

ORDINANCE NO. 97-07
UT POST OFFICE

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AN ORDINANCE RELATING TO CABLE COMMUNICATIONS; PROVIDING FOR THE GRANTING, RENEWAL AND ENFORCEMENT OF A NON-EXCLUSIVE FRANCHISE WITH HALCYON COMMUNICATIONS, INC. AND NEVADA CABLE TELEVISION, INC. AND THE TERMS AND CONDITIONS THEREOF.

RECITALS:

A. The City Council of the City of Wendover, Utah believes it is desirable to encourage the growth and development of cable communications within the City in order to provide the widest possible diversity of information sources and services to the public;

B. The City Council deems it reasonable to provide reasonable rules and regulations in order to assure that the cable system is responsive to the needs and interests of the City of Wendover, and its residents and businesses.

C. Halcyon Communications, Inc. and its subsidiary, Nevada Cable Television, Inc. have provided cable communications services to the City and to the general community of Wendover for several years. The City Council deems it reasonable to renew the franchise granted to Halcyon and Nevada Cable under the provisions set forth in this ordinance.

BE IT ORDAINED by the City Council of the City of Wendover, Tooele County, Utah, as follows:

Section No. 1. Adoption of Franchise Ordinance. The Wendover City Council hereby adopts the Wendover City Cable Communications Franchise Act, set forth in its entirety as Exhibit "A", attached hereto and incorporated herein by this reference.

Section 2. Term of Franchise. Subject to faithful compliance with the requirements of this Ordinance, the term of the franchise granted by this Ordinance shall be as set forth in the body thereof.

Section No. 3. Penalty for Violation. The penalties for violation of the Wendover City Cable Communications Franchise Act shall be as defined therein.

Section No. 4. Effective Date. This Ordinance shall become effective on December 1, 1997.

PASSED AND ADOPTED by the City Council of the City of Wendover, Tooele County, Utah, this 5 day of November, 1997.

The City of Wendover, Utah


Brenda D. Morgan, Mayor

Attest:


Margaret Wheeler, City Recorder

EXHIBIT "A"

**WENDOVER CITY CABLE COMMUNICATIONS
FRANCHISE ACT**

**WENDOVER CITY CABLE COMMUNICATIONS
FRANCHISE ACT**

**WENDOVER CITY -- HALCYON COMMUNICATIONS, INC. & NEVADA
CABLE TELEVISION INC. FRANCHISE**

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1.101. Intent

The City finds that the continuation and development of cable television and communications systems has great benefit and impact upon the resident of Wendover City. Because of the complex and rapidly changing technology associated with cable television, the City further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the City or such persons as the City shall designate. It is the City's intent in granting this Franchise, to insure that City residents receive the best possible cable television and communications service comparable to the best offered in any surrounding community in Tooele County, Utah, and Elko and White Pine Counties, Nevada; that any inconvenience to residents in the development and maintenance of the system be minimized; and that the City is properly compensated for the administration of this Franchise and the use of the public facilities permitted by this Act. It is the intent of this Act and subsequent amendments, to provide for and specify the means to attain the best possible public interest and public purpose in these matters, and the Franchise issued pursuant to this Act shall be deemed to include this finding as an integral part thereof.

1.102. Short Title

This Ordinance shall be known and may be cited as the "Wendover City Cable Communications Franchise Act."

1.103. Definitions.

For the purposes of this Act the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Words not defined shall be given their common and ordinary meaning.

(1) "**City**" shall mean the City of Wendover, Tooele County, Utah and all the territory within its present municipal boundaries and shall include any additions thereto by annexation or other legal means.

(2) "**Basic Cable**" is the lowest price tier of service that includes the retransmission of local broadcast television signals and the cablecasting of Public, Educational and Government access channels.

(3) "**Cable Act**" collectively means the Cable Communications Policy Act of 1984 (Public Law No. 98-549, 47 U.S.C. 151 et. seq.) and the Cable Television Consumer Protection and Competition Act of 1992, as amended by the Telecommunications Act of 1996.

(4) "**Cable Services**" shall mean (A) the one way transmission to Subscribers of (i) video programming, or (ii) other programming service, and (B) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(5) "**Cable Communications System**", "**System**", or "**Systems**", also referred to as "**Cable Television System**", "**Cable System**", "**CATV System**", or "**Community Antenna TV System**", shall have the same meaning specified for "Cable System" in the Cable Act. Unless otherwise specified it shall in this document refer to the Cable System constructed and operated in the Service Area under this Act.

(6) "**Franchise**" shall mean the right granted to the Grantee by which the City authorizes the Grantee to erect, construct, reconstruct, operate, dismantle, test, use and maintain a Cable Communications System in the City. The Franchise awarded is a nonexclusive Franchise.

(7) "**Grantee**" shall mean Halcyon Communications, Inc. and Nevada Cable Television Inc., and their agents, employees, lawful successors, transferees or assignees.

(8) "**Grantor**" means the City.

(9) "**Franchise Fees**" means any tax, fee or assessment of any kind imposed by the City or other government entity on the Grantee or Cable Subscriber, or both solely because of their status as such. The term "Franchise Fee" does not include:

a. Any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services; but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers);

b. Capital costs which are required by the Franchise to be incurred by Grantee for public, educational and governmental access facilities; provided that the Grantee is able to pass such costs directly through to the subscribers;

c. Requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or

d. Any fee imposed under Title 17, United States Code.

(10) "**Gross Revenues**" shall mean all cash, credits, property of any kind or nature or other consideration received directly or indirectly by the Grantee, arising from or attributable to operation of the Cable Television System to provide Cable Services in the City, including but not limited to:

a. Revenue from all charges for Cable Services provided to Subscribers;

b. Revenue from all charges for the insertion of local commercial advertisements upon the Cable System, excluding revenue derived from the production of local commercial advertisements;

c. Revenue from all charges for leased access fees;

d. Revenue from all charges for the installation, connection and reinstatement of equipment necessary for the utilization of the Cable System to provide Cable Service; and

e. The sale, exchange or use or cablecast of any programming developed for community use or institutional users for use on the Cable System to provide Cable Service.

f. Revenue from all regularly and non-regularly occurring charges attributable to the Cable Television System to provide Cable Service; and

g. Revenue received by the Grantee as the Grantee's pro rata portion of any revenues on a subscriber basis derived from any other person or source arising from or attributable to Grantee's operation of the Cable System to provide Cable Service in the City to which the City is authorized to apply a Franchise Fee under Federal or State law as it may exist from time to time during the term of the Franchise.

(11) "**Leased Access**" shall mean the use on a fee-for-service basis of the Cable Television System by business enterprises (whether profit, nonprofit or governmental) to render services to the citizens of the City and shall include without limitation all use pursuant to Section 612 of the Cable Communications Policy Act of 1984 (47 U.S.C. 521 et. seq.) and the Cable Television Consumer Protection and Competition Act of 1992, as amended.

(12) "**Person**" means any individual, corporation, partnership, association, joint venture, or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative thereof.

(13) "**Subscriber**" means any person who legally receives any one or more of the services provided by the Cable Communications System.

(14) "**Street**" and "**Streets**" shall mean the surface of and the space above and below any public street, road, highway, easement, lane, path, alley, court sidewalk, parkway, rights-of-way, utility strip, driveway, or other public right-of-way now or hereafter existing as such within the City and over which the City has ownership or control.

1.104. Police power.

Nothing in this Act shall be construed as an abrogation by the City of any of its lawful police powers.

1.105. Grant of Franchise.

(1) Grantor hereby grants to Grantee a nonexclusive Franchise to construct, operate, maintain, construct and reconstruct, a Cable Communications System within the City. The Franchise shall constitute both a right and an obligation to provide the services of a Cable Communications System as required by the provisions of this Act.

a. This Franchise is granted under the terms and conditions contained herein and is intended to be consistent with federal laws and regulations and state general laws and regulations.

b. The Franchise granted is hereby made subject to the general City Code provisions now in effect or hereafter made effective. Nothing in this Franchise shall be deemed to waive the requirements of the other codes and ordinances of the Grantor regarding permits, fees to be paid or manner of construction. The Grantee agrees to abide by any existing or new ordinances or regulations of general applicability to the operation of the Cable System in the City, adopted in the manner provided by law, so long as they do not substantially impair the rights granted pursuant to this Franchise.

c. Nothing in this Franchise shall be construed to prohibit Grantee from offering services over its Cable System that is not prohibited by Federal or State law.

(2) The term of this Franchise and all rights, privileges, obligations, and restrictions pertaining thereto shall commence on December 1, 1997 and continue to November 30, 2002, unless terminated sooner as hereinafter provided. In addition, the term of this Franchise shall be automatically renewed for an additional term not to exceed five (5) years following November 30, 2002, by resolution of the governing body of the City, so long as the Grantee has: (a) faithfully complied with the requirements hereof; (b) faithfully complies with all other rules, regulations and ordinances as may now be in force or hereafter adopted by the City; and (c) has completed or substantially commenced improvements and/or additions to the System as required, requested or directed by the City.

(3) Any renewals shall be conducted pursuant to applicable law in effect at that time, which is currently Section 626 of the Cable Communications Policy Act of 1984 and the Cable Television and Consumer Protection and Competition Act of 1992, as amended.

(4) The Franchise granted is nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional Franchises for a Cable Communications System as it deems appropriate, provided however, that such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to any Grantee. The material provisions of such additional Franchises shall be comparable to those of the existing Franchises in order that an unfair competitive advantage is not granted to one operator over another. The City shall not authorize or permit a System to operate within the Franchise area on terms or conditions more favorable or less burdensome to such operator than those applied to the Grantee pursuant to this Franchise.

(5) Subject to federal law, no Cable Communications System shall be allowed to occupy or use the Streets or operate within the City without being granted a Franchise.

(6) Subject to federal law, the City may establish appropriate requirements of new Franchises or Franchise renewals, to reflect the future cable related community needs and interests, taking into account the costs of meeting such needs and interests.

(7) The Grantor may grant a Franchise for all or any defined portion of the City, provided that one operator is not granted unfair competitive advantage over another by virtue of having been awarded a Franchise.

(8) All new Franchise applications and renewal applications, subject to federal law, when filed shall be available for public inspection at places designated by the Grantor. Information identified by Grantee or an applicant as "proprietary and confidential" shall not be disclosed by

City without Grantee's or the applicant's consent, except to the extent state law or any City ordinance adopted pursuant to state law requires its disclosure. Subject to federal law, the Grantor may grant or may decline to grant any Franchise.

1.106. Authority for use of streets.

For the purposes of operating and maintaining a Cable Communications System in the City, Grantee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the Streets within City such lines, cable, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of the Cable System, provided that all applicable permits are applied for and granted, all fees paid and all other City codes and ordinances are otherwise complied with.

(1) Prior to construction or alteration, Grantee shall in each case file plans with all appropriate departments and utility companies and receive written approval of such plans, which approval by City departments shall not be unreasonably withheld. Issuance of excavation, construction or similar permits as required by ordinance shall constitute such written approval.

(2) Grantee shall construct and maintain a Cable Communications System so as not to interfere with other uses of streets. Grantee shall make use of existing poles and other facilities available to Grantee wherever possible. Grantee shall make reasonable best efforts to individually notify all residents affected by proposed construction in writing prior to the commencement of that work; provided that such prior notification will not unnecessarily delay repair or restoration of existing services or slow expeditious remedy of unsafe conditions.

(3) Notwithstanding the above grant to use streets, no street shall be used by Grantee if the City, in its sole option, determines that such use is inconsistent with the terms, conditions or provisions by which such street was created or dedicated, or presently used.

(4) Nothing contained herein should be construed as granting to Grantee any rights whatsoever to the use of any private property without the consent of the owner thereof unless such is permitted by Section 54-4-13, Utah Code Annotated (1953), as amended.

1.107. Conditions on street occupancy.

All transmission and distribution structures, poles, other lines, and equipment installed or erected by the Grantee within the City pursuant to the terms hereof shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of said streets, alleys or other public ways and places.

(1) Grantee shall repair or replace, at its own expense, any and all rights-of-way, pavements, sidewalks, street improvements, excavations, other facilities, landscaping or other improvements, public or private, used, disturbed, or damaged in the Franchise operations, including construction, installation, and maintenance thereof to the extent that this repair or replacement was made necessary as a result of the operations of the Grantee. Such repair or replacement shall return the property to as good or better condition as it was prior to the work being done.

(2) a. The Grantee shall have the authority to trim trees or other natural growth overhanging any of its system so as to prevent the branches from coming in contact with the Grantees wires, cables or other equipment.

b. The Grantee shall make a reasonable best effort, including written notice, to notify owners of property adjacent to the trees to be trimmed at least 72 hours prior to doing the work.

c. For all trimming, the Grantee shall use generally accepted pruning standards of modern arboriculture.

(3) The Grantee shall hold harmless the City and its officers, agents, and employees from and against any and all damages arising out of or resulting from the removal, trimming, mutilation of or any injury to any tree or trees proximately caused by the Grantee or its officers, agents, employees, contractors or subcontractors.

1.108. Erection of poles.

(1) The Franchise shall not be deemed to expressly or impliedly authorize the Grantee to construct or install poles or wire-holding structures within streets for the purpose of placing cables, wires, lines or otherwise, without the written consent of the City. Such consent shall not unreasonably be withheld and shall include a requirement that the Grantee perform, at its sole expense, all tree trimming required to maintain the poles, cable and wires clear of obstructions.

(2) With respect to any poles or wire-holding structures which Grantee is authorized to construct and install within streets, a public utility or public utility district serving the City may, if denied the privilege of utilizing such pole or wire-holding structures by the Grantee, apply for such permission to the City Council. If the City Council finds that such use would enhance the public convenience and would not unduly interfere with the Grantee's present and future operations, the City Council may authorize such use subject to such terms and conditions as may reasonably be agreed between the parties. Such authorization shall include the condition that the public utility or public utility district pay to the Grantee any and all actual and necessary costs incurred by the Grantee in permitting such use and shall pay an annual fee per attachment which is equal to that which the Grantee pays to the public electric service utility in the service area for such use and shall indemnify the Grantee from and against any claims or causes of action brought about due to such use.

(3) Construction, installation, and maintenance of the system shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable FCC or other Federal, State, and local regulations and the National Electric Safety Code. The system shall not unreasonably endanger or interfere with the safety of persons or property in the service area.

1.109. Undergrounding.

(1) Except as hereinafter provided, in all areas of the City where the cables, wires and other like facilities of a public utility or public utility district are placed underground, Grantee shall construct and install its cables, wires and other facilities underground. Amplifier boxes and pedestal mounted terminal boxes may be placed above ground if existing technology reasonably requires, but shall be of such size and design and shall be so located as to minimize visual and physical impact on adjacent yards and landscapes insofar as it is technically and economically feasible and not unsafe. In any area of the City where there are certain cables, wires and other like facilities of a public utility or public utility district suspended above the ground from poles, the Grantee may construct and install its cables, wires and other facilities from the same poles and subject to the provisions of Section 1.108 ("Erection of Poles"), may place additional poles as technically required.

(2) With respect to any cables, wires and other like facilities constructed and installed by a Grantee above ground, the Grantee shall, at its sole expense, reconstruct and install such cables, wires or other facilities underground pursuant to any project under which the cables, wires or other like facilities of such utilities are placed underground within an area. The duty of Grantee to place its cables, wires and other facilities underground shall arise only if all like facilities of utilities which are existing above ground are placed underground, provided however, Grantee is given reasonable notice of such event so that it may place its facilities underground in conjunction with the utility. All construction, reconstruction and installation required under this Section, shall be done at no cost to the City, except as provided for by law and/or entitlement.

1.110. Relocation.

(1) If during the term of the Franchise, the City, a publicly owned utility, a public water district, a public sanitation district, a public drainage district or any other similar special public district elects to alter, repair, realign, abandon, improve, vacate, reroute or change the grade of any street or to replace, repair, install, maintain, or otherwise alter any above ground or underground cable, wire, conduit, pipe, line, pole, wire-holding structure, structure, or other facility utilized for the provision of utility or other services or transportation of draining, sewage or other liquids, the Grantee, shall, except as provided in Subsection (2) below or as otherwise provided by law or by agreement with such publicly owned utility, public water district, public sanitation district, public drainage district or any other similar special public district, shall, at its sole expense, remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and any other facilities which it has installed.

(2) If such removal or relocation is required within the subdivision in which all utility lines, including those for the Cable Television System were installed at the same time, the entities may decide among themselves who is to bear the cost of relocation; provided that the City shall not, under any circumstance, be liable to a Grantee for such costs. Regardless of who bears the costs, Grantee shall take action to remove or relocate upon reasonable notice at such time or times as are directed by the agency or company undertaking the work. Reasonable advance written notice of not less than 60 days, shall be mailed to the Grantee advising the Grantee of the date or dates removal or relocation is to be undertaken.

1.111. Movement of buildings.

Grantee shall, upon request by any person holding a building moving permit, Franchise or other approval issued by the City or State of Utah, temporarily remove, raise or lower its wire to permit the movements of buildings. The expense of such removal, raising or lowering shall be paid by the person requesting same, and Grantee shall be authorized to require such payment in advance. Grantee shall be given not less than forty-eight (48) hours oral or written notice to arrange for such temporary wire changes.

1.112. Required extensions of service.

(1) Grantee is hereby authorized to extend the Cable System as necessary, as desirable, or as required pursuant to the terms hereof within the City. However, at the effective date of this Franchise, the Grantee was capable of providing service to not less than seventy percent (70.0%) of the City residents. Grantee shall develop the system such that not less than seventy percent (70.0%) of the City residents are always capable of being served by the Grantee. However, Grantee's obligation to maintain the percentage shall be subject to the provisions of this Section.

(2) Whenever Grantee shall receive a request for service from at least five (5) Subscribers within 1320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such Subscribers at no cost to said Subscribers other than the usual connection fees; provided that such extension is technically feasible, that there are at least twenty (20) subscribers per 5,280 cable bearing strand feet on that cable, and the extension will not adversely affect the operation, financial condition, or market development of the Cable System, or as provided for under the Section.

(3) No Subscriber shall be refused service arbitrarily.

(4) In the case of new construction or property development where utilities are to be placed underground, the developer or property owner shall give the Grantee reasonable notice of not less than thirty (30) days prior to such construction or development, of the particular date on which open trenching will be available for the Grantees installation of conduit, pedestals/or vaults, and laterals to be provided at the Grantee's expense. The developer/property owner shall also provide specifications in conformance with City requirements as needed for trenching. The developer/property owner may close the requisite trenches when:

- a. The Grantee has placed the necessary conduit; or
- b. Seven days after the developer/property owner has given a second notice that the requisite trench has been opened; or
- c. The Grantee has waived its right to place its facilities under this provision, whichever comes sooner.

(5) Costs of trenching and easements required to bring service to the development shall be born by the developer/property owner. Where such trenching is so provided by the developer/property owner, the extension standards in this Section will be reduced to 11 residents requesting service within one quarter mile (1,320 feet).

(6) For unusual circumstances, such as a Subscriber's request to locate his cable drop underground, existence of more than one hundred fifty (150) feet of distance from distribution cable to connection of service to Subscribers, or a density of less than five (5) Subscribers per 1320 cable-bearing strand feet of trunk or distribution cable, Cable Service or other service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution to be borne by Grantee and Subscribers in the area in which Cable Service may be expanded, Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of potential Subscribers per 1320 cable-bearing stand feet of its trunks or distribution cable, and whose denominator equals five (5) Subscribers. Potential Subscribers will bear the remainder of the construction and other costs on a pro rata basis. Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance.

1.113. Service to public buildings.

The Grantee shall provide, without charge, one (1) outlet of basic and expanded basic service to each governmental building, including but not limited to fire stations, police stations (and substations), and public and nonprofit private school buildings that are passed by its Cable System. The outlets of basic and expanded basic service shall not be used to sell Cable Services in or throughout such buildings; nor shall such outlets be located in common or public areas open to the public. Grantee shall have the right to secure any and all of its signals to insure compliance with this provision and to insure compliance with its contractual agreements with its programming suppliers. The distribution of the cable facility inside such building and the extent thereof shall be the option, duty and expense of the building owner. Users of such outlets shall hold Grantee harmless from any and all liability or claims arising out of their use of such outlets, including but not limited to, those arising from copyright liability. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to the building exceeds one-hundred fifty (150) cable feet, unless it is technically feasible and so long as it will not adversely affect the operation, financial condition, or market development of the Cable System to do so, or unless the building owner agrees to pay the incremental cost of such drop line in excess of 150 cable feet. In the event that additional outlets are provided to such buildings, the building owner may also be required to pay the service fees and installation charges associated with the provision of all service(s) provided for on the additional outlets relating thereto.

1.114. Removal.

(1) Upon expiration or termination of the Franchise, if the Franchise is not renewed and if neither the City nor an assignee purchase the Cable Television System, the Grantee may remove any underground cable from the streets which has been installed in such a manner that it can be removed without trenching or other opening of the streets along the extension of cable to be removed. The Grantee shall not remove any underground cable or conduit which requires trenching or other opening of the streets along the extension of cable to be removed, except as

hereinafter provided. Subject to federal law, the Grantee shall remove, at its sole cost and expense, any underground cable or conduit by trenching or opening of the streets along the extension thereof or otherwise which is ordered to be removed by the City based upon a determination, in the sole discretion of the City, that removal is required in order to eliminate or prevent a hazardous condition or promote future utilization of the streets for public purposes. Any order by the City to remove cable or conduit shall be mailed to the Grantee not later than ninety (90) calendar days following the date of expiration of the Franchise. Grantee shall file written notice with the City Recorder not later than thirty (30) calendar days following the date of expiration or termination of the Franchise of its intention to remove cable intended to be removed and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the City. Removal shall be completed not later than twelve (12) months following the date of expiration of the Franchise. Underground cable and conduit in the streets which is not removed shall be deemed abandoned and title thereto shall be vested in the City.

(2) Upon expiration or termination of the Franchise, if the Franchise is not renewed and if neither the City nor an assignee purchases the System, the Grantee, at its sole expense, shall, subject to federal law unless relieved of the obligation by the City, remove from the streets all above ground elements of the Cable Television System, including but not limited to amplifier boxes, pedestal mounted terminal boxes, and cable attached to or suspended from poles, which are not purchased by the City or its assigns.

(3) The Grantee shall apply for and obtain such encroachment permits, licenses, authorizations or other approvals and pay such fees and deposit such security as required by applicable ordinance of the City, shall conduct and complete the work of removal in compliance with all such applicable ordinances, and shall restore the streets to the same condition they were in before the work of removal commenced. The work of removal shall be completed not later than one (1) year following the date of expiration of the Franchise.

1.115. General capability.

Because Cable System technology is rapidly changing, it is difficult for the City to set a standard by which the Grantee will upgrade and maintain the Cable Television System in the City. Therefore, insofar as it is technically and economically feasible, Grantee shall upgrade and maintain the Cable System quality equal to or better than the best system that the Grantee provides to any community in Tooele County, Utah or Elko and White Pine Counties, Nevada, where it has a Franchise.

1.116. Cable System upgrading.

It is recognized that technology is rapidly changing and that subsequent to any Cable System upgrading that the Grantee may perform, technological developments which materially affect the capabilities of the Cable System to offer new and additional services may be utilized by the Grantee at any time, subject to the other terms and conditions of this Franchise and State and Federal law. The Grantee will regularly inform the City of these technological developments and/or services additions.

1.117. Emergency use.

To the extent applicable to the System, the Grantee shall comply with the laws, rules and regulations of the Federal Communication Commission pertaining to the maintenance of an Emergency Access System, and the transmission of Emergency Alert Notifications.

1.118. Technical standards.

(1) Grantee shall construct, install and maintain its Cable Television System in a manner consistent and in compliance with all applicable laws, ordinances, construction standards, governmental requirements, and technical standards equivalent to those established by the FCC.

(2) Grantee shall at all times comply with National Electrical Safety Code (National Bureau of Standards); National Electrical Code (National Bureau of Fire Underwriters); Applicable FCC and other federal, state and local regulations; and codes and other ordinances of the City.

(3) In any event, the Cable Television System shall not endanger or interfere with the safety of persons or property within the City or other areas where the Grantee may have equipment located.

(4) All working facilities, conditions, and procedures, used or occurring during construction of the Cable Television System shall comply with the standards of the Occupational Safety and Health Administration.

(5) Construction, installation and maintenance of the Cable Television System shall be performed in an orderly and workmanlike manner, and in reasonable cooperation with public and private utilities serving the City following accepted construction procedures and practices and working through existing utility coordinating committees and organizations.

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

(7) Any antenna structure used in the Cable Television System shall comply with construction, marking, lighting of antennae structures, required by the United States Department of Transportation.

(8) RF leakage shall be monitored as required by FCC Rules and Regulations Part 76, Subpart K.

(9) Grantee shall at all times retain control of all of its contractors and their subcontractors and respond to complaints and concerns of the City and its citizens.

1.119. Repair of private property.

At any time the Grantee, in furtherance of its right to construct, operate and maintain a multi-channel system, disturbs the yard, residence or other real or personal property of a Subscriber, to the extent such repair or replacement was made necessary as a direct result of the operations of the Grantee, Grantee shall ensure that the Subscriber's yard, residence or other personal property is returned, replaced and/or restored to a condition that is as good or better condition than existed prior to the commencement of work. The costs associated with the return, replacement and/or restoration shall be borne by the Grantee. The requirements imposed upon the Grantee extend to any subcontractor or independent contractor that the Grantee might employ to perform the tasks outlined in this Section.

1.120. Educational and governmental access.

Upon request by the City, Grantee shall make available one channel to be used for educational and governmental access use. When programming on the access channel occupies fifty percent (50%) of the hours between 11:00 a.m. and 11:00 p.m., for any twelve consecutive weeks, the City may request the use of an additional channel for the same purpose. The additional channel must maintain programming twenty-five percent (25%) of the hours of 11:00 a.m. and 11:00 p.m. for twelve consecutive weeks. If this level of programming is not maintained, the channel will return to the Grantee for its use. Grantee also reserves the right to program the designated education and governmental channels during the hours not used by the City or other governmental entities. The channels(s) may be shared with the municipalities receiving programming from a headend operated within Tooele County, Utah or Elko County, Nevada. The City shall agree to indemnify, save, and hold harmless, Grantee from and against any liability resulting from use of the aforementioned education and governmental channel(s) by the City.

No charges may be assessed by Grantee for channel time for programming on the specially designated educational and governmental access channel(s) referenced in this Section. Each user of the educational and governmental access channel(s) shall be responsible for the operation of

their own channel(s) and pay their own costs of operation and programming. Grantee shall have the right to recover the costs for establishing educational and governmental access channel(s), and the costs for capital grants pursuant to this Act as hereafter provided as an external pass through to Subscribers; provided, however, that such expense as Grantee incurs in voluntary assistance to access users shall not be an external pass through nor a credit against the fee paid pursuant to this Section.

The Grantee may assess reasonable charges to any use for technical or other support other than for channel time when such support is requested by the user.

The City, with the assistance of educational institutions, shall be responsible for rules pertaining to the administration of the governmental and educational access channels respectively, and costs of operation of said channels shall be borne by the users of each category, as required by this Section.

1.121. Support for education and governmental access.

Nothing contained in this Act shall be construed to limit the authority of the Grantee to make voluntary payments in support of the use of educational and/or governmental access. However, such payments are expressly not a requirement of any Franchise granted hereunder and shall in no event be considered in the calculation of Franchise Fees pursuant to this Act unless such payment or contributions are subsequently required by the City.

1.122. City's right to lowest charge.

No charges to the City by the Grantee for any Cable Services shall exceed the lowest charge for similar or identical Cable Services provided by the Grantee to any other similarly situated Cable Services Subscriber or consumer of the Grantee.

1.123. Availability of access facilities.

(1) Use of Grantee's facilities, as they exist, for educational and governmental access upon the Cable Television System pursuant to Section 1.121 ("Educational and Governmental Access") above shall be made available, without rental, deposits, or any other charge whatsoever, for use during normal business hours in connection with the insertion of educational and/or governmental access programming cablecast upon the Cable Television System. Grantee shall, upon request of the City, assist in the establishment of such reasonable rules and procedures, designed to promote the utilization of such educational and/or governmental access programming and subject to the approval of the City Council, which approval shall not unreasonably withheld, whereby the Grantee shall accept and cablecast such educational and/or governmental access programming upon the Cable Television System as shall be provided to the Grantee by such persons and entities.

(2) Grantee shall make all reasonable efforts to coordinate the cablecasting of educational and/or governmental access programming upon the Cable Television System at the same time and upon the same channel designations as such programming is cablecast upon other cable television systems within the community.

1.124. Approval of construction by City; Inspection; Correction of defects in system.

(1) Except for individual service drops and all attachments to existing aerial facilities, the Grantee shall not, within the City, run any line, make any attachment, nor shall any construction of any kind be commenced without the prior approval of the City. Such approval shall not be unreasonably withheld and action shall be taken on any request for approval within ten (10) business days of receipt of the request. Grantee shall be able to make emergency repairs as needed.

(2) The City shall have and maintain the right to inspect, at its own expense the construction, operation and maintenance of the Cable System by the Grantee to insure the proper performance of the terms of this Act.

(3) In the event the Grantee should fail to comply with the terms of this Act or any other City permit issued for construction, the City shall give Grantee written notice of such non-compliance and a reasonable time for correction. After reasonable written notice and failure of Grantee to make correction, the City may:

- a. Make such correction itself and charge the cost of the same to the Grantee;
- and/or
- b. Secure the proceeds from any financial performance instrument posted by the Grantee.

1.125. Transfers.

(1) The Franchise shall not be sold, assigned or transferred, either in whole or in part, or leased, sublet, or mortgaged in any manner, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person except to an entity controlling, controlled by, or under common control with the Grantee, without the prior written consent of the City which consent shall not be unreasonably withheld.

(2) No such consent shall be required for a transfer in trust, mortgage, or other hypothecation as a whole or in part to secure an indebtedness.

(3) The proposed assignee must show technical ability, financial capability, legal qualifications and general qualifications as determined by the City and must agree to comply with all provisions of the Franchise and such conditions as may be prescribed by the City Council expressed by resolution. Within thirty (30) days of receiving the request for transfer, the City shall, in accordance with FCC Rules and Regulations, notify the Grantee in writing of the information it requires to determine the legal, financial and technical qualifications of the transferee. If the City has not taken action on the Grantee's request for transfer within one-hundred and twenty (120) days after receiving such request, consent by the City shall be deemed given.

(4) The Grantee shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the Grantee. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner. 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. For the purpose of determining whether it shall consent to such change, transfer or acquisition or control, the City may inquire into the qualifications of the prospective controlling party and the Grantee shall assist the City in any such inquiry.

(5) 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 fifty (50%) percent of the voting interest of the Grantee.

(6) The consent or approval of the City Council to any transfer of the Franchise shall not constitute a waiver or release of the rights of the City in and to the streets, and any transfer shall by its terms, be expressly subordinate to the terms and conditions of the Franchise.

(7) The City Council reserves the right of "first refusal" to purchase a Cable System if and when it is placed on the market for sale. However, should the sale of the system be part of a unified sale of some or all assets of the Grantee or any affiliated organization, then this Section shall not be applicable. In no event shall Grantee be required to receive less than a fair market value as a going concern.

(8) In no event shall a transfer of ownership or control be approved without successor in interest becoming a signatory to the Franchise Act.

1.126. Bonds and other surety.

(1) Except as expressly provided herein, Grantee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Franchise or continuing its existence. Grantee and City recognize that the costs associated with bonds and other surety may ultimately be borne by the Subscribers in the form of increased rates for cable services. Initially, no bond or other surety will be required. In the event that one is required in the future, the City agrees to give Grantee at least sixty (60) days prior written notice thereof stating the exact reason for the requirement.

(2) Notwithstanding the above provisions, Grantee shall be responsible for standard performance bonds and insurance required for encroachment permits for work done within City streets.

1.127. Indemnification by Grantee.

(1) Grantee shall, at its sole expense, fully indemnify, defend and hold harmless the City, and in their capacity as such, the officers, agents and employees thereof, from and against any and all claims, suits, actions, liability and judgments for damages or otherwise, including, but not limited to:

a. For actual or alleged injury to persons or property, including loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed, in any way arising out of or through or alleged to arise out of or through the acts or omissions of the Grantee or its officers, agents, employees or contractors or to which the Grantee's or its officers, agents, employees or contractors acts or omission in any way contribute.

b. Arising out of or alleged to arise out of any claim for damages for Grantee's alleged invasion of the right of privacy, defamation of any person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark or patent, or of any other right of any person, firm or corporation; or

c. Arising out of or alleged to arise out of Grantee's failure to comply with the provisions of any statute, regulation or ordinance of the United States, State of Utah, the City or other local agency applicable to the Grantee in its business.

(2) Nothing herein shall be deemed to prevent the parties indemnified and held harmless herein from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstance relieve the Grantee from its duty of defense against liability or paying any judgment entered against such party.

1.128. Customer service standards.

(1) **Reserved.** The City reserves the right to adopt customer service standards subsequently by separate ordinance or amendment to this Act. Grantee acknowledges and recognizes City's authority and right to adopt customer service standards in the future as provided for and consistent with applicable law.

(2) **Interrupted Service.** Except in emergency situations the Grantee shall make reasonable best efforts to notify Subscribers in advance if interrupted service is necessary for extensive repairing or upgrading of the Cable System.

(3) **Complaints by Subscribers.** If a Subscriber or other person or entity making use of the Cable System should have an unresolved complaint concerning quality of service, equipment malfunctions, access to or programming of public channels, or other matters pertaining to the Cable System after reasonable attempts to resolve their complaint with the Grantee, that party shall have the right to file a complaint before the City Manager and meet jointly with a representative of the City and the Grantee to fully discuss and resolve such matters.

(4) **System office hours and telephone availability.**

a. The Grantee will maintain a local, toll free or collect call telephone access line, which will be available to Subscribers twenty-four (24) hours a day, seven (7) days a week.

(i) Trained representatives of the Grantee shall be available to respond to Subscriber telephone inquiries during Normal Business Hours as defined herein.

(ii) After Normal Business Hours, an access line will be available to be answered by a service or an automated response system, including a telephone answering system. Inquiries received after Normal Business Hours must be responded to by a trained representative of the Grantee on the next business day.

b. Under Normal Operating Conditions, as defined herein, telephone answer time by a customer representative, including wait time, will not exceed 30 seconds when the connection is made. If the call needs to be transferred, transferred time will not exceed 30 seconds. These standards will be met no less than ninety percent (90%) of the time under Normal Operating Conditions, as measured by the Grantee on a quarterly basis.

c. Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards set forth above unless an historical record of complaints indicates a clear failure to comply with the standards.

d. Emergency telephone line capacity shall be available on a twenty-four (24) hour basis, including weekends and holidays. Under Normal Operating Conditions, the Subscriber will receive a busy signal less than three percent (3%) of the time.

e. Customer service center and bill payment locations will be open at least during Normal Business Hours and will be conveniently located.

(5) **Installations, outages and service calls.** Under Normal Operating Conditions, each of the following four standards will be met no less than ninety-five percent (95%) of the time, as measured by the Grantee on a quarterly basis:

a. "Standard" installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.

b. Excluding conditions beyond its control, the Grantee will begin working on Service Interruptions, as defined herein, promptly and in no event later than twenty-four (24) hours after the interruption becomes known. The Grantee will begin actions to correct other service problems the next business day after notification of the service problem.

c. The Grantee will provide "appointment window" alternatives for installations, service calls, and other installation activities, which will be either a specific time or, at maximum, a four-hour time block during Normal Business Hours.

d. The Grantee shall not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment.

e. If a representative of the Grantee is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the Subscriber.

(6) **Communications between Grantee and Subscribers.**

a. Notifications to Subscribers:

(i) The 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 service offered;
- (B) prices and options for services and conditions of subscription to programming and other services;
- (C) installation and service maintenance policies;
- (D) instructions on how to use service;
- (E) channels positions of programming carried on the System; and
- (F) billing and complaint procedures, including the address and telephone number of the local Franchising Authority's cable office.

b. Billing:

(i) Bills will be clear, concise and understandable. Bills will be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(ii) In case of a billing dispute, the Grantee will respond to a written complaint from a Subscriber within 30 days from receipt of the complaint.

(iii) Subscribers will be given reasonable notice of any changes in rates, programming services or channel positions as soon as possible through announcements on the System and in writing. Notice will be given to Subscriber a minimum of 30 days in advance of such changes if the change is within the control of the Grantee. In addition, the Grantee shall notify Subscribers 30 days in advance of any significant changes in the other in the other information required by the preceding paragraph.

c. Refund checks will be issued promptly upon request, but no later than the return of all Subscriber equipment provided by the Grantee and, either the Subscriber's next billing cycle following resolution of the request or 30 days, whichever is later.

d. Credits for service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

(7) **Definitions:** For the purposes of this Section, the following definitions shall apply:

a. Normal Business Hours - The term "Normal Business Hours" means those hours between 8:00 a.m. and 6:00 p.m., mountain standard time (or as applicable, mountain daylight time), Monday through Friday, and excluding legal holidays.

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

c. Service Interruption - The term "Service Interruption" means loss of picture or sound on one or more channels.

1.129. Grantee insurance.

As a part of the indemnification provided by Section ("Indemnification by Grantee"), but without limiting the foregoing, Grantee shall file a certificate of insurance with the Grantor, and at all times thereafter maintain in full force and effect at its sole expense, an acceptable policy or policies of liability insurance, including comprehensive general liability insurance products/completed operations liability, personal injury liability, owners and contractors protective liability, broad form property damage, contractual liability, automobile liability (owned; non-owned and hired automobiles), workers compensation and employer liability. The policy or policies shall name as an additional insured the City, and in their capacity as such, their officers, agents and employees. Policies of insurance shall be in the minimum single limit amount of one million dollars (\$1,000,000.00) per occurrence. The insurance policy or policies shall contain contractual liability insurance naming the Grantee, and shall insure against the types of liabilities covered by the indemnification and hold harmless provisions of Section ("Indemnification by Grantee"). The insurer or insurers shall be rated "A" by Best (or the equivalent by a similar insurance rating entity), and shall, in addition, be authorized to write the required insurance, approved by the Insurance Commissioner of the State of Utah.

The policy or policies of insurance shall be maintained by the Grantee in full force and effect during the entire term of the Franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for

nonpayment of premium, or otherwise, and whether by the request of the Grantee or for other reasons, except after thirty (30) calendar days advance written notice mailed by the insurer to the City Recorder, and that such notice shall be transmitted postage prepaid, with return receipt.

1.130. Procedure for remedying Franchise violations.

(1) In the event that the City determines that Grantee has violated any provision of the Franchise, City may make a written demand on Grantee that it remedy such violation. If the violation is not remedied, or in the process of being remedied, to the satisfaction of City within thirty (30) days following such demands, an administrative hearing shall be held to review the alleged violation. If this hearing does not result in a satisfactory resolution, and/or Grantee requests a public hearing, then a public hearing shall be held, and Grantee shall be provided with an opportunity to be heard upon thirty (30) days written notice to Grantee of the time and the place of the hearing and the allegations of Franchise violations.

a. Any hearing held may be conducted by the City Council or, at the sole discretion of the Council, by a hearing officer appointed by the Council. Any such hearing officer shall be an attorney licensed to practice under the laws of the State of Utah.

b. The cost of providing quarters for the hearing, compensation for the hearing officer, if any, and the per diem cost of any reporter retained to record the proceedings shall be borne by the City. The costs incurred by the parties for attorney's fees, expert witness fees and other expenses shall be borne solely by the party incurring the costs.

c. All witnesses testifying at any hearing held pursuant to this Section shall be sworn witnesses and shall be subject to direct and cross-examination. However, formal rules of evidence applicable to the trial of civil and criminal proceedings in the trial courts of the State of Utah shall not be applicable to the hearing. The provisions of the Administrative Procedures Act, commencing at Section 63-46b-1, et. seq. U.C.A. 1953, as amended, or any successor legislative enactment, shall not be applicable to any such hearing. The hearing may be continued from time to time.

d. If the hearing is conducted by a hearing officer, the officer shall upon conclusion of the hearing, prepare a recommended decision which includes findings of fact and conclusions. The recommended decision shall be filed with the City Recorder and mailed to the parties not later than thirty (30) calendar days after the conclusion of the hearing. Upon receipt of such a recommended decision, the City Council may, without a hearing except as otherwise required below, either:

(i) adopt the recommended decision, including findings of fact and conclusions submitted by the hearing officer;

(ii) adopt the findings of fact and conclusions contained in the recommended decision, modify the decision, and adopt the recommended decision as so revised;

(iii) based upon the record of the hearing, modify the findings of fact, conclusions or decisions and adopt the recommended decision as so revised;

(iv) reject the recommended decision and conduct a new hearing.

e. If the hearing is conducted by the City Council, following conclusion of the hearing, the City Council shall adopt a decision which includes findings of fact and conclusions.

(2) If, after notice is given and, at Grantee's option, a full public proceeding is held, City determines that such violation occurred or still exists, then Grantor may impose a remedy including, without limitation:

a. making the correction itself, and charging the cost to the Grantee;

b. commencing an action at law for monetary damages, or seeking other equitable relief;

c. requiring the filing of a financial performance instrument by the Grantee to insure future performance; or

d. in the case of a substantial default of a material provision of the Franchise, declare the Franchise terminated.

(3) If the decision by the City Council is that there are grounds for termination of the Franchise and that the Franchise shall be terminated, the City Council may adopt a resolution which terminates the Franchise and includes its decisions. The effective date of termination shall be such date as is prescribed by the City Council, within its sole discretion, in the resolution.

(4) The Grantee shall not be held in default or non-compliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, for such non-compliance or alleged defaults that are caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control.

1.131. Revenue report following termination.

In the event this Franchise Act should be terminated, forfeited or voided pursuant to the terms of this Act, or any order or decree by a court of competent jurisdiction, the Grantee shall, not later than thirty (30) days following the termination of the Franchise Act, submit to the City, a report prepared as before required, showing the Gross Revenue of the Grantee for the time elapsed since the last period for which the Grantee has paid the Fee. With the submission of the report, the Grantee shall pay to the City the Franchise Fee due and owing to the City.

1.132. Alternative remedies.

(1) No provision of this Act shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Act nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violation by the Grantee, or judicial enforcement of the Grantee's obligations by means of specific performance, injunction relief or mandate, or any other judicial remedy at law or in equity.

(2) No provision of this Act shall be deemed to bar any rights the Grantee may have under law, which may include the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992, as amended, to the extent it is in force, and the right to review of any decision by the City Council, by a court of competent jurisdiction.

1.133. Non-enforcement.

Grantee shall not be relieved of any obligation to comply with any of the provisions of the Franchise or any rule, regulation, requirement or directive promulgated thereunder by reason of any failure of the City or its officers, agents or employees to enforce prompt compliance.

1.134. Communications with regulatory agencies.

Copies of all petitions, applications, communications, and reports submitted by Grantee to the FCC or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting construction or operation of a Cable Television System or services provided through such a System, shall be made available to City upon reasonable request. Copies of responses or any other communications from the regulatory agencies to a Grantee likewise shall be made available upon reasonable request.

1.135. Rates.

(1) The Grantee shall file with the City on December 31 of each year a full schedule of all Subscribers and user rates and all other charges including, but not limited to, pay TV, lease channel and discrete services, made in connection with the Cable Communications System.
a. All rates shall be published on file with the City.

b. The Grantee shall not discriminate in the assessment, levy, charge, imposition or collection of rates on the basis of age, race, creed, color, religion, national origin, sex or marital status.

(2) Nothing in this Act shall be construed to prohibit the reduction or waiving of charges in conjunction with promotional campaigns for the purpose of attracting Subscribers or users.

(3) The Grantee may require all Subscribers to pay for basic service not more than one (1) month in advance. The Grantee shall require no other advancement of payment for basic service, provided, however, that nothing herein shall be construed to prohibit an advancement of payment for installation of Cable Communications Services or charges other than those for basic service.

(4) In the event that a Subscriber fails to pay as properly due and owing a fee or charge, the Grantee may disconnect the Subscriber's service outlet, upon giving ten (10) days written notice thereof.

(5) The Grantee shall establish and conform to the following policy regarding refunds to Subscribers and users:

a. If the Grantee collects a deposit or advance charge on any service or equipment requested by a Subscriber or user, the Grantee shall provide such service or equipment within thirty (30) days of the collection of the deposit or charge or it shall refund such deposit or charge within fifteen (15) days of the request for refund thereafter.

(i) Nothing in this Section shall be construed to relieve the Grantee of any responsibility to Subscribers or users under any contractual agreements into which it enters with them.

(ii) Nothing in this Section shall be construed as limiting the Grantee's liability for fines or penalties which may be imposed under this Act or of any agreement awarded in accordance herewith for violation or breach of any of their provisions.

(iii) Nothing in this Section shall be construed to limit the Grantee's liability for damages because of its failure to provide the service for which the deposit or charge was made.

b. In the event that a Subscriber terminates basic service prior to the end of a pre-paid period, upon request, the pro-rata portion of any pre-paid Subscriber fee which represents payment for services which are no longer to be rendered shall be refunded promptly, but in no case more than thirty (30) days after receipt of the request for refund and the return of all of the customer equipment provided to the Subscriber by the Grantee.

1.136. Franchise Fee.

For the use of the streets and for the purposes of providing revenue with which to defray the costs or regulation arising out of the granting of this Franchise under this Act, Grantee shall pay a Franchise Fee in the amount prescribed by Section 1.138 ("Amount and Payment of Franchise Fee") below.

1.137. Amount and Payment of Franchise Fee.

(1) During the term of the Franchise, Grantee shall pay to the City an amount equal to five (5%) percent per year of the Grantee's annual Gross Revenue received.

(2) The Franchise Fee shall be paid quarterly, not later than thirty (30) days after the end of each previous calendar quarter. Not later than the date of each payment, the Grantee shall file with the City, a written statement signed by an officer of the Grantee attesting to the accuracy, completeness and veracity of the statement, and which identifies in detail the sources and amounts of Gross Revenues received by a Grantee during the period for which the payment is made.

(3) No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this Section.

(4) The City agrees that all Franchise Fees paid to the City will be collected from Subscribers as "external costs" as such term is used in 47 C.F.R. 76.922, and will be separately stated on Subscribers' bills as permitted in 47 C.F.R. 76.985.

(5) Should the Cable Act ever be amended to change the maximum Franchise Fee percentage allowable by law, or should the statutory limit imposed by Utah Code 11-16-1 *et seq.*, or any successor provision, is increased above six percent (6%), the Grantee shall upon revision of this Act, or by other ordinance or resolution, increase the Franchise Fee to the level required by the City, but not to exceed the increased statutory limit, nor shall the Franchise Fee paid be unduly discriminatory towards the Grantee or its customers, solely because of their status as such.

1.138. Interest on Delinquent Franchise Fees.

Any Franchise Fee which remains unpaid after the dates specified above, shall be delinquent and shall thereafter accrue interest at the rate of 1.5% per month (18% per annum) until paid.

1.139. Accounting standards.

Within six (6) months after the Grantee's fiscal year end, the Grantee shall provide to the City an unqualified certification certifying to the accuracy of the quarterly Franchise Fee payments remitted for the preceding fiscal year. This certification must be prepared in accordance with generally accepted accounting standards.

1.140. Auditing and financial records.

During the term of the Franchise, the City may, at times deemed appropriate by the City, conduct an audit of the books, records and accounts of the Grantee for the purpose of determining whether the Grantee has paid Franchise Fees in the amounts prescribed by Section ("Amount and Payment of Franchise Fee") above. The audit may be conducted by the Finance Department of the City or by an independent certified public accountant retained by the City, and shall be conducted at the sole expense of the City. If, however, as a result of the audit, it is determined that the Grantee has under-reported its gross revenues by more than five percent (5%), the Grantee shall pay all costs of the audit. The party conducting the audit shall prepare a written report containing its findings, and the report shall be filed with the City, and mailed to the City and Grantee.

The Grantee shall make available for inspection by authorized representatives of the City, its books, accounts, and all other financial records at reasonable times and upon reasonable advance notice for the purpose of permitting exercise of the authorities conferred by this Section. The Grantee shall not be required to provide Subscriber information in violation of Section 631 ("Protection of Subscriber Privacy") of the Cable Act.

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1.141. Improvements to System & Amendments to Act.

(1) State of the Art. The City believes the cable television industry will continue to progress with changes in technologies and services. Because this Franchise will extend over a long time, it is the goal of the City to ensure that cable services are current and state of the art.

(2) In order to keep current with the latest state of the art and to incorporate changes that are reasonable, Grantee shall endeavor: (a) to improve signal quality (and in particular, the signal quality for broadcasts from Salt Lake City/Wasatch front television stations); (b) to provide additional or new facilities and equipment; (c) expand channel capacity; and (d) otherwise upgrade or rebuild its system throughout the franchise term, in order to incorporate improvements in technology to reasonably meet the needs and interests of the community in light of the costs thereof. Grantee shall consider the needs and interests of the community, as well as the changes taking place in telecommunications technology and services nation-wide. Grantee will pursue a continuous policy of incorporating new technical developments into the System and will identify

and respond to changing community interests and desires regarding video programming. Provided, however, it shall ultimately be within the sole discretion of Grantee to determine, in its reasonable business judgment and consistent with the goals stated herein, whether or under what terms and conditions to add new facilities, equipment, or services to the system pursuant to this Franchise. Provided, also, that if in the sole judgment of the City the Grantee has not met any of the goals defined herein, it may, at the conclusion of the initial five (5) year term of this franchise, elect not to renew the same

(3) Periodic Evaluation, Review and Modification. The field of cable communications is a relatively new and rapidly changing one which may see many regulatory, technical, financial, marketing and legal changes during the term of this Franchise. Therefore, to provide for a maximum degree of flexibility in this Franchise, and to help achieve a continued advanced and modern System, the following evaluation provisions will apply:

(a) The City reserves the right to adopt reasonable rules and regulations controlling the procedures as set forth below and the subjects for Evaluation Sessions with the Grantee. In the absence of any City action taken to exercise these rights, Grantee shall be subject to at least the procedures and subjects described in this section.

(b) The City may require, at its sole discretion, evaluation sessions at any time during the term of this Franchise; provided, however, there shall not be more than one evaluation session during any one (1) calendar year. The Grantee will receive sixty (60) days prior advance notice of such evaluation sessions.

(c) Topics which may be discussed at any evaluation and renegotiation session include, but are not limited to signal quality, rates, channel capacity, the System performance, programming, access, municipal uses of cable, Subscriber Complaints, judicial rulings, FCC rulings and any other topics the City or Grantee deem relevant.

(d) During an evaluation session, Grantee shall fully cooperate with the City and shall provide without cost such information and documents which relate to the operation of this cable System as the City may request to perform the evaluation. To the extent such information or documents contain confidential information, such confidential information may not be disclosed when so requested by Grantee.

(e) If at any time during its evaluation, the City determines that reasonable evidence exists of System performance which fails to meet the requirements of this Franchise Agreement or Ordinance, the City may require Grantee to perform tests and analysis directed toward such suspected inadequacies at Grantee's expense. Grantee shall fully cooperate with the City in performing such testing and any report prepared by Grantee shall include at least:

- i. A description of the problem in the System performance which precipitated the special tests.
- ii. The System component tested.
- iii. The equipment used and procedures employed in testing.
- iv. The method, if any, by which the System performance problem was resolved.
- v. Any other information pertinent to said tests and analysis which may be required by the City, or determined when the test is performed.

(f) If after receiving Grantee's report the City determines that reasonable evidence still exists of inadequate System performance, the City and Grantee may enlist an independent engineer, approved by the Grantee, at Grantee's expense, to perform reasonable tests and analysis directed toward such suspected failures to meet the requirements of this Franchise Agreement or Ordinance. Grantee shall cooperate and permit said testing.

(h) Notwithstanding the foregoing, no amendment shall be effective if the amendment substantially impairs the rights granted pursuant to this Franchise or if federal law is deemed to preempt, preclude or supersede a provision or provisions of the Franchise.

(4) Subscriber Surveys. Upon request, the Grantor shall provide to the City the results of any internal subscriber surveys conducted by Grantee. During the twelve (12) months prior to the renewal of the initial term hereof, the City may request that the Grantee conduct a written random survey so as to provide information as to Subscriber satisfaction with:

- i. Audio and signal quality;
- ii. Response to Subscriber Complaints;
- iii. Billing practices;
- iv. Programming services;
- v. Installation practices.

(a) The survey shall be conducted in good faith and the City shall have the right, prior to the survey being taken, to comment on the survey, and shall have the right to review the returned surveys. Grantee may satisfy this requirement through a telephone survey conducted by an independent Person in the business of regularly conducting telephone surveys.

1.142. Unauthorized Use and Attachment.

(1) Whoever, without the consent of the Grantee, willfully destroys, damages or in any way injures any CATV System within the City, or its poles, cables, wires, fixtures, antennae, amplifiers or other apparatus, equipment or appliances, or who willfully obstructs, impedes or impairs the service of any System therein, or any of its lines, or the transmission of television and radio signals thereover; or whoever, without such consent, attaches within City any device or equipment to such System, or any line, antenna, poles, cable, wire fixture, amplifier or other apparatus, instrument; equipment or appliance thereof; or who taps or connects directly or indirectly, by wire or any other means whatsoever, to or with any System line so as to hear, or see, or be in a position to hear or see, for any use or purpose whatsoever, any signal going over said System line, or who makes said tapping or connection for the purpose of receiving or enabling any other person to receive any service over said line or lines; or whoever uses or attempts to use, in any manner or for any purpose, any information so obtained, or communicates the same in any way or for any purpose, or attempts to so communicate the same; or whoever aids, agrees with, employs, or conspires with, any person to do or cause to be done any of the acts hereinbefore set forth; shall be guilty of a class C misdemeanor. Each day that such violation exists shall constitute a separate offense.

(2) In all prosecutions of this section of this ordinance, proof that any of the acts herein forbidden were done on or about the premises owned or occupied by the defendant charged with the commission of such offense, or that the defendant unlawfully received the benefit of the transmission of television signals from system on account of the commission of such acts, shall be prima facie evidence of the guilt of the defendant.

1.143. Publication costs.

The Grantee shall assume the cost of publication of this Franchise as such publication is required by law and such is payable upon the Grantee's filing of acceptance of this Franchise.

1.144. No waiver or estoppel.

Neither the City nor the Grantee shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

1.145. Severability.

If any section, sentence, paragraph, term or provision of this Act, or the Franchise Ordinance, is for any reason determined to be or rendered illegal, invalid, or superseded by other lawful authority including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof or determined to be unconstitutional, illegal or invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, to the extent that the essential terms of this Franchise remain unaffected and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise Act or any renewal or renewals thereof.

1.146. Fee article and provisions non-severable.

Section 1.135, and provisions related to the assessment and payment of fees to the City (the "related provisions") are essential to the adoption of this Franchise Act and should any such provision be challenged by the Grantee, or determined to be illegal, invalid, unconstitutional or superseded, in whole or in part, unless otherwise agreed upon by the City and the Grantee, the entire Franchise Act shall be voided and terminated, subject to the provisions of the following provisions of this Section. In the event of a judicial, regulatory or administrative determination that Section 1.135 or any related provision is illegal, invalid, unconstitutional or superseded, such termination shall be effective as of the date of a final appealable order, unless otherwise agreed upon by the City and the Grantee. In the event of any legislative action that renders Section 1.135, or any related provision, unconstitutional, illegal, invalid or superseded, such termination shall be effective as of the effective date of such legislation.

1.147. Termination of Franchise.

If this Franchise Act terminates for any reason, including but not limited to Grantee's becoming a provider of an Open Video System as defined by the Telecommunications Act of 1996, so long as Grantee maintains facilities in the public rights-of-ways, the City is entitled to collect from Grantee reasonable and nondiscriminatory fees for use of such public rights-of-way. Such fees are to be comparable to those fees paid by other providers of services similar to those provided to Grantee within the City of Wendover.

Grantee acknowledges that this Franchise provides Grantee with the use of valuable public rights-of-ways acquired and maintained by the City at great expense to its taxpayers and citizens and in recognition thereof that the grant to the Grantee of the use of those rights-of-ways is a valuable privilege and that such payments are made as a matter of contract.

1.148. Notice.

Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the City or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope when hand delivered or sent by certified or registered mail, postage prepaid.

The notices or responses to the City shall be addressed as follows:

Wendover City
P.O. Box 430
Wendover, Utah 84083

The notices or responses to the Grantee shall be addressed as follows:

Nevada Cable Company
P.O. Box 5180
1930 Plateau Way, Suite No. 4
West Wendover, Nevada 89883

The City and the Grantee may designate such other address or addresses from time to time by giving notice to the other.

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