE during normal business hours.
 - c. Non-compliance with the quarterly standard set forth in Subsection (a) above shall subject the GRANTEE regarding whom the complaints have been made to liquidated damages in the amount of \$200 per day for each business day of the calendar quarter on which more than one Complaint was received by the City.
 - d. The procedure for assessment of liquidated damages under this Subsection 39(E)(3) shall be as set forth in Subsection 25(C) with the following exceptions:
 - (1) GRANTEE is not entitled to an opportunity to cure and the provision for a ruling of Council that the violation has been corrected does not apply.

- (2) The liquidated damages shall be assessed beginning on the first day of the quarter.
 - e. For purposes of this Subsection 39(E)(3) "Complaint" shall have the meaning set forth in Section 1 except that the following types of communications are not Complaints:
 - (1) Communications about the content of GRANTEE's programming.
 - (2) Communications about GRANTEE's channel line-up, other than communications about notice or timing of changes in the channel line-up.
 - (3) Communications made in response to solicitations by the City (such as request for comments on rate increases or franchise performance).
 - f. For the purposes of this Subsection 39(E)(3), "business day" shall mean any day on which the City Manager's Office of the City of Arlington is open for business. (Amend Ord 99-21, 2/9/99)
- F. Repetitive Complaints. When there have been repetitive, similar complaints made, or where there exists other evidence, which, in the judgment of the City, casts doubt on the reliability or quality of the cable service, the City shall have the right and authority to require GRANTEE to test, analyze, and report on the performance of the system to the extent allowed by this ordinance, Federal law and GRANTEE's Franchise with City, as follows:
 1. GRANTEE shall fully cooperate with 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:
 - a. The nature of the complaint or problem which precipitated the special tests.

- b. What system component was tested.
 - c. The equipment used and procedures employed in testing.
 - d. The method, if any, in which such complaint or problem was resolved.
 - e. Any other information pertinent to said tests and analysis which may be required.
2. The City may require that tests be supervised, at GRANTEE's expense, by a professional engineer, not on the permanent staff of the GRANTEE. The engineer shall sign all records of special tests and forward to the City such records with a report interpreting the results of the tests and recommending actions to be taken.
 3. The City's right under this section shall be limited to requiring tests, analyses, and reports covering specific subject and characteristics based on said complaints or other evidence when and under such circumstances as the City has reasonable grounds to believe that the complaints or other evidence required that tests be performed to protect the public against substandard cable service. (Amend Ord 98-71, 6/9/98)
- G. When there have been similar complaints made, or where there exists other evidence, which, in the judgment of the City, casts doubt on the reliability or quality of the cable service, the City shall have the right and authority to require GRANTEE to test, analyze, and report on the performance of the system. GRANTEE shall fully cooperate with 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 which precipitated the special tests.
 2. What system component was tested.
 3. The equipment used and procedures employed in testing.

4. The method, if any, in which such complaint or problem was resolved.
5. Any other information pertinent to said tests and analysis which may be required.

The City may require that tests be supervised, at GRANTEE's expense, by a professional engineer, not on the permanent staff of the GRANTEE. The engineer shall sign all records of special tests and forward to the City such records with a report interpreting the results of the tests and recommending actions to be taken.

The City's right under this section shall be limited to requiring tests, analyses, and reports covering specific subject and characteristics based on said complaints or other evidence when and under such circumstances as the City has reasonable grounds to believe that the complaints or other evidence required that tests be performed to protect the public against substandard cable service.

- H. A GRANTEE shall interrupt system service after 7:00 a.m. and before 1:00 a.m. only with good cause and for the shortest time possible and, except in emergency situations, only after publishing notice of service interruption at least twenty-four (24) hours in advance of the service interruption. Service may be interrupted between 1:00 a.m. and 7:00 a.m. for routine testing, maintenance and repair without notification on Mondays through Fridays, except on holidays.

Section 40 Use of Streets

- A. A GRANTEE shall have the right to use the streets of the City for construction, operation and maintenance of a CATV System as prescribed, regulated, and limited by provisions of this ordinance, and state, local and federal law, both present and future.
- B. The right granted shall allow a GRANTEE to construct, erect, maintain, and operate such poles, conduits, towers, manholes, subways, wires, cables, appliances, and equipment necessary for the safe and efficient operation of the CATV System; provided that:

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1. A GRANTEE shall utilize the poles or conduits of utilities and subways wherever possible.
 2. In no case may a GRANTEE install poles where underground facilities are in use by all utility companies without the prior written approval of the City Manager.
 3. Nothing in this section shall be construed to act as a waiver of the power of the City to require by ordinance or otherwise the substitution of underground service for overhead service provided such requirement is applied to all owners of overhead service facilities.
 4. Nothing in this section shall be construed to relieve a GRANTEE from its obligation to pay any fees or rents for its use of facilities of the City, utility companies, or other legal entities.
- C. A GRANTEE shall not erect or install, move, alter, or change the location of any pole, tower, wire, conduit, subway, line, manhole, cable or equipment in any street, alley or other public place of the City; or dig, cut or disturb any street, alley or other public place of the City unless prior written notice of its intention to do so is given to such department or agency of the City as shall have been or may be designated by the City Manager or the Council of the City and permission in writing so to do is granted by such department or agency or entity, or such requirement is waived by such department or agency or entity. Such permission shall be conditioned upon compliance with the terms, provisions, conditions and limitations of the Franchise Agreement and with such other terms, provisions, conditions and limitations as will preserve, protect and promote the safety of the public using the streets, alleys, and other public places by the City or by any other public utility or public service corporation for their respective purposes and functions. Such permission shall also be conditioned upon such other terms, provisions, conditions and limitations as will preserve, protect and promote the health, safety and general welfare of the City and its citizens subject to the lawful exercise of the police power.
- D. In the event the relocation, construction, maintenance or repair by the City of any of its facilities or ser

- vices now or hereafter acquired and including but not limited to any street, alley or other public place, sewer, electric, water, fire alarm, emergency communication, or traffic control facilities or any part thereof, or in the event access to any street, alley or other public place to or from any property of the City is required, and it is necessary to move, alter or relocate, either permanently or temporarily, any of a GRANTEE's poles, towers, wires, appliances, conduits, subways, lines, manholes, cables or equipment or any part thereof in the public right-of-way, in order for the City to relocate, construct, reconstruct, maintain or repair any such facility, service, street, alley or other public place or any such sewer or electric, water, fire alarm, police communication or traffic control facility, or any part thereof, or to obtain access to or from such property, upon notice from the City, a GRANTEE will move, alter, or relocate such pole, tower, appliance, conduit, subway, line, manhole, cable or equipment or part thereof, at its own cost and expense; and should a GRANTEE fail, refuse or neglect to comply with such notice, such pole, tower, wire, appliance, conduit, subway, line, manhole, cable or equipment or part thereof may be removed, altered or relocated by the City at the cost of a GRANTEE and the City shall not be liable to a GRANTEE for damages resulting from such removal, alteration or relocation.
- E. A GRANTEE shall at no cost to the City erect, install and maintain on any of its poles, towers, wires, appliances, conduits, subways, lines, manholes, cables or equipment in or near the streets, alleys and other public places of the City such reasonable devices to appraise or warn persons using the streets, alleys and other public places of the existence of such poles, towers, wires, appliances, conduits, subways, manholes, lines, cables or equipment as shall be from time to time reasonably prescribed or approved for purposes of public safety by such department or agency of the City as shall have been or may be designated for the purpose by the City Manager or Council of the City.
- F. A GRANTEE shall have the right to remove, trim, cut and keep clear of its poles, towers, wires and other overhead appliances and equipment the trees in and along the streets, alleys and other public places of the City. It is further provided that in the exercise of such right, a GRANTEE shall not cut, remove, trim or otherwise injure such trees to any greater extent than

is reasonably necessary for the installation, maintenance and use of such poles, towers, wires and other overhead appliance. The GRANTEE shall be responsible and dependable and hold the City harmless for any and all damages to any tree as a result of the trimming, or to the land surrounding any tree, whether such tree is trimmed or removed. (Amend Ord 98-71, 6/9/98)

- G. A GRANTEE in the exercise of any right granted to it by a franchise, shall at no cost to the City promptly reconstruct, replace, restore or repair any facility or service of the City, now or hereafter acquired, including but not limited to, any street, alley or other public place, sewer, electric, water, fire alarm, police communication or traffic control facility or any part thereof which may be damaged, disturbed, or destroyed by the exercise of any such right, in a manner, with such materials and to the satisfaction of such department or agency as shall have been or may be designated by the City Manager or Council of the City; provided that should a GRANTEE fail to comply with these requirements, the City shall have the right to carry out the provisions of this paragraph and a GRANTEE shall reimburse the City for all expenses incurred in so doing.
- H. All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and appearance and reasonable convenience of property owners who join on any street and at all times shall be kept and maintained in a safe, adequate and substantial condition and in good order and repair.
- I. Wherever all electrical and telephone utility distribution wiring is located underground, either at the time of initial construction or subsequently, at the direction of the City, the television cable shall also be located underground, at a GRANTEE's own expense. If the distribution facilities of either the electric or the telephone utility are aerial, the cable television facilities may be located underground at the request of the property owner; provided, that the excess cost of the installation, labor and material of underground over aerial location shall be paid by the property owner making the request to a GRANTEE.

- J. A GRANTEE shall, at its own expense and in a manner approved by the City, restore to City standards and specifications any damage or disturbance caused to the public way as a result of its operations or construction on its behalf. A GRANTEE shall guarantee and maintain such restoration for a period of one (1) year against defective materials or workmanship, except in instances involving acts of God.
- K. Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the City Manager, or the Chief of the Fire or Police departments to remove or damage any of a GRANTEE's facilities, no charge shall be made by a GRANTEE against the City for restoration and repair.
- L. At the request of any person holding a valid building permit issued by the City and upon at least forty-eight (48) hours' notice, a GRANTEE shall temporarily raise, lower or cut its wires as may be necessary to facilitate such move. The direct expense of such temporary changes, including standby time, shall be paid by the permit holder, and a GRANTEE shall have the authority to require payment in advance.

Section 41 Maintenance of the System

- A. A GRANTEE shall at all times employ ordinary care and shall install and maintain devices or systems for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
- B. A GRANTEE shall install and maintain its wire, cable, fixtures, and other equipment so as not to interfere with the equipment of any utility of the City, or any other entity lawfully and rightfully using the conduit, pole, subway or other part of the right of way.
- C. The CATV system shall at all times conform to the construction and maintenance standards set forth in a GRANTEE's proposal and/or franchise agreement.
- D. All conductors, cables, towers, poles and other components of the system shall be located and constructed by a GRANTEE so as to provide minimum interference with access by adjoining property owners to the streets and public ways nor shall any pole or other fixtures of a

GRANTEE placed in the public way interfere with the usual travel in such public way.

- E. Upon the reasonable request for service by any person located within the franchise territory, the GRANTEE shall, within thirty (30) days, furnish the requested service to such person within the terms of the line extension policy. A request for service shall be unreasonable for the purpose of this subsection, if no trunk line installation capable of servicing that person's block has as yet been installed.
- F. The GRANTEE shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use.
- G. GRANTEE shall not allow its cable or other operations to interfere with television reception of persons not served by GRANTEE, nor shall the system interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents within the confines of the City of Arlington.
- H. The GRANTEE shall continue, through the term of the franchise, to maintain the technical standards and quality of service set forth in this ordinance. Should the City find, by resolution, that the GRANTEE has failed to maintain these technical standards and quality of service, and should it, by resolution, specifically enumerate improvements to be made the GRANTEE shall make such improvements. Failure to make such improvements within three (3) months of such resolution will constitute a breach of condition for which the remedy of Section 25 is applicable.

Section 42 Construction Schedule and Reports

- A. Upon accepting a franchise, a GRANTEE shall, within (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 Manager on progress in this respect until all such documents are in hand.

- B. Map and Plan. A GRANTEE shall submit a construction plan or reconstruction plan of both the subscriber network and institutional network (see Subsection F) which shall be incorporated by reference and made a part of a Franchise Agreement. The plan shall include cable system design details, equipment specifications, and design performance criteria. The plan shall also include a map of the entire franchise area disclosed in accordance with the terms and conditions of the franchise and shall clearly delineate areas within the franchise area where the cable system will be available to subscribers including a time schedule of construction for each year that construction or reconstruction is proposed.
- C. Every three (3) months after the start of construction or reconstruction, a GRANTEE shall furnish the City Manager a report on progress of construction or reconstruction until complete. The report shall include a map that clearly defines the areas wherein regular subscriber service is available.
- D. Copies of any agreements, reports, petitions, correspondence or other documents filed with any local, state or federal government or any person or legal entity relating to a GRANTEE's operations within the City shall be filed simultaneously with the City Manager.
- E. A GRANTEE or its authorized contractors shall obtain permits from the City Engineer, Building or other appropriate departments prior to any physical work being performed in the City's rights-of-way, or on City-owned property. Permits will be issued to a GRANTEE or approved contractors only on approved plans, which must be submitted on or before the request for the construction permit. All work will be done in accordance with the City's specifications.
- F. GRANTEE shall cause detailed maps of the entire cable system including both the subscriber network and institutional network showing materials of construction, amplifier, and power supply locations to be filed in the office of the City Engineer prior to the issuance of a permit for construction. Prior to requesting the issuance of a permit for the installation of any facility or apparatus in accordance with the provisions of this section, the GRANTEE shall file such maps with all utility companies and other public agencies whose

facilities are affected by such installation and obtain a statement signed by a responsible official thereof that such utility or public agency has no objection to the proposed location of such facility. Such utility companies and public agencies shall act upon a request made to them by a GRANTEE in accordance with the foregoing provisions within thirty (30) days after such request has been made to such utility or public agency.

Section 43 Protection of Subscriber Privacy

A. Subscriber Privacy

1. At the time of entering into an agreement to provide any cable service or other service to a subscriber and at least once a year thereafter, a cable operator (GRANTEE) shall provide notice in the form of a separate, written statement to such subscriber which clearly and conspicuously informs the subscriber of --
 - i. the nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information;
 - ii. the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;
 - iii. the period during which such information will be maintained by the cable operator;
 - iv. the times and place at which the subscriber may have access to such information in accordance with subsection D of this section; and
 - v. the limitations provided by this section with respect to the collection and disclosure of information by a cable operator and the right of the subscriber under subsections F and G of this section to enforce such limitations.

2. For purposes of this section, other than subsection G --
 - i. the term "personally identifiable information" does not include any record of aggregate data which does not identify particular persons;
 - ii. the term "other service" includes any wire or radio communications service provided using any of the facilities of a cable operator that are used in the provision of cable service; and
 - iii. the term "cable operator" includes, in addition to persons within the definition of cable operator in Section 602 of the Communications Act of 1934, as amended, any person who a) is owned or controlled by, or under common ownership or control with, a cable operator, and b) provides any wire or radio communications service.
- B. Except as provided in paragraph B.1., a cable operator shall not use the cable system to collect personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned.
 1. A cable operator may use the cable system to collect such information in order to --
 - i. obtain information necessary to render a cable service or other service provided by the cable operator to the subscriber; or
 - ii. detect unauthorized reception of cable communications.
- C. Except as provided in paragraph C.1., a cable operator shall not disclose personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned and shall take actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or cable operator.
 1. A cable operator may disclose such information if the disclosure is --

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- i. necessary to render or conduct a legitimate business activity related to a cable service or other service provided by the cable operator to the subscriber;
 - ii. subject to subsection G of this section, made pursuant to a court order authorizing such disclosure, if the subscriber is notified of such order by the person to whom the order is directed; or
 - iii. a disclosure of the names and addresses of subscribers to any cable service or other service if --
 - (A) the cable operator has provided the subscriber the opportunity to prohibit or limit such disclosure, and
 - (B) the disclosure does not reveal, directly or indirectly, the --
 - (1) extent of any viewing or other use by the subscriber of a cable service or other service provided by the cable operator, or
 - (2) the nature of any transaction made by the subscriber over the cable system of the cable operator.
- D. A cable subscriber shall be provided access to all personally identifiable information regarding that subscriber which is collected and maintained by a cable operator. Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by such cable operator. A cable subscriber shall be provided reasonable opportunity to correct any error in such information.
- E. A cable operator shall destroy personally identifiable information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsection D of this section or pursuant to a court order.

- F. Any person aggrieved by any act of a cable operator in violation of this section may bring a civil action in a United States district court in accordance with the Communications Act of 1934, as amended.
1. The court may award --
 - i. actual damages but not less than liquidated damages computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is higher;
 - ii. punitive damages; and
 - iii. reasonable attorneys' fees and other litigation costs reasonably incurred.
 2. The remedy provided by this section shall be in addition to any other lawful remedy available to a cable subscriber.
- G. A governmental entity may obtain personally identifiable information concerning a cable subscriber pursuant to a court order only if, in the court proceeding relevant to such court order --
- i. such entity offers clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the case; and
 - ii. the subject of the information is afforded the opportunity to appear and contest such entity's claim.
- H. Compliance with the requirements concerning Protection of Subscriber Privacy set forth in the Communications Act of 1934, as amended shall be deemed compliant with this section.

Section 44 Landlord/Tenant

A. Interference with Cable Service Prohibited

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 television service, cable installation or maintenance from a cable television company regulated by and lawfully operating under a valid and existing cable television franchise issued by the City of Arlington.

B. Gratuities and Payments to Permit Service Prohibited

Neither the owner of any multiple-unit residential dwelling nor his agent or representative shall ask, demand or receive any payment, service or gratuity in any form as a condition for permitting or cooperating with the installation of a cable television service to the dwelling unit occupied by a tenant or resident requesting service.

C. Penalties and Charges to Tenants for Service Prohibited

Neither the owner of 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 who requests or receives television service from a GRANTEE operating under a valid and existing cable television franchise issued by the City of Arlington.

D. Reselling Service Prohibited

No person shall resell, without the expressed, written consent of both the GRANTEE and the City, any cable service, program, or signal transmitted by a cable television company operating under a franchise issued by the City.

E. Protection of Property

Nothing in this article shall prohibit a person from requiring that cable television 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.

F. Risks Assumed by GRANTEE

Nothing in this article shall prohibit a person from requiring a cable television company from agreeing to indemnify the owner, or his agent or representatives for damages or from liability for damages due to negligence of whatever form caused by the installation, operation, maintenance or removal of cable television facilities.

ARTICLE VI

ACCESS CHANNELS

Section 45 Access Channels

- A. Each cable system franchised by the City shall provide at least one government access channel dedicated to the City; one education access channel dedicated to all schools (public and private non-profit) within the City; and one community access channel to be utilized by the public and otherwise in accordance with GRANTEE's franchise.
- B. If any access channel is being used for nonrepetitive programming (excluding character generated programming) more than six (6) hours per day, seven (7) days a week for twelve (12) consecutive weeks, a GRANTEE shall, upon receipt of written notice from the City, make an additional new channel available for the same purpose(s) within sixty (60) days; provided however, that nothing in this subsection shall require a GRANTEE to construct additional channel capacity to the cable system for the sole purpose of providing additional access channel capacity.
- C. Whenever any access channel, other than the basic access channels required in Subsection (A) of this section, is utilized less than four (4) hours per day of six (6) days per week for a continuous period of not less than twelve (12) consecutive weeks, the City may permit different or additional "interim" uses for such channels. A GRANTEE may be permitted to utilize unused access channel capacity under rules and procedures established by the City.

ARTICLE VII

MISCELLANEOUS PROVISIONS

Section 46 Appeals

In the event a GRANTEE questions the reasonableness of any order, requirement, decision, or other action taken by the City Manager or shall be of the opinion that the City Manager lacks authority to take such action, a GRANTEE shall be allowed to appeal the order, requirement, decision or other action to the City Council. The notice of objection and request for an appeal shall be made in writing to the City Secretary within two weeks of the objectionable order, requirement, decision or other action.

Section 47 Additional Provisions

- A. Every direction, notice or order to be served upon a GRANTEE shall be delivered or sent by registered mail to its office in the City. Every notice served upon the City shall be delivered or sent by registered mail to the City Manager, City Hall, Arlington, Texas 76004.
- B. All provisions of this ordinance shall apply to a GRANTEE, its successors, and assigns, as such may be approved by City Council in accordance with this ordinance.
- C. The rights granted by this ordinance are subject to all franchises and permits heretofore or hereafter granted by the Council to use the streets of the City by other public utility or public service corporations. It is not intended by the grant of a franchise to abridge the exercise of the police power heretofore or hereafter granted to the City by the State Legislature. The grant of a franchise is subject to all ordinances and resolutions of the Council of the City as the same now exist or may be hereafter amended, revised or codified, in the lawful exercise of any other power granted to the City by the State Legislature.
- D. Specific mention of the materiality of any of the provisions herein is not intended to be exclusive of any others for the purpose of determining whether any failure of compliance hereunder is material and substantial.
- E. The GRANTEE, upon its acceptance of a franchise, shall be bound by the provisions of this ordinance, all responses, statements, and information contained in its proposal, and all matters agreed upon in a franchise agreement.
- F. A GRANTEE shall assume the cost of any publications required by law and such is payable upon a GRANTEE's filing of acceptance of a franchise.

- G. Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Five Hundred Dollars (\$500.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.
- H. This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.
- I. If any particular section of this ordinance, or the particular application thereof, shall be held invalid for any reason, the remaining provisions, and their application, shall not be affected thereby.
- J. All of the regulations or provisions or terms provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement or administration of this ordinance, acting for the City of Arlington in the discharge of his or her duties, shall not thereby render himself or herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.
- K. Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington, or any other law.
- L. The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.
- M. This ordinance shall become effective ten (10) days after first publication as described above.

ORDINANCE NO. 98-71

AN ORDINANCE AMENDING THE "**CABLE TELEVISION**" CHAPTER OF THE CODE OF THE CITY OF ARLINGTON, TEXAS, 1987, THROUGH THE AMENDMENT OF **ARTICLE I**, ENTITLED GENERAL PROVISIONS, BY THE AMENDMENT OF **SECTION 1**, DEFINITIONS, RELATIVE TO THE ADDITION OF THE DEFINITIONS OF "COMPLAINT", "FRANCHISE FEES", "NORMAL BUSINESS HOURS", "NORMAL OPERATING CONDITIONS", AND "SERVICE INTERRUPTION" AND THE AMENDMENT OF THE DEFINITION OF "GROSS REVENUES" AND THE REFORMATTING OF THE ENTIRE SECTION; BY THE AMENDMENT OF **SECTION 3**, LIMITS ON A GRANTEE'S RECOURSE, AT SUBSECTION (E), RELATIVE TO WAIVERS, EXCEPTIONS OR DECLARATORY RULINGS; THROUGH THE AMENDMENT OF **ARTICLE III**, FRANCHISE CONDITIONS, BY THE AMENDMENT OF **SECTION 25**, LIQUIDATED DAMAGES, AT SUBSECTION (C), RELATIVE TO NOTICE TO CURE PROBLEM; THROUGH THE AMENDMENT OF **ARTICLE V**, ENTITLED SYSTEM OPERATIONS, BY THE AMENDMENT OF **SECTION 36**, OPERATING PROCEDURES, BY THE ADDITION OF SUBSECTION (H), RELATIVE TO ABOVE GROUND WIRES IN UNDERGROUND SERVICE AREAS; BY THE AMENDMENT OF **SECTION 39**, SERVICE, ADJUSTMENT AND COMPLAINT PROCEDURES, AT SUBSECTION (B), RELATIVE TO CUSTOMER SERVICE STANDARDS; BY THE AMENDMENT OF **SECTION 39**, AT SUBSECTION (C), RELATIVE TO CUSTOMER SERVICE REPORTS AND COMPLIANCE; BY THE AMENDMENT OF **SECTION 39**, AT SUBSECTION (D), RELATIVE TO EXCEPTIONS; BY THE AMENDMENT OF **SECTION 39**, AT SUBSECTION (E), RELATIVE TO SUBSCRIBER COMPLAINT PROCEDURES; BY THE AMENDMENT OF **SECTION 39**, AT SUBSECTION (F), RELATIVE TO REPETITIVE COMPLAINTS; BY THE AMENDMENT OF **SECTION 40**, USE OF STREETS, AT SUBSECTION (F), RELATIVE TO REMOVAL OR TRIMMING OF TREES; PROVIDING FOR A FINE OF UP TO \$500 FOR EACH OFFENSE IN VIOLATION OF THE ORDINANCE; PROVIDING THIS ORDINANCE BE CUMULATIVE; PROVIDING

FOR SEVERABILITY; PROVIDING FOR
GOVERNMENTAL IMMUNITY; PROVIDING FOR
INJUNCTIONS; PROVIDING FOR PUBLICATION
AND BECOMING EFFECTIVE TEN DAYS AFTER
PUBLICATION

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON,
TEXAS:

1.

That the "**Cable Television**" Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the amendment of Article I, General Provisions, by the amendment of **Section 1, Definitions**, by the amendment or addition of the following definitions and the **reformatting of the entire section**, so that hereafter said definitions shall be and read as follows:

"Complaint" shall mean any verbal or written communication received by the City from a resident, subscriber, I-Net user or other, which expresses concern or dissatisfaction with any portion of a GRANTEE's product and/or services, any written correspondence received by a GRANTEE from a subscriber which expresses concern or dissatisfaction with any portion of the GRANTEE's products and/or services, or any verbal communication from a subscriber to the GRANTEE which cannot be handled in the normal course of business and must be resolved by a management employee of the GRANTEE.

"Franchise fees" are the price paid by a GRANTEE to rent use of public rights-of-way in accordance with this ordinance and any applicable franchise, contract or agreement.

"Gross Revenues" shall mean all revenues derived from cash sales, customer credit account sales, property of any kind or nature or from any source whatever received or accruing to a GRANTEE directly or indirectly arising from or attributable to the sale or exchange of cable or non-cable services by a GRANTEE within the City from the operation of its cable system recorded and reported on a full accrual basis of accounting in accordance with generally accepted accounting principles. Gross revenues shall include, but not be limited to, all cable and non-cable service fees, franchise fees, pay television and pay-per-view fees, leased channel fees, connector rentals or sales, studio rentals, Internet services, and advertising revenue. Except that gross revenue shall not include converter deposits (unless the deposit is forfeited or is non-refundable after a

specified period of time), refunds to subscribers by a GRANTEE, or receipts from sales or use taxes or any other taxes that a GRANTEE collects on behalf of any taxing authority.

"Normal business hours" shall mean those hours during which most similar businesses in the community are open to serve customers, and in no event fewer than nine (9) hours a day and four (4) hours on Saturdays.

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

"Service interruption" shall mean the loss of picture or sound on one (1) or more cable channels.

Further, Article I is hereby amended by the amendment of **Section 3, Limits on a Grantee's Recourse**, Subsection (E), so that hereafter said subsection shall be and read as follows:

- E. A GRANTEE shall not apply for any waivers, exceptions or declaratory rulings from the Federal Communications Commission or any other federal or state regulatory agency affecting the City of Arlington without providing the City Manager copies of all filings.

Further, Article III, **Franchise Conditions**, is hereby amended by the amendment of **Section 25, Liquidated Damages**, Subsection (C), so that hereafter said subsection shall be and read as follows:

- C. If the City Manager, following thirty (30) days' written notice to a GRANTEE to cure any problem that might result in liquidated damages, concludes that a GRANTEE is in fact liable for liquidated damages pursuant to this section, he shall issue to the GRANTEE by

registered or certified mail a Notice of Intention to Assess Liquidated Damages. The Notice of Intention to Assess shall set forth the basis of the assessment and shall inform the GRANTEE that liquidated damages will be assessed from the date of the Notice of Intention to Assess unless the assessment notice is appealed for hearing before the Council and the Council rules (1) that the violation has been corrected, or (2) that an extension of time or other relief should be granted. A GRANTEE desiring a hearing before the Council shall send a written Notice of Appeal by registered or certified mail to the City Manager within ten (10) days of the date of the Notice of Intention to Assess Liquidated Damages. The hearing on the GRANTEE's appeal shall be held within thirty (30) days of the date of the Notice of Intention to Assess Liquidated Damages. After the hearing, if the Council sustains in whole or in part the City Manager's assessment of liquidated damages, the City Manager may at any time thereafter draw upon the letter of credit required by Section 24. Unless the Council indicates to the contrary, the liquidated damages shall be assessed beginning on the date of the Notice of Intention to Assess and continuing thereafter until such time as the violation ceases, as determined by the City Manager in his sole discretion.

Further, Article V, System Operations, is hereby amended by the amendment of **Section 36, Operating Procedures**, Subsection (H), so that hereafter said subsection shall be and read as follows:

- H. Drop wires in underground service areas that are temporarily placed above ground shall be buried within ten (10) days of the date and time of the temporary installation, except in those situations, where conditions are beyond the control of the GRANTEE.

Further, Article V is hereby amended by the amendment of **Section 39, Service, Adjustment and Complaint Procedures**, Subsection (B), so that hereafter said subsection shall be and read as follows:

- B. Customer Service Standards. A GRANTEE is subject to the following customer service standards or such higher applicable standard in accordance with current federal

law or a GRANTEE's Franchise with City, whichever is the highest standard of customer service.

1. A GRANTEE shall maintain local, toll-free telephone access lines, which shall be available to its subscribers twenty-four (24) hours a day, seven (7) days a week, including holidays. Trained company representatives shall be available to respond to customer telephone inquiries regarding service and repair on a twenty-four (24) hour basis. An Automated Response Unit (ARU) is permitted but no use of an answering machine or contracting answering service shall be permitted.
2. A GRANTEE shall obtain and maintain sufficient telephone lines and staffing so as to not unreasonably delay the answering of telephone calls. Under normal operating conditions, a GRANTEE shall connect callers desiring contact to a live, qualified personal representative of a GRANTEE within thirty (30) seconds. If the call needs to be transferred, the additional transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under normal operating conditions, measured on a quarterly basis. Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the time on average measured on a quarterly basis.
3. Appropriate records shall be made by GRANTEE of service calls showing when and what corrective action was completed. Such records shall be available to the City during normal business hours and shall be reported to the City quarterly, summarized by month, and retained for not less than three (3) years.
4. GRANTEE shall maintain in the City at least one (1) office to serve the purpose of receiving and resolving customer complaints regarding cable and telecommunications services, equipment malfunctions, billing and collection disputes and similar matters. Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located. The City Manager will be notified of the location of such office or any change thereof.

5. A GRANTEE shall keep an emergency system maintenance and repair staff capable of responding to and repairing system malfunctions or interruptions affecting the entire cable system on a twenty-four (24) hour basis under normal operating conditions.
6. A GRANTEE shall interrupt system service after 7:00 a.m. and before 1:00 a.m. only with good cause and for the shortest time possible and, except in emergency situations, only after publishing notice of service interruption at least twenty-four (24) hours in advance of the service interruption. Service may be interrupted between 1:00 a.m. and 7:00 a.m. for routine testing, maintenance and repair without notification on Mondays through Fridays, except on holidays.
7. Under normal operating conditions, each of the following standards shall be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:
 - a. Standard installation shall be completed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to one-hundred twenty-five feet (125') from the existing distribution system.
 - b. Excluding conditions beyond the control of a GRANTEE, a GRANTEE shall begin working promptly on "service interruptions" or outages affecting individual subscribers and in no event later than twenty-four (24) hours after the interruption becomes known.
 - c. A GRANTEE shall respond to outage reports affecting three (3) or more subscribers within two (2) hours of the first report of the incident.
 - d. A GRANTEE must begin action to correct other service problems no later than the next business day after notification of a service problem.
 - e. The "appointment window" alternatives for installations, service calls, and other

installation activities shall be either a specific time or, at maximum, a four (4) hour time block during normal business hours. (A GRANTEE may schedule service calls and other installation activities outside of normal business hours for the expressed convenience of the customer.)

- f. A GRANTEE shall not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If a GRANTEE's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer shall be contacted. The appointment shall be rescheduled, as necessary, at a time which is convenient for the customer. Installation fees will be reduced or waived if installers miss their appointments.
8. All personnel, agents and representatives of a GRANTEE, including subcontractors that have occasion to deal directly with subscribers in the field, shall wear identification badges visibly displayed on their person when acting on behalf of a GRANTEE.
9. A GRANTEE and its contractors shall provide advance notice, in light of the circumstances, prior to entry whenever desiring to enter or access any private property within the City. GRANTEE shall provide at least twenty-four (24) hours of advance notice to affected businesses and residences (such as by mail or a door hanger) prior to major construction requiring entry on private property. During maintenance work, installation work, and outage repair, a GRANTEE shall attempt to notify affected residences (such as by knocking and, if no answer, leaving a door hanger) prior to entering the private property. Work performed in an emergency in easements and rights of way to repair a system outage is exempted.
10. 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:

- a. Products and services offered;
 - b. Prices and options for programming services and conditions of subscription to programming and other services, including credit and/or rebate for system outages;
 - c. Parental control features;
 - d. Installation and service maintenance policies;
 - e. Instructions on how to use the Cable Services;
 - f. Channel positions of programming carried on the system;
 - g. The availability of the "AB" switch option; and
 - h. Billing and complaint procedures that clearly set forth a GRANTEE's business address and telephone numbers and procedures for placing a service call or request for adjustment. Such instructions also shall include the name, address, telephone number of the City Manager or other designated employee and a reminder that the subscriber can call or write the City Manager or other designated employee for information regarding complaints and terms and conditions of a GRANTEE's Franchise if a GRANTEE fails to respond to the subscriber's request for installation, service, or adjustment within a reasonable period of time.
11. Between the time a new customer is signed up for service and the time service is installed, he or she shall be afforded a right of rescision.
12. Customers shall 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.

13. Bills shall be clear, concise and understandable. Except as may be provided for in the Franchise Agreement, bills shall be fully itemized with itemizations including, but not being limited, to, basic and premium service charges and equipment charges. Bill shall clearly delineate all activity during the billing period, including operational charges, rebates, and credits. In case of a billing dispute, a GRANTEE must respond to a written complaint from a subscriber within thirty (30) days.
14. A GRANTEE shall provide reasonable notice with at least five (5) days written notice by mail prior to discontinuance of service due to nonpayment and shall not terminate for nonpayment where the payment relates to service not yet provided. Where a GRANTEE has improperly discontinued service, it shall immediately provide free reconnection.
15. Refund checks shall be issued promptly, but not later than:
 - a. The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier; or
 - b. Upon the return of the equipment supplied by the cable operator if service is terminated.
16. Credits shall be issued no later than the customer's next billing cycle following the determination that a credit is warranted.
17. In cases where requests for service have been ignored or unfilled for whatever reason, the City Manager shall have the power to require the GRANTEE to provide service in response to all reasonable requests as the City Manager may reasonably determine.

Further, Article V is hereby amended by the amendment of **Section 39**, Subsection (C), so that hereafter said subsection shall be and read as follows:

C. Customer Service Reports and Compliance

1. A GRANTEE shall report to the City on a quarterly basis regarding its compliance with customer service standards no later than thirty (30) days after the end of a calendar year quarter. A report form shall be developed in consultation between the City and a GRANTEE that will provide the detail necessary to monitor GRANTEE's compliance with customer service standards. A GRANTEE shall acquire any equipment needed to measure and verify compliance with all customer service standards.
2. Upon breach of any customer service standards set forth in this ordinance or relevant provisions of Federal law or GRANTEE's Franchise, and failure of a GRANTEE to remedy such breach in accordance with this ordinance and GRANTEE's Franchise, the City may invoke the liquidated damages provisions of this ordinance, without prejudice to any other remedy otherwise available to the City.
3. Should the report required by Section 39 (C)(1) indicate a failure to meet any of the customer service standards, within thirty (30) days of submitting the initial report, a GRANTEE shall file a cure plan with the City, indicating what actions are being taken to bring performance back into compliance. Subsequently filed quarterly reports required by Section 39(C)(1) shall include updates on the cure plan until performance is in compliance.

Further, Article V is hereby amended by the amendment of **Section 39**, Subsection (D), so that hereafter said subsection shall be and read as follows:

- D. Exceptions. Nothing in this Ordinance is intended to prevent or prohibit:
1. The City and a GRANTEE from agreeing to customer service requirements that exceed the standards set forth in this Ordinance;
 2. The City from enforcing through the end of the Franchise term pre-existing customer service requirements that exceed the standards;

3. The City from enacting or enforcing any consumer protection law; or
4. The establishment or enforcement of any ordinance or regulation concerning customer service that imposes customer service requirements that exceed or address matters not addressed by the standards set forth in the FCC rules.

Further, Article V is hereby amended by the amendment of **Section 39**, Subsection (E), so that hereafter said subsection shall be and read as follows:

E. Subscriber Complaint Procedures. A GRANTEE shall comply with all procedures established by the City regarding the handling of complaints received directly by the City from City residents regarding cable television service. In the event a subscriber does not obtain a satisfactory response or resolution to his or her request for service or adjustment or other complaint within a reasonable period of time, he or she may advise the City Manager or other designated employee in writing of his or her dissatisfaction and the City Manager or other designated employee shall have an obligation to investigate the matter and to keep records with respect to all such complaints for the remaining life of the Franchise or three (3) years, whichever amount of time is of longer duration.

1. Complaints to GRANTEE:

- a. GRANTEE shall establish policies and procedures for processing subscriber complaints. The policies and procedures shall include, but shall not be limited to, guidelines for filing complaints with the GRANTEE and City, responding to filings and resolving subscriber complaint filings.
- b. GRANTEE shall publish or cause to be published a subscriber service information publication which contains the complaint filing information.
- c. The publication shall describe in clear and ordinary language the manner in which a complaint may be filed with the GRANTEE and with the City.

- d. The publication shall be made available upon subscriber request, when a subscriber initiates service, or when a customer files a complaint.
 - e. GRANTEE shall have up to fifteen (15) days after a complaint is received to respond. GRANTEE shall notify the complainant subscriber of the response to the complaint.
 - f. If GRANTEE is unable to respond within fifteen (15) days, GRANTEE shall notify the subscriber complainant of the reason for the delay and anticipated date of response.
2. Complaints to the CITY:
- a. Any subscriber who is dissatisfied with any response of a GRANTEE or who has not received a response within the fifteen (15) day period shall be entitled to have the complaint reviewed by the City.
 - b. The subscriber may initiate the review either by calling the City or by filing a written complaint together with the GRANTEE's written response, if any, with the City.
 - c. If the City Manager determines that further investigation is warranted, the City may request that the GRANTEE and subscriber submit, within ten (10) days of notice thereof, a written statement.
 - d. The GRANTEE shall produce and the subscriber shall be requested to produce any additional information, including any reports from the GRANTEE, which the City may request as reasonably necessary to an understanding and determination of the complaint.
 - e. The City shall issue a determination within fifteen (15) days after examining the materials submitted, setting forth City's basis for the determination.

Further, Article V is hereby amended by the amendment of **Section 39**, Subsection (F), so that hereafter said subsection shall be and read as follows:

F. Repetitive Complaints. When there have been repetitive, similar complaints made, or where there exists other evidence, which, in the judgment of the City, casts doubt on the reliability or quality of the cable service, the City shall have the right and authority to require GRANTEE to test, analyze, and report on the performance of the system to the extent allowed by this ordinance, Federal law and GRANTEE's Franchise with City, as follows:

1. GRANTEE shall fully cooperate with 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:
 - a. The nature of the complaint or problem which precipitated the special tests.
 - b. What system component was tested.
 - c. The equipment used and procedures employed in testing.
 - d. The method, if any, in which such complaint or problem was resolved.
 - e. Any other information pertinent to said tests and analysis which may be required.
2. The City may require that tests be supervised, at GRANTEE's expense, by a professional engineer, not on the permanent staff of the GRANTEE. The engineer shall sign all records of special tests and forward to the City such records with a report interpreting the results of the tests and recommending actions to be taken.
3. The City's right under this section shall be limited to requiring tests, analyses, and reports covering specific subject and characteristics based on said complaints or other evidence when and under such circumstances as the City has reasonable grounds to believe that the complaints or other evidence required that tests be performed

to protect the public against substandard cable service.

Further, Article V is hereby amended by the amendment of **Section 40, Use of Streets**, Subsection (F), so that hereafter said subsection shall be and read as follows:

F. A GRANTEE shall have the right to remove, trim, cut and keep clear of its poles, towers, wires and other overhead appliances and equipment the trees in and along the streets, alleys and other public places of the City. It is further provided that in the exercise of such right, a GRANTEE shall not cut, remove, trim or otherwise injure such trees to any greater extent than is reasonably necessary for the installation, maintenance and use of such poles, towers, wires and other overhead appliance. The GRANTEE shall be responsible and dependable and hold the City harmless for any and all damages to any tree as a result of the trimming, or to the land surrounding any tree, whether such tree is trimmed or removed.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed **Five Hundred and No/100 Dollars (\$500)** for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective ten (10) days after first publication as described above.

PRESENTED AND GIVEN FIRST READING on the 2nd day of June, **1998**, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 9th day of June, **1998**, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of **Arlington, Texas**.

ORDINANCE NO. 99-21

AN ORDINANCE AMENDING THE "**CABLE TELEVISION**" CHAPTER OF THE CODE OF THE CITY OF ARLINGTON, TEXAS, 1987, THROUGH THE AMENDMENT OF **ARTICLE IV**, ENTITLED SUBSCRIBER RATES, BY THE AMENDMENT OF **SECTION 29**, SUBSCRIBER FEES, RATES OR CHARGES, BY THE ADDITION OF SUBSECTION (E), RELATIVE TO THE OFFENSE OF FAILURE TO COMPLY WITH RATE ORDER; THROUGH THE AMENDMENT OF **ARTICLE V**, ENTITLED SYSTEM OPERATIONS, BY THE AMENDMENT OF **SECTION 39**, SERVICE, ADJUSTMENT AND COMPLAINT PROCEDURES, BY THE ADDITION OF SUBSECTION (E) (3), RELATIVE TO THE FREQUENCY OF CUSTOMER COMPLAINTS TO THE CITY; PROVIDING FOR A FINE OF UP TO \$500 FOR EACH OFFENSE IN VIOLATION OF THE ORDINANCE; PROVIDING THIS ORDINANCE BE CUMULATIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING FOR PUBLICATION AND BECOMING EFFECTIVE TEN DAYS AFTER PUBLICATION

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

I.

That the "Cable Television" Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the amendment of Article IV, Subscriber Rates, by the amendment of **Section 29**, Subscriber Fees, Rates or Charges, by the addition of Subsection (E), so that said subsection shall be and read as follows:

E. Penalty for Violation of Rate Order

It is an offense for any person, firm, corporation, agent or employee thereof to knowingly or intentionally fail to comply with a Rate Order issued by the City of Arlington. Any person, firm, corporation, agent or employee thereof who violates any of the provisions of a Rate Order shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount

not to exceed Five Hundred Dollars (\$500.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

Further, Article V, System Operations, is hereby amended through the amendment of **Section 39, Service, Adjustment and Complaint Procedures**, by the addition of Subsection (E) (3), so that said subsection shall be and read as follows:

3. Frequency of Complaints to the City:
 - a. Complaints to the City regarding any one provider, whether or not submitted in the first instance to GRANTEE or falling within the scope of Subsection 39(E) (2), may not exceed one per business day on average, measured on a calendar quarter basis.
 - b. The City will maintain a log of Complaints received by the City that fall within the scope of this Subsection 39(E) (3). The log will be available for inspection and copying by GRANTEE during normal business hours.
 - c. Non-compliance with the quarterly standard set forth in Subsection (a) above shall subject the GRANTEE regarding whom the complaints have been made to liquidated damages in the amount of \$200 per day for each business day of the calendar quarter on which more than one Complaint was received by the City.
 - d. The procedure for assessment of liquidated damages under this Subsection 39(E) (3) shall be as set forth in Subsection 25(C) with the following exceptions:
 - (1) GRANTEE is not entitled to an opportunity to cure and the provision for a ruling of Council that the violation has been corrected does not apply.

- (2) The liquidated damages shall be assessed beginning on the first day of the quarter.
- e. For purposes of this Subsection 39(E)(3) "Complaint" shall have the meaning set forth in Section 1 except that the following types of communications are not Complaints:
- (1) Communications about the content of GRANTEE's programming.
 - (2) Communications about GRANTEE's channel line-up, other than communications about notice or timing of changes in the channel line-up.
 - (3) Communications made in response to solicitations by the City (such as request for comments on rate increases or franchise performance).
- f. For the purposes of this Subsection 39(E)(3), "business day" shall mean any day on which the City Manager's Office of the City of Arlington is open for business.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed **Five Hundred and No/100 Dollars (\$500)** for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective ten (10) days after first publication as described above.

PRESENTED AND GIVEN FIRST READING on the 2nd day of February, 1999, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 9th day of February, 1999, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of **Arlington, Texas.**