

CHAPTER 25

CABLE COMMUNICATIONS SYSTEMS

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ARTICLE I

CABLE COMMUNICATIONS FRANCHISES

25-1 TITLE. This ordinance is known and may be cited as the “Cable Communications Franchise Ordinance.”

25-2 DEFINITIONS. Various terms and phrases used in this ordinance are defined in Section 25-16.

25-3 GRANT OF FRANCHISE.

a. Authority to Grant Franchises. The Grantor may grant a Franchise to provide Cable Service to any Person who offers to provide a System pursuant to this ordinance.

b. Form. A Franchise may, at Grantor’s sole option, take the form of an ordinance, license, permit, contract, resolution, or any other form elected by Grantor.

c. Grants Not Required. Consistent with applicable state and federal law, no provision of this ordinance requires the granting of a Franchise when, in the opinion of the Grantor, it is in the public interest not to do so.

d. Purpose. The purpose of a Franchise is to identify and authorize the operation of a Cable Communications System by a specific Grantee, and to identify and specify those terms, conditions, definitions, itemizations, specifications and other particulars of the agreement between the Grantor and Grantee. In so doing, a Franchise may clarify, extend, and interpret the provisions of this ordinance. Where a Franchise and this ordinance conflict, both shall be liberally interpreted to achieve a common meaning or requirement. In the event this is not possible within reasonable limits, the Franchise shall prevail. Unless otherwise specifically state, no provision of this ordinance shall be deemed to be contractually incorporated into any Franchise granted hereunder.

e. Compliance with Law. Neither this ordinance nor a Franchise granted under it relieves Grantee of any requirement of Grantor, or of any ordinance, rule, regulations, or specification of Grantor now or hereafter in effect pursuant to Grantor's police power, including, but not limited to, the obtaining of a business license, and the payment of all permit and inspection fees required from time to time by the Grantor.

f. Franchise Non-Exclusive. Grantor may, at its option, grant one or more Franchises to construct, operate, maintain, and reconstruct a System. Said Franchises shall constitute both a privilege and an obligation to provide the System and Services required by this ordinance and the Franchise.

g. Duration. The term of any Franchise, and all rights, privileges, obligations and restrictions pertaining thereto, shall be specified in the Franchise. The effective date of any Franchise shall be as specified in the Franchise.

h. Use of Public Streets and Rights-of-Way. For the purposes of operating and maintaining a system in the franchised Service Area, a Grantee may place and maintain within the public rights-of-way such property and equipment as are necessary and appurtenant to the operation of the Cable Communications system. Prior to construction or alteration of the Plant in public rights-of-way, the Grantee shall apply for, pay all applicable fees, and receive all necessary permits.

i. Use of Other Utilities. Any Person who provides a System of Services as defined herein shall be deemed a Grantee and must obtain a Franchise. If such Grantee uses distribution channels furnished by any telephone company, other public utility, or any other entity which are functionally equivalent to those used by a Cable Operator, said Grantee shall be required to comply with all of the provision of this ordinance.

j. Assignment, Transfer or Sale of Franchise.

1. There shall be no assignment of a Franchise, in whole or in part, or any change in Control of the Grantee, without the prior express written approval of the Grantor.

2. Any assignment or transfer, or any change in Control, without the Grantor's prior written consent shall constitute a default which will cause a Franchise to terminate.

3. At least one hundred twenty (120) days before a proposed assignment or change in Control of the Franchise is scheduled to become effective, the Grantee shall request in writing the Grantor's written consent. The Grantee shall submit to the Grantor (concurrently with the submission of its written request) an FCC 394 Form (or successor form) together with:

(i) any other information or documentation required by the State or Federal government (including the FCC); (ii) the information referenced in subsection 7 of this paragraph; (iii) copies of the sale or transfer documents with all schedules and exhibits thereto; and (iv) information regarding the financial ability and stability of the proposed assignee with respect to being able to perform all obligations of the existing Franchise.

4. The Grantor shall not unreasonably withhold its consent to such an assignment or change in Control. However, in evaluating the request for assignment, transfer, sale, or change in Control, the Grantor may, in its sole discretion and among other things, undertake a technical inspection and audit of the System to determine whether the System complies with all applicable technical and safety codes, this ordinance, and the Franchise.

5. If the Grantor determines (as a result of the technical inspection and audit) that the System does not comply with federal, state, or local standards, then the Grantee shall be provided with an opportunity to correct or cure the non-compliance. In the alternative, the Grantor may work with both the current and proposed Grantee to cure the non-compliance.

6. If the Grantee has not previously supplied the Grantor with certain operational reports and data, then the Grantee shall submit to the Grantor the following reports at the time it submits its FCC Form 394:

(a) FCC Form 395-A relating to equal employment opportunity and fair contracting policies:

(b) Periodic revenue statements in the format referenced in this ordinance; and

(c) Subscriber logs in the format referenced in this ordinance.

7. Before an assignment or change in Control is approved by the Grantor, the proposed assignee, transferee, or buyer shall execute an affidavit acknowledging that it has read, understood, and will abide by both this ordinance and the applicable Franchise.

8. In the event of any approved assignment or change in Control, the assignee or transferee shall assume all obligations and liabilities of the former Grantee relating to the Franchise unless specifically relieved by the Grantor at the time the assignment or change in Control is approved.

9. If the Grantor disapproves a request for consent, then the Grantee may submit another request or an amended request for consent. In such a situation, the one hundred twenty (120) day time frame beings to run anew.

10. No approval will be required for a transfer in trust, mortgage or other hypothecation to secure indebtedness. No transfer of control will be deemed to have taken place if the transfer is to an entity under common control with the Grantee of any Franchise in the City.

11. For purposes of Section 2503 j, no assignment, transfer or sale shall be deemed to occur where Grantee transfers the Franchise to any person or entity which owns or controls, is owned or controlled by, or is under common ownership with the Grantee.

k. Reimbursement of Processing and Review Costs. To the maximum extent allowed by then applicable law, Grantee shall reimburse Grantor for Grantor's reasonable processing and review expenses in connection with a transfer of the Franchise or a change in Control of the Franchise, including without limitation, costs of internal administrative review by Grantor of the financial, legal, and technical qualifications of the proposed transferee, notice and publication costs, and document preparation expenses.

l. Violation. If the Grantee violates any provision of paragraph j of Section 25-3, the procedures contained in Section 25-11 of this ordinance shall apply to such unlawful transfer or change in Control.

25-4 RIGHTS RESERVED TO THE GRANTOR.

a. Reservation. Grantor reserves every right it may have in relation to its power of eminent domain over Grantee's Franchise and property.

b. Non-waiver or Bar. Neither the granting of any Franchise, nor any provisions of this ordinance, shall constitute or be construed as a waiver or bar to the exercise of any governmental right or power by Grantor.

c. Delegation of Powers. Any right or power in, or duty retained by or imposed upon Grantor, or any commission, officer, employee, department, or board of Grantor, may be delegated by Grantor to any officer, employee, department or board of Grantor or to such other person or entity as Grantor may designate to act on its behalf.

d. Right of Inspection of Construction. The Grantor shall have the right to inspect all construction, installation, or other physical work performed by Grantee in connection with the Franchise, and to make such tests as may be necessary to ensure compliance with the terms of this ordinance and the Franchise, so long as said inspection and testing does not unreasonably interfere with Grantee's operations.

e. Right to Require Removal of Property. Consistent with applicable law, at the expiration of the term or any renewal term or extension for which the Franchise is granted, or upon its lawful revocation, expiration, or termination, the Grantor shall have the right to require the Grantee to remove, at Grantee's expense, all portions of its system and any other property from all streets and public rights-of-way within the Franchise Service Area within a reasonable period of time.

f. Right of Intervention. The Grantor shall have the right of intervention in any suit, proceeding or other judicial or administrative proceeding in which the Grantor has any material interest, and to which the Grantee is party.

g. Place of Inspection. The Grantor shall have the right to inspect Grantee's local premises, and to request copies of all relevant information that is reasonably necessary for the exercise of Grantor's regulatory authority, upon reasonable notice at any time during normal business hours. Any Grantee records kept at another place shall, within ten (10) days of Grantor's request, be made available at Grantee's local premises within the County of Imperial for Grantor's inspection and copying. All reports and records required pursuant to this ordinance shall be furnished at the sole expense of Grantee, except as otherwise provided in this ordinance or the Franchise.

25-5 RIGHTS OF SUBSCRIBERS.

a. Discriminatory Practices Prohibited. The Grantee shall not deny Cable Service or otherwise discriminate against Subscribers or others on the basis of race, color, religion, national origin, sex, age, handicap, or other protected classes. The Grantee shall strictly adhere to the equal employment opportunity requirements of federal, state, or local governments and shall comply with all applicable laws and executive and administrative orders relating to nondiscrimination.

b. Tapping and Monitoring. The Grantee shall not tap or monitor, or permit any other person to tap or monitor, any cable, line, signal input device, or subscriber outlet or receiver, for any purpose whatsoever without the express written consent of the Subscriber or a court order therefore; provided, however, that the Grantee may monitor customer service calls for quality control purposes and may conduct system-wide or individually addressed "sweeps" for the purpose of verifying system integrity, controlling return path transmission, or checking for unauthorized connections to the Cable Television System, service levels, or billing-for-pay services.

c. Date Collection in connection with cable service offerings.

1. Except for its own use, or in connection with the provisions of Cable Services or for release of data to the Grantor, or as allowed by the Subscriber Privacy provision of the Cable Act Section 631, the Grantee shall not permit its system to be used for data collection purposes, nor shall it otherwise collect data which would reveal the commercial product or other preferences or opinions of an individual Subscriber, members of their families, or their guests, licensees or employees, unless the Grantee shall have received the prior written or electronic consent of such Subscriber.

2. In any event, the Grantee shall not disclose or permit the release or sale of data on individual Subscribers or groups thereof, but may disclose or permit the release or sale of aggregate data only.

d. Disclosure of Subscriber Preferences.

1. Except as allowed by the Subscriber Privacy provisions of Cable Act Section 631, Grantee shall not disclose individual Subscriber preferences, viewing habits, beliefs, philosophy, creeds, or religious beliefs to any third person, firm, agency, governmental unit or investigating agency without court authority or the prior written or electronic consent of the Subscriber.

2. Such written or electronic consent, if given, shall be limited to a period of time not to exceed one year, or a term agreed upon by the Grantee and the Subscriber.

3. The Grantee shall not condition the delivery or receipt of Cable Services to any Subscriber on any such consent.

4. A Subscriber may revoke, without penalty or cost, any consent previously given by delivering to the Grantee in writing a statement of the Subscriber's intent to so revoke.

e. Disclosure of Subscriber Lists. Except as allowed by the Subscriber the Grantee shall not disclose, or sell, or permit the disclosure or sale of its subscriber list without the prior written or electronic consent of each Subscriber on such list; provided that Grantee may use its subscriber list as necessary for the construction, marketing, and maintenance of the Grantee's services and facilities authorized by a Franchise, and the billing of Subscribers for Cable Services.

f. Other Persons Affected. The prohibitions contained in paragraphs (a) through (e), inclusive, of this Section 25-5 apply to Grantee, as well as to all of the following:

1. Officers, directors, employees, agents, and General and Limited Partners of the Grantee;

2. Any person or combination of persons owning, holding, or controlling twenty percent (20%) or more of any corporate stock or other ownership interests in the Grantee;

3. Any affiliated or subsidiary entity owned or controlled by Grantee, or in which any officer, director, stockholder, general, or limited partner, or person or group of persons owning, holding or controlling any ownership interest in the Grantee, shall own, hold or control twenty percent (20%) or more of any corporate stock or other ownership interests; and

4. Any person, firm, or corporation acting or serving in the capacity of a holding or controlling company of the Grantee.

g. Subscriber Bill of Rights. Grantee shall provide to all Subscribers, at the time of initial connection and annually thereafter, a notice describing in understandable language, in accordance with existing FCC regulation, the Subscriber's rights and obligations that are generally provided under the Franchise and federal law, including a description of how to contact the Grantee and, if necessary, the Grantor, in the event of an unresolved Subscriber complaint.

h. Notice to New Subscribers. Before providing Cable Service to any subscriber, Grantee shall provide a written notice to the Subscriber containing substantially the following information:

“Subscriber understands that Company uses public rights-of-way and other facilities of the City of Imperial in providing service and that this continued use cannot be guaranteed. Subscriber agrees not to make any claims against the City of Imperial or its officers or employees in the event that such use is denied for any reason and Company is unable, in its discretion, to provide service over alternate routes.”

i. Complaint Advice. Grantor may require Grantee to advise its Subscribers that complaints of poor service should be made to Grantor's representative if such complaints are not resolved by Grantee to the satisfaction of a Subscriber.

25-6 FINANCE.

a. Payment to the Grantor.

1. As compensation for any Franchise to be granted, and in consideration of permission to use the Grantor's streets and public rights-of-way for the construction, operation, maintenance, and reconstruction of a System, the Grantee shall pay to the Grantor the amount specified in the Franchise.

2. Payments due the Grantor shall be computed quarterly, and shall be paid within forty-five (45) days after the close of each calendar quarter. The payment shall be accompanied by a report showing the basis for the computation and such other

relevant facts as may be required by the Grantor to determine the accuracy of the payment. A final annual reconciliation, and payment if any, shall be delivered to Grantor by Grantee within ninety (90) days after the end of each calendar year.

3. If any franchise payment or recomputed amount is not made on or before the dates specified above in subsection 2, Grantee shall pay as additional compensation the greater of the following:

(a) An interest charge, computed from the applicable due date, at an annual rate equal to the prevailing commercial prime interest rate in effect upon the due date, plus one percent (1%).

(b) A sum of money equal to five hundred dollars (\$500.00) for each month, or part thereof, of delay, which sum shall also bear interest from the due date at an annual rate equal to the prevailing commercial prime interest rate in effect upon the due date, plus one percent (1%).

4. In addition to any late payment made pursuant to subsection 3 above, if a payment is late by sixty days or more, Grantee shall pay a sum of money equal to three percent (3%) of the amount due in order to defray additional expenses and costs incurred by Grantor as a result of such delinquent payment.

5. No acceptance of any payment shall be construed as a release of, or an accord, or satisfaction of, any claim that the Grantor might have for further or additional sums payable under the terms of this ordinance, or for any other performance by Grantee of an obligation hereunder.

6. Payments of compensation made by a Grantee to the Grantor pursuant to the provisions of this ordinance are in addition to, and exclusive of, any and all authorized taxes, business license fees, and other fees, levies, or assessments now in effect, or subsequently adopted.

b. Security Fund.

1. If required by the Franchise within thirty (30) days after the effective date of the Franchise, the Grantee shall deposit into a bank account established by the Grantee, for the benefit of Grantor, and shall maintain on deposit through the term of the Franchise, a sum specified in the Franchise as security for the faithful performance by Grantee of all of the provisions of the Franchise, and compliance with this ordinance and with all orders, permits and directions of the Grantor, or any designated representative of the Grantor having jurisdiction over Grantee's acts or defaults under the Franchise or this ordinance, and as security for the payment by the Grantee of any claims, fees, liens, or taxes due the Grantor which arise by reason of the construction, operation or maintenance of the System pursuant to the Franchise or this ordinance, and to satisfy any actual or liquidated damages arising out of a Franchise breach.

2. Except as otherwise provided in the Franchise, if the Grantee fails, after twenty (20) days written notice, to pay to the Grantor any fees that are due and unpaid, or fails to repay within such twenty (20) days, any damages, costs or expenses which the Grantor is compelled to pay by reason of any act or default of the Grantee in connection with its Franchise; or if Grantee fails to comply with any provision of the Franchise or this ordinance and the Grantor determines that such failure was without just cause and, in a manner consistent with the procedures specified in Section 25-11 of this ordinance, Grantor reasonably determines it can be remedied by a withdrawal from the security fund or is nevertheless subject to liquidated damages, then, in any such event, the Grantor may immediately withdraw the amount thereof from the security fund, with interest and any liquidated damages. Upon such withdrawal, the Grantor shall notify the Grantee of the amount and the date of withdrawal.

3. Within thirty (30) days after notice to Grantee that any amount has been withdrawn by Grantor from the security fund, the Grantee shall deposit a sum of money sufficient to restore such security fund to the original amount.

4. Grantee shall be entitled to the return of the security fund, or portion thereof, with interest that remains on deposit at the expiration or termination of the Franchise, once all amounts due to the Grantor have been paid. Grantee shall also retain its right to challenge any withdrawal from such security fund.

5. The rights reserved to the Grantor with respect to the security fund are in addition to all other rights of the Grantor, and no action, proceeding or exercise of a right with respect to such security fund shall affect any other right the Grantor may have.

c. Faithful Performance Bond. Within thirty (30) days after the effective date of the Franchise, the Grantee shall furnish proof of the posting of a faithful performance bond in favor of the Grantor, with corporate surety approved by the Grantor (which approval shall not be unreasonably withheld) in the sum specified in the Franchise and conditioned that the Grantee shall well and truly observe, fulfill, and perform each term and condition of the Franchise; provided, however, that such bond shall not be required after certification by Grantor of the completion of construction of Grantee's Cable System. The corporate surety must be authorized to issue such bonds in the State of California, and the bond must be obtained and secured through an agent subject to suit in California and authorized to accept service of process in the County of Imperial. During the course of construction, the amount of the bond may from time to time be reduced, as provided in the Franchise. Written evidence of payment of premiums shall be filed with the Grantor.

d. Letter of Credit.

1. At the option of the Grantor, and if required in the Franchise the Grantee may be authorized, in lieu of creating a Security Fund or obtaining a Faithful Performance Bond, to post an irrevocable letter of credit, issued by a bank approved by the Grantor, in the amount specified in the Franchise. Said letter of credit shall

incorporate wording approved by the Grantor enabling it to draw from time to time such funds as the Grantor may determine to be necessary to satisfy any material defaults of Grantee or to make any payments due Grantor under or in connection with this ordinance or Grantee's Franchise, upon ten (10) days written notice to the issuer of the letter of credit. Said letter of credit shall further provide for sixty (60) days written notice by certified mail from its issuer to Grantor of any pending expiration or cancellation, and said notice shall without further cause constitute reason for the Grantor to draw the full sum to be held in its own accounts until such letter of credit is reestablished in a form satisfactory to Grantor.

2. If Grantor requires such a letter of credit, Grantee shall pay all fees or other charges required to keep it in force.

3. All provisions herein applicable to bonds or security funds shall also apply to letters of credit.

25-7 SERVICES.

a. Services to be Provided. A Cable System shall provide, as a minimum, the broad programming categories specified in the Franchise.

b. Changes in Services. Grantee shall inform Grantor and its Subscribers at least thirty (30) days in advance of making any change in a Cable Service, or in the rates charged therefore, unless Grantor agrees to waive this requirement in writing.

c. Non-discrimination. Grantee shall not discriminate between or among Subscribers within one type or class in the availability of services, at either standard or differential rates according to published rate schedules, except as otherwise authorized by law. No charges may be made for services except as listed in published schedules which are available for inspection by anyone at Grantee's office, quoted by Grantee on the telephone, or displayed or communicated to all potential Subscribers.

d. Prepayment. Grantee may not charge Subscribers for services more than one (1) month in advance unless an individual Subscriber requests a longer period. Bills may be due and payable upon mailing but shall not be delinquent, and no late charge penalties shall be assessed, until the later of; (i) twenty-two (22) days from postmark; or (ii) service has actually been provided for the billed period. All bills and billing statements shall clearly indicate the billing period, the actual due date, and the delinquent or late payment or assessment. Subscribers must be notified in writing of a proposed disconnection for non-payment at least fifteen (15) days prior to disconnection.

e. Disconnect for Cause. Grantee may disconnect a Subscriber only for cause, which shall include, without limitation, the following:

1. Payment delinquency in excess of forty-five (45) days.

2. Willful or negligent damage to or misappropriation of Grantee's property.

3. Monitoring, tapping, or tampering with Grantee's system, signals, or service.

4. Threats of violence to Grantee's employees or property.

f. Reconnection. Grantee shall, upon Subscriber's written request, reconnect service which has been disconnected for payment delinquency when payment has removed the delinquency. If authorized by applicable law, a published standard charge may be made for reconnection. Grantee shall not be required to make more than three (3) reconnections for the same subscriber if the disconnections involved were caused by payment delinquency within any previous twenty-four (24) month period. Reconnection for disconnects covered by section 25-7e, 2, 3, or 4 shall be at Grantee's sole discretion.

g. Installations.

1. Grantee shall promptly provide and maintain service as specified in the Franchise to the residential, commercial, and industrial structures in the Franchise Service Area, as defined in the Franchise, upon request of the lawful occupant or owner.

2. In the case of a new drop, Grantee shall advise each Subscriber that the Subscriber has the right to require that installation be done over any route on the Subscriber's property, and in any manner the Subscriber may elect which is technically feasible and consistent with proper construction practices. If the Subscriber requests installation other than a standard installation, then the Subscriber may be required to pay a reasonable fee or the time and materials occasioned by that installation.

3. For purposes of this paragraph, a standard installation shall include installation of drop cable with fittings up to one hundred and fifty feet (150) feet from the CATV distribution system measured along the cable from the center line of the street or utility easement through the house wall to the Subscriber's television set with five feet of cable from the wall to the TV set. Also included, as part of a standard installation is the grounding cable, fine tuning of the television set, and the provision by the Grantee of the appropriate literature and information.

4. After Cable Service has been established by activating trunk or distribution cables for any area, Grantee shall provide Service to any person requesting Service in that area within seven business days from the date of request, provided that the Grantee is able to secure all rights-of-way necessary to extend service to that potential Subscriber within that seven (7) business day period on reasonable terms and conditions.

h. Non-Standard Installations. For each non-standard drop installed, the Grantee may charge the Subscriber for the cost of material and labor in excess of that for

a standard drop. Grantee shall provide to each Subscriber a written estimate of all charges prior to installation and obtain Subscriber's written authorization in advance for all nonstandard drop charges.

i. Converters/Terminals. At such time as a converter or terminal is required for Subscribers to have access to all services on its System, Grantee shall make them available to Subscribers. Grantee may require each Subscriber who elects to install a converter or terminal to furnish a security deposit therefore.

1. Upon termination or cancellation of Subscriber's service, Subscriber shall promptly return Grantee's property to Grantee in the same condition as received, reasonable wear and tear excepted.

2. Grantee may apply the security deposit against any sum due from Subscriber for loss of or damage to such converter or terminal exceeding reasonable wear and tear. In the event that no security deposit has been required, the Grantee may charge the Subscriber for any such damage exceeding reasonable wear and tear.

3. If Grantee has no claim against the Subscriber's security deposit, Grantee shall return it, or the balance, to the Subscriber within twenty (20) days of return of the converter or terminal.

25-8 DESIGN AND CONSTRUCTION.

a. System Construction. The System shall be constructed in accordance with the provision of the Franchise.

b. Construction Components and Techniques. Construction components and techniques shall be in accordance with the Franchise and all applicable law.

c. Technical and Performance Standards. Grantee shall construct, install, operate and maintain its System in a manner consistent with all applicable federal and state laws, and all applicable local ordinances, construction standards, construction specifications, governmental requirements, FCC technical standards, and any standards set forth in the Franchise.

d. Construction Codes. The Grantee shall strictly adhere to all building and zoning codes currently or hereafter in force and shall obtain all necessary permits. The Grantee shall arrange its lines, cables, and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of said property by any person. In the event of such interference, the Grantor may require the removal of the Grantee's lines, cables, and appurtenances from the property in question. Grantee shall give at least forty-eight (48) hours advance notice to all property owners and to the Grantor prior to installing any aboveground or underground structures upon easements located on private property. Grantee shall be a member of Underground Service Alert. Grantor shall not modify its construction requirements subsequent to the

completion of construction so as to require reconstruction or retrofit unless the public health and safety so requires.

e. System Construction Schedule.

1. The Grantee shall begin to offer Cable Service and any other service authorized by the Franchise no later than the date specified in the Franchise.

2. The Grantee shall provide a detailed construction plan indicating progress schedule, area construction or reconstruction maps, test plan, and projected dates for offering service.

f. Geographical Coverage. The Grantee shall construct the Cable System to service every Residential Dwelling Unit and other structures within the Franchise Service Area and any future annexations thereto (as defined and provided by the Franchise), with any exceptions specified in the Franchise. Service shall be provided to Subscribers in accordance with the schedules specified in the Franchise.

g. Construction Default. Upon the failure, refusal or neglect of Grantee to cause any construction, repair, or the terms of any building permit, or other necessary work to comply with the terms of the Franchise, thereby creating an adverse impact upon public safety, Grantor may (but shall not be required to) cause such work to be completed in whole or in part, and upon so doing shall submit to Grantee an itemized statement of costs. Grantee shall be given reasonable advance notice of Grantor's intent to exercise this power, and fifteen (15) days to cure the default, Grantee shall, within thirty (30) days of billing, pay to Grantor the actual costs incurred.

h. Vacation or Abandonment. In the event any street, alley, public highway, or portion thereof used by the Grantee shall be vacated by the Grantor, or the use thereof discontinued by the Grantee, upon reasonable notice the Grantee shall forthwith remove its facilities therefrom unless specifically permitted to continue the same. On the removal thereof, Grantee shall restore, repair or reconstruct the area where such removal has occurred, to such condition as may be required by the Grantor, but not in excess of the original condition. In the event of any failure, neglect or refusal of the Grantee, after thirty (30) days' notice by the Grantor, to do such work, Grantor may cause it to be done, and Grantee shall, within thirty (30) days of billing, pay to Grantor the actual costs incurred.

i. Abandonment in Place. Grantor may, upon written application by Grantee, approve the abandonment of any property in place by Grantee, under such terms and conditions as Grantor may approve. Upon Grantor-approved abandonment of any property in place, Grantee shall cause to be executed, acknowledged, and delivered to Grantor such instruments as Grantor shall prescribe and approve, transferring and conveying the ownership of such property to Grantor.

j. Removal of System Facilities. In the event that Grantee's Plan is deactivated for a continuous period of thirty (30) days (except for reasons outside Grantee's control), without prior written notice to and approval by Grantor, then Grantee shall, at Grantor's option and demand, and at the sole expense of Grantee, promptly remove from any streets or other areas all property of Grantee. Grantee shall promptly restore the streets or other areas from which such property has been removed to its condition existing prior to Grantee's use thereof; provided that Grantee shall not be required to remove conduit from underground, where Grantor has determined that no damage to the surface of any structures will result from such nonremoval.

k. Movement of Facilities. In the event it is necessary, at Grantor's discretion, to temporarily move or remove any of the Grantee's property for a public purpose, Grantee, upon reasonable notice, shall move, at the expense of Grantee, its property as may be required to facilitate such public purpose. No such movement shall be deemed a taking of Grantee's property. Nothing herein shall limit the right of Grantee to seek reimbursement from any party other than Grantor.

l. Undergrounding of Cable. Cables shall be installed underground at Grantee's cost where substantially all existing utilities are already underground pursuant to the Grantor's adopted undergrounding policy. Previously installed aerial cable shall be installed underground at Grantee's pro rata cost in concert with other utilities when, and if, those other utilities convert from aerial to underground construction.

m. Facility Agreements. No Franchise shall relieve Grantee of any obligations involved in obtaining pole or conduit space from any department of Grantor, any utility company, or from others maintaining utilities in Grantor's streets.

n. Repair of Streets and Public Ways. Any and all streets and public ways, and improvements located within such streets and public ways, disturbed or damaged by the Grantee or its contractors during the construction, operation, maintenance, or reconstruction of the System, shall be restored at Grantee's expense, and within the time frame and limits specified by Grantor, to their original condition unless otherwise authorized in writing by Grantor.

o. Erection of Poles Prohibited. The Grantee shall not erect any pole on or along any street or public way where there is an existing aerial utility system. Any such installation of new poles shall require the advance written approval of the Grantor. Subject to applicable federal and state law, the Grantee shall negotiate the lease of pole space and facilities from the existing pole owners for all aerial construction, under mutually acceptable terms and conditions.

p. Reservation of Street Rights. Nothing in a Franchise shall prevent the Grantor from constructing, repairing, or altering any public work. All such work shall be done, insofar as practicable, in such manner as not to unnecessarily obstruct, injure or prevent the free use and operation of any property of Grantee. However, if any property of Grantee shall interfere with the construction, maintenance, or repair of any public

improvement, that property shall be removed or replaced in such manner as directed by Grantor so that the same shall not interfere with the public work, and such removal or replacement shall be at the expense of the Grantee.

q. Extension of Franchise Service Area. If Grantor elects to grant one or more Franchises hereunder, and if thereafter one or more of the Franchises expires or is otherwise terminated, and such termination or expiration is undisputed by the original franchisee, Grantor may, if it so elects, require such a remaining Grantee, to extend it's system to provide service to the service area previously served under the expired or terminated franchise, provided that such service area has a density of homes per cable mile measured from such remaining grantee's existing distribution system that equals or exceeds the density requirements for annexed areas contained in such remaining grantee's franchise.

25-9 OPERATIONS AND MAINTENANCE

a. Maintenance and Complaints.

1. The Grantee shall maintain an office in the Franchise Service Area, or at such other location as is approved by the Grantor in writing, or as described in the Franchise. That office must be open during all usual business hours, but in no case less than forty eight (48) hours per week, including some evening hours at least one night per week and/or some weekend hours. Grantor shall have a publicly listed, non-toll-charge telephone number that is in operation to receive Subscriber complaints and requests on a 24-hour basis. Current information shall be maintained of all complaints and their disposition, and a summary thereof shall be submitted to Grantor upon request, but no more often than monthly.

2. The Grantee shall respond to requests as follows: (i) within eight (8) hours after receipt of a request for repairs relating to a Service Interruption affecting at least ten (10) percent of the Subscribers of the System; (ii) within twenty-four (24) hours after receipt of requests for service related to all other Service Interruptions; (iii) and within forty-eight (48) hours for all other complaints and requests for repair. All Cable System related problems shall be resolved within five (5) business days unless technically infeasible. No charge shall be made to a Subscriber for such service or repairs, except that Grantee may charge for service calls not related to its Cable System, or that caused by the Subscriber or members of its household, or the Subscriber's agents or guests.

3. The Grantee shall provide a telephone service system to receive all construction and service complaints. A sufficient number of customer service representatives shall be provided so that callers are not required to wait more than thirty (30) seconds before being connected to a customer service representative ninety percent (90%) of the time, measured quarterly. The local or toll free telephone number service system shall accept complaints twenty-four (24) hours a day, seven (7) days a week. The telephone service system shall be capable of generating reports relating to answer times, response times, hold times, and abandoned calls.

4. Customer service personnel shall identify themselves by first names immediately.

5. Customers shall have the right to speak with a supervisor, and if none is available, a supervisor shall return the customer's call within one working day.

6. All officers, agents, or employees of the Grantee, including its contractors or subcontractors, who come into contact with members of the public shall wear on their outer clothing a photo-identification card in a form reasonably acceptable to Grantor. Grantee shall account for all identification cards at all times. Every vehicle of Grantee, or its major subcontractors, shall be clearly identifiable as working for Grantee.

7. Grantee shall provide Subscribers with the option of scheduling a four (4) hour period, either in the morning or afternoon, in which a service call will be made.

8. If a Grantee representative is running late for an appointment with a customer, or will not be able to keep the appointment as scheduled, the customer will be contacted and the appointment will be rescheduled, as necessary, at a time which is convenient for the customer. The customer has the option of rescheduling the appointment within a specified two (2) hour period.

b. Remedies for Inadequate Performance. Except for rebuild or planned Service Interruptions for which Grantee received prior approval from the Grantor, in the event that one-third (1/3) or more of its service to any Subscriber is interrupted for six (6) consecutive hours, or a total of twelve (12) nonconsecutive hours within any thirty (30) days period, and Subscriber notifies Grantee of said Service Interruption within twenty-four (24) hours of Subscriber discover thereof, Grantee shall provide a ten percent (10%) rebate of the monthly fees to affected Subscribers for each consecutive six-hour or nonconsecutive twelve-hour Service Interruption period. Grantee shall provide a fifty percent (50%) rebate of the monthly basic service fees to all affected Subscribers for failure to make a service call within the specified four (4) hour period. In no case shall such rebate exceed the monthly fee charged to the Subscriber.

c. Biennial Audit of Performance.

1. Grantor may require, at its option, that performance audits of the System be conducted every two (2) years by an independent technical consultant selected and employed by Grantor to verify that the System complies with all technical standards and other specifications of the Franchise.

2. Upon completion of performance audit, the Grantor and Grantee shall meet to review the performance of the Cable System. The reports required by this ordinance regarding Subscriber complaints, the records of performance audits and tests, and the opinion survey report shall be utilized as the basis for review. In addition, any

Subscriber may submit complaints prior to or during the review meetings, either orally or in writing, and these shall also be considered.

3. Within thirty (30) days after the conclusion of the System performance review meetings, Grantor shall issue findings with respect to the performance audit. If inadequacies are found, Grantor may direct Grantee to correct the inadequacies within such period of time as Grantor determines is reasonable.

4. Participation by the Grantor and the Grantee in this process shall not waive any rights they may possess under applicable federal or state law.

5. In addition to the Biennial Audit described above, Grantor may conduct an annual audit of the same or lesser magnitude, at its sole expense, when and if determined necessary or appropriate by Grantor.

d. System Technical Data. Grantee shall provide Grantor in a format compatible with Grantor's information system, details and documents of all of grantee's equipment and facilities located on city property and their geographic location in the city. Such computer disk or other device shall be updated annually and whenever there have been significant changes in the location of Grantee's equipment and facilities. In addition, Grantee shall maintain in its local office, a complete and up-to-date set of as-built system maps and drawings upon completion of construction or reconstruction, equipment specification and maintenance publications, and signal level diagrams for each active piece of electronic equipment in the system. As-built drawings shall show all lines and installed equipment, and tap values and spigots. The scale of maps and drawings shall be sufficient to show the required details in easily readable form and size. Technical data at the local office shall also include approved pole applications, details and documentation of satellite and microwave equipment, mobile radio units, heavy construction vehicles and equipment, and video and audio equipment normally used in the operation of the system. If Grantor requires use of technical data in its own offices, it may make copies of any items at Grantor's expense.

e. Availability of Technical Data. All technical data shall be available for Grantor's inspection during normal business hours and, upon reasonable notice. In the event of System failure or other operating emergency, the technical data will be made available at any time, so long as the provision of said data does not unreasonably interfere with Grantee's operations.

f. Emergency Repair Capability. It shall be the Grantee's responsibility to assure that its personnel, qualified to make repairs, are available at all reasonable times and that they are supplied with keys, equipment location instructions, and technical information necessary to begin repairs upon notification of the need to maintain or restore continuous service to the System.

g. Customer Service Standards and Procedures.

1. Information to Customers. The Grantee shall, at the time service is initiated, provide each new Subscriber with written information covering:

- (a) The time allowed to pay outstanding bills.
- (b) Grounds for termination of service.
- (c) The steps the Grantee must take before terminating service.
- (d) How the customer can resolve billing disputes.
- (e) The steps necessary to have service reconnected after involuntary termination.
- (f) The fact that customer service personnel must identify themselves by first names immediately.
- (g) The fact that Subscribers have the right to speak with a supervisor, and if none is available, a supervisor shall return the Subscriber's call within one (1) working day.
- (h) The appropriate regulatory authority with which to register a complaint and how to contact that authority.

In addition, at least once each calendar year, Grantee shall notify each Subscriber that information is available upon request concerning items (a) through (h) above.

2. Written Notices. Written notice of all terms of the customer agreement, the name, address and telephone number of the Cable Operator, all equipment and fee options, the availability of A/B switches, the availability of parental control devices, any reduced rates for seniors or other Subscribers, company billing and credit practices, company practices with respect to privacy of Subscribers, the telephone numbers for customer complaints, the telephone number of the Grantor, and other relevant information, shall be made by Grantee to Subscribers before service is commenced, at least once each calendar year, at any time upon the request of the Subscriber, and whenever changes to such policies are made.

3. Advance Notice of Changes. Except as otherwise provided by applicable law, advance notice of increases in fees or charges, and changes in channel lineup of stations or service, shall be sent to Grantor and to Subscribers at least thirty (30) days before the changes are made, except for changes not known sufficiently in advance by Grantee and not under Grantee's control, or where Grantor's waiver is obtained. Notice must be clearly identified and in print large enough to be easily readable.

4. Billing.

(a) Billing Frequency and Format. Bills for service shall be rendered monthly, unless otherwise authorized by the Subscriber and the Grantee, or unless service is rendered for a period less than one (1) month. All bills shall contain a telephone number and a mailing address for billing inquiries or disputes and shall clearly delineate all changes and the basis for those changes.

(b) Disputed Bills.

(1) In the event of a dispute between a Subscriber and the Grantee regarding the bill, the Grantee shall promptly make such investigation as is required by the particular case and report the results to the Subscriber. If the dispute is not resolved to the satisfaction of both parties, the Grantee shall inform the Subscriber of the Grantee's complaint procedures. If the Subscriber wishes to obtain the benefits of subparagraphs (2) and (3) of the subparagraph (b), notification of the disputed bill must be given by the Subscriber to the Grantee in writing within thirty (30) days after the billing date.

(2) The Subscriber shall not be required to pay the disputed portion of the bill until the earlier of the following: (i) Resolution of the dispute; or (ii) Expiration of the forty-five (45) day period beginning on the date of the Subscriber's written notification, provided that the procedures established in subparagraph (1) above have been followed.

5. Suspension of Collection Efforts. Pending resolution of the bill dispute, Grantee shall exercise reasonable care to ensure that no termination notices are issued for the disputed portions of the bill, and that not other collection procedures are initiated for the disputed amount. Any such activity may be interpreted as an attempt to avoid the provisions of these rules and may constitute a violation of these rules.

6. Referral of Accounts to Collection Agencies.

(a) Uncollected accounts may be referred to private collection agencies for appropriate action if the bill has not been paid by the earlier of (i) thirty (30) days following date of involuntary termination; or (ii) the sixty-first (61) day following the billing date of the original uncollected amount, provided that no notification of a billing dispute has been made.

(b) If the account was voluntarily terminated by Subscriber, for any reason, the account may not be referred to a private collection agency until at least thirty (30) days following submission of the final bill. If notification of a billing dispute is made, all collection procedures shall be delayed as required in subsection 4(b) entitled "Disputed Bills." Referral to a collection agent shall then occur no sooner than the ninety-first (91st) day following the billing date of the original uncollected amount.

h. Refund. When a Subscriber voluntarily discontinues service, Grantee shall refund, within 20 days of the discontinuance of service, the unused portion of any

advance payments after deducting any charges currently due through the date of such discontinuance. Unused payment portions shall be the percentage of time for which Subscriber has paid for service and will not receive it because of the Subscriber's discontinuation of service.

25-10 VIOLATIONS.

a. Use of Public Streets. From and after the effective date of this ordinance, it shall be unlawful for any person to construct, install, or maintain in any public place within Grantor's territory, or upon any easement owned or controlled by a public utility, or within any other public property of Grantor, or within any privately-owned area within Grantor's jurisdiction which is not yet, but is designated as, a proposed public place on a tentative subdivision map approved by Grantor, any equipment, facilities, or system for distributing signals or services through a cable television system, unless a Franchise has first been obtained hereunder, and is in full force and effect.

b. Unauthorized Connections. It shall be unlawful for any person to make or use any unauthorized connection to, or to monitor, tap, receive or send any signal or service via a franchised System, or to enable anyone to receive or use any service, television or radio signal, picture, program, or sound, or any other signal without payment to the owner of said System.

c. Tampering with Facilities. It shall be unlawful, without the consent of the owner, to willfully attach to, tamper with, modify, remove or injure any physical part of or signals on a franchised cable television system.

25-11 TERMINATION AND FORFEITURE.

a. Revocation. Consistent with applicable law, and in addition to any rights set out elsewhere in this ordinance, the Grantor reserves the right to revoke a Franchise, subject to the procedural guidelines set forth in Section 25-14 of this ordinance, in the event that:

1. The Grantee willfully or negligently, on a repeated basis, violates any material provision of its Franchise.
2. The Grantee's construction schedule, as set forth in this Franchise, is materially delayed, and such delay is within the control of Grantee.

b. Forfeiture. Upon failure of the Grantee to comply with any material term of its Franchise, the Grantor may, subject to the procedural guidelines set forth in Section 25-14 of this ordinance, declare a forfeiture. The Grantee may be required to remove its structures of property from the Grantor's streets and to restore those streets to their prior condition within a reasonable period of time. Upon failure to do so, the Grantor may perform the work and collect all costs, including direct and indirect costs, from the Grantee.

25-12 FRANCHISE APPLICATIONS.

Applicants for a Franchise may submit to the Grantor, or to its designated representative, written application in a format provided by this Grantor, at the time and place specified by the Grantor for accepting applications, and to the maximum extent allowed by then applicable law, accompanied by the designated application fee. A nonrefundable application fee, established by resolution of the Grantor, not to exceed five thousand dollars (\$5,000) shall accompany the application to cover all costs associated with processing the application, including without limitation, costs of administrative review, financial, legal and technical evaluation of the applicant, notice and publication requirements and document preparation expenses. In the event such costs exceed the application fee, the applicant shall pay the difference to Grantor within twenty (20) days following receipt of any itemized statement of such costs. This provision is procedural and shall not constitute the grant of any right of renewal to the Grantor.

25-13 RECORDS; REPORTS; RIGHT TO INSPECT AND AUDIT; EXPERTS.

a. Grantee to Provide Records. All reports and records required under this Section shall be furnished at the sole expense of Grantee.

b. Records. Grantor must maintain in its local offices, and make available for inspection during normal business hours, a separate and complete set of business records for the Franchise. The Grantee shall provide that information in such form as may be required by the Grantor, as well as copies of any records of Grantee upon Grantor's request, so long as said information is reasonably related to the scope of Grantor's rights under this ordinance, the Franchise, or Grantor's regulatory functions.

c. Maintenance and Inspection of Records. Grantee shall keep true and accurate books and records in conformity with generally accepted accounting principles, consistently applied, and showing all income, expenses, borrowing, payments, investments of capital, and all other transactions relating to the System. Grantor shall, upon reasonable notice, have the right to inspect said records and receive copies thereof to the extent said information is reasonably related to the scope of the Grantor's rights under this ordinance, the Franchise, or the Grantor's regulatory functions. Any Grantee records kept at another place shall, within ten (10) days of Grantor's request, be made at Grantee's local premises within the County of Imperia.

d. Reports of Financial and Operating Activity.

1. No later than ninety (90) days after the close of Grantee's fiscal year, Grantee shall submit an audited written report to the Grantor which shall include: A financial report, audited and certified by a financial officer of Grantee, for all Cable System activity during the previous fiscal year, including gross receipts from all sources and gross subscriber revenues from each service. The report must set out separately all gross receipts from all sources in the City and gross subscriber revenues from each

service in the City, and all payments, deductions, and computations of franchise fees. In addition, upon request of the Grantor, Grantee shall also provide:

(a) A summary of the previous year's activities, including, but not limited to subscriber totals and new services.

(b) A current list of Grantee's officers, directors, and other principals if there has been any change in the previous year.

(c) A list of stockholders or other equity investors holding twenty (20%) or more of the voting interests in Grantee if there has been any change in the previous year.

(d) A summary of complaints received and remedial actions taken.

2. Performance tests and Compliance Reports. Upon request, the Grantee shall provide a written report of any FCC or other performance tests required or conducted. In addition, the Grantee shall provide reports of the test and compliance procedures required by its Franchise, or by this ordinance, no later than thirty (30) days after the completion of those tests and compliance procedures.

3. Additional Reports. The Grantee shall prepare and furnish to the Grantor in writing, at the times and in the form reasonably prescribed by Grantor, such additional reports as may reasonably be required with respect to Grantee's compliance with the provisions of its Franchise and this ordinance.

e. Communications with Regulatory Agencies. Copies of all non-routine or material communications between the Grantee and the Federal Communications Commission, or any other agency having jurisdiction in respect to any matters affecting compliance with this ordinance, shall be submitted promptly to the Grantor upon receipt or mailing by Grantee.

f. Examination of Facilities. Upon reasonable notice, and during normal business hours, Grantee shall permit examination, by any duly authorized representative of Grantor, of all Franchise property and facilities, together with any appurtenant property and facilities of Grantee situated within the City.

g. Right to Audit.

1. In addition to any other inspection rights under this ordinance or the Franchise, upon ten (10) days prior written notice, Grantor shall have the right to inspect, examine, or audit, during normal business hours, all documents pertaining to the Grantee or any Affiliated Person which are reasonably necessary to the Grantor's enforcement of its rights under the terms of this ordinance or the Franchise; provided, however, that the Grantor may not exercise said right more frequently than once in any twelve (12) month period. All such documents shall be made available at the local office of the Grantee.

All such documents pertaining to financial matters which may be the subject of an audit by the Grantor as set forth herein shall be retained by the Grantee for a minimum of five (5) years following the termination of the Franchise. Access by the Grantor to any of the documents covered by this paragraph g shall not be denied by the Grantee on grounds that such documents are alleged by the Grantee to contain proprietary information.

2. Grantor may require written certification by the Grantee's directors, officers, or other employees with respect to all documents referred to in this paragraph g.

3. Any audit conducted by the Grantor pursuant to this paragraph g shall be conducted at the sole expense of the Grantor, and the Grantor shall prepare a written report containing its findings, a copy of which shall be mailed to the Grantee; provided, however, that the Grantee shall reimburse the Grantor for the expense of any such audit, if, as the result of said audit, it is determined that there is a shortfall of more than two percent (2%) in the amount of franchise fees or other payments which have been made or will be made by the Grantee to the Grantor pursuant to the terms of the Franchise.

h. Retention of Experts. In the exercise of its rights under this ordinance, the Grantor shall have the further right to retain technical experts and other consultants on a periodic basis for the purpose of monitoring, testing, and inspecting any construction, operation, or maintenance of the System, and all parts thereof, or to ensure compliance with and enforcement of the provisions of this ordinance and the Franchise.

25-14 ENFORCEMENT MECHANISM.

a. Notice and Hearing for Franchise Default.

1. Unless otherwise provided in this ordinance or in the Franchise, prior to formal consideration by Grantor of termination, revocation, or forfeiture of Grantee's Franchise, or any other penalty or administrative remedy available to the Grantor, including liquidated damages, attributable to Grantee's failure, willful, negligent, or otherwise, to adhere to the material terms and conditions of the Franchise or this ordinance, Grantor shall make written demand on Grantee to correct the alleged default. Grantor and Grantee shall expeditiously meet to discuss the alleged default, at which time Grantee shall indicate, in writing, the amount of time necessary to resolve the alleged problem. Giving due consideration to Grantee's request, Grantor shall, in writing, state the amount of time Grantor will allow Grantee to resolve the problem. Such time shall be a reasonable time. During this time period, but in no event less than ten (10) days before the final date for correction, Grantee may request additional time to correct the problem, and Grantor shall grant said request if Grantor determines, in the exercise of its discretion, that such time is necessary due to delays beyond Grantee's control. If the default continues for a period of ten (10) days following the deadline for corrections, plus any extension thereof, a hearing shall be scheduled by Grantor on such Franchise termination, revocation, forfeiture, or any other penalty or administrative remedy.

2. The Administrative Officer shall provide written notice of such hearing, including the grounds for the proposed action, to the Grantee no less than thirty (30) days before the hearing on the matter. In addition, the Administrative Officer, as part of said written notification, shall state the procedures to be followed by the Grantor to determine whether cause for termination, revocation, forfeiture, or other penalty exists. At a minimum, said procedures shall afford the Grantee adequate notice and a fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence, to question witnesses, and to obtain a transcript of the proceeding at Grantee's expense. Within ten (10) days after the receipt of said notice, Grantee shall file any written objections to said procedures. The Administrative Officer shall notify Grantee of any modification to the procedures and provide another ten (10) days objection period. Any objections not raised within said ten day period shall be deemed waived. At the hearing, Grantor shall hear Grantee, and any person interested in the matter, and shall determine, at that or subsequent meetings, an appropriate course of action for enforcement or termination of Grantee's Franchise. Any action by the Grantor pursuant to this provision may be appealed to a court of competent jurisdiction.

b. Delegation of Enforcement Mechanisms. Such liquidated damages as Grantor may assess against Grantee in accordance with the provisions of the Franchise which do not include loss of the Franchise may, at Grantor's option, be determined by an officer or agency of the Grantor to which it may delegate such administrative decisions, subject to due process and the criteria contained in this ordinance and the Franchise, and subject to appeal to the City Council.

25-15. MISCELLANEOUS PROVISION.

a. Captions. The section, subsection, paragraph, and subparagraph numbers and letters, and the captions throughout this ordinance, are intended to facilitate reading and reference. Such numbers, letters, and captions shall not affect the meaning or interpretation of any part of this ordinance.

b. Franchise References. A Franchise which cites, refers to, or otherwise incorporates this ordinance, or portions thereof, shall be deemed to be a Franchise issued under and subject to this ordinance.

c. Filing. When not otherwise specified in this ordinance, all documents required to be filed with Grantor shall be filed with the Grantor's representative as designated by Grantor.

d. Non-enforcement by the Grantor. A Grantee shall not be relieved of its obligation to comply with all provisions of this ordinance, and of its Franchise, and all laws and regulations, by reason of any failure of the Grantor to demand prompt compliance.

e. Continuity of Service. It is the right of all Subscribers to receive all available services authorized by the Franchise so long as their financial and other

obligations to the Grantee are honored. In the event that the Grantee elects to rebuild, modify, or sell the System, the Grantee shall use due diligence and reasonable care to ensure that all subscribers receive continuous, uninterrupted service. In the event of purchase by the Grantor, or a change of Grantee, the current Grantee shall cooperate with the Grantor, or new Grantee to operate the System for a temporary period, in order to maintain continuity of service to all Subscribers. In the event that Grantee, through its own fault, discontinues system-wide service for seventy-two (72) continuous hours, and Grantee is in material default of its Franchise, or if the Franchise is revoked by Grantor (but not if Grantor fails to renew the Franchise), Grantor may, by resolution, when reasonable cause exists, assume operation of the System for the purpose of maintaining continuity of service. Grantor's operation of the System may continue until the circumstances which, threaten the continuity of service are resolved Grantor shall be entitled to reasonable compensation for any period during which it operates the system.

f. Operation by Grantor. During any period when the system is being operated by Grantor pursuant to paragraph e above, Grantor shall attempt to cause as little disruption of operations as is consistent with the maintenance of continuing service to Subscribers. During any such period, Grantor will also maintain to the best of its ability the system's records, physical plant, financial integrity, funds and other elements normally involved in operations. Notwithstanding the foregoing, Grantor may make changes to the operation of the system to assure preservation of the quality and continuity of service.

g. Management by Grantor. Grantor may, upon assuming operation of a system franchised hereunder, appoint a manager to act for it in conducting the System's affairs. Such manager shall have such authority as may be delegated by Grantor and shall be solely responsible to Grantor for management of the System. Grantee shall reimburse Grantor for all its reasonable costs, in excess of System revenues, incurred during Grantor's operation if the Franchise is in full force and effect during the period of Grantor's operation.

h. Notices. All notices and other communications to Grantee shall be addressed to it at the local address at which Grantee conducts its business. All notices and other communications to Grantor shall be addressed to Imperial City Hall, or such other address as may be designated by Grantor.

i. Force Majeure; Grantee's Inability to Perform. In the event Grantee's performance of any of the terms, conditions, obligations, or requirements of this ordinance, or any Franchise granted hereunder, is prevented or impaired due to any cause beyond its reasonable control and not reasonably foreseeable, such inability to perform shall be deemed to be excused, and no penalties or sanctions shall be imposed as a result thereof. Such causes beyond Grantee's reasonable control and not reasonably foreseeable shall include, but not be limited to, any acts of God, civil emergencies, labor unrest, strikes, utility interruptions, inability to obtain gratis access to an individual's property, and any inability of the Grantee to secure all required authorizations or permits to utilize

necessary poles or conduits, so long as Grantee uses due diligence to timely obtain said authorization or permits.

j. Application. All of the provisions of this ordinance shall be applicable to all Cable Operators and Cable Systems to the greatest extent permissible under applicable law.

k. Severability. If any provision of this ordinance is determined to be void or invalid by any administrative or judicial tribunal, said provision shall be deemed severable and such invalidation shall not invalidate the entirety of this ordinance or any other provision thereof.

25-16. DEFINITIONS.

a. For the purposes of this ordinance, the following words, terms, phrases, and their derivations have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, and words in the singular number include the plural number.

“Additional Service” means any service not included in “Basic Service” [or “Institutional Service.”]

“Administrative Officer” means the City Manager or the City Manager’s designee.

“Agency Subscriber” means a subscriber who receives a Service in a government or public agency, school, or nonprofit corporation facility.

“Affiliated Person” or “Affiliates” means each Person who falls into one or more of the following categories : (i) each Person having, directly or indirectly, a Controlling Interest in Grantee; (ii) each Person in which Grantee has, directly or indirectly, a Controlling Interest; (iii) each officer, director, general partner, limited partner holding an interest of thirty percent (30%) or more, joint venture, or joint venture partner in Grantee’s Cable System in the City; and (iv) each Person, directly or indirectly, controlling, controlled by, or under common Control with Grantee; provided that “Affiliated Person” excludes the Grantor, any limited partner holding an interest of less than thirty percent (30%) in the Grantee, or any creditor of Grantee, solely by virtue of its status as a creditor, and which is not otherwise an Affiliated Person by reason of owning a Controlling Interest in, being owned by, or being under common ownership, common management, or common Control with Grantee.

“Basic Service” or “Basic Cable Service” or “Basic Service Tier” means the lowest Service Tier which includes the retransmission of local television Broadcast Signals.

“Broadcast Signal” means a signal transmitted over the air to a geographically dispersed public audience and received by a Cable System.

“1984 Cable Act” means the Cable Communications Policy Act of 1984.

“1992 Cable Act” means the Cable Television Consumer Protection and Competition act of 1992.

“Cable Act” means the 1984 Cable Act as amended by the 1992 Cable Act by the Telecommunications Act of 1996.

“Cable Operator” means any Person or group of Persons (i) who provides Cable Service over a Cable System and, directly or through one or more Affiliates, owns a significant interest in that Cable System; or (ii) who otherwise controls or is responsible for, through any arrangement, the management and operation of a Cable System.

“Cable Service” means (i) the one-way transmission to Subscribers of video programming or other programming service, and (ii) subscriber interaction, if in conjunction with subparagraph (i), which is required for the selection of or use of such video programming.

“Cable System” or “Cable Communications System” or “System” means a facility, consisting of a set of closed transmission paths and associated signal generation reception, and control equipment that is designed to provide Cable Service, including video programming, and which is provided to multiple Subscribers within a community; but this term does not include: (i) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (ii) a facility that serves Subscribers without using any public right-of-way; (iii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Act, except that such facility shall be considered a Cable System (other than for purposes of section 621 (c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (iv) an open video system that complies with section 653 of the Cable Act; or (v) any facilities of any electric utility used solely for operating its electric utility systems.

“Cablecast Signal” means a non-broadcast signal that originates within the facilities of the Cable System, whether from a live or recorded source.

“City” means the City of Imperial, California.

“Closed Circuit” or “Institutional Service” means services provided to institutional users on an individual or collective basis. The information contained in such a service may or may not be simultaneously available to other system Subscribers or users.

“Channel” means a frequency band capable of carrying a standard video signal or some combination of video signals, or a frequency band assigned to carry a non-standard video signal or some combination of such video signals.

“Commercial Subscriber” means a Subscriber who received a Cable Service in a place other than a residential dwelling unit.

“Complaint” means a billing dispute in which a Subscriber notifies Grantee of an outage or degradation in picture quality which is not corrected during the initial telephone or service call.

“Control” or “Controlling Interest” means actual working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments, or negative control, as the case may be, of the Cable System or the Grantee. A rebuttable presumption of the existence of Control or a Controlling Interest shall arise from the beneficial ownership, directly or indirectly, by any Person or group of Persons acting in concert (other than underwriters during the period in which they are offering securities to the public) of thirty percent (30%) or more of any Person (which Person or group of Persons is referred to as “Controlling Person”), or being a party to a management contract.

“Converter” or “Terminal” means a device which converts signals from one frequency to another or otherwise processes signals for use by Subscribers.

“Drop” means the cable and related equipment connecting the Cable system’s plant to equipment at the Subscriber’s premises.

“Education Channel” means any channel where non-profit educational institutions are the primary designated programmers.

“FCC” means the Federal Communications Commission or its designated representatives.

“Franchise” means a written legal undertaking or action of the Grantor which authorizes a specific Person to use the Grantor’s streets and public ways for the purpose of installing, operating and maintaining a Cable Communications System to provide Cable Service.

“Government Channel” means any channel where local government agencies are the primary designated programmers, and programming is informational programming regarding government activities and programs.

“Grantee” means the Person to which a Franchise is granted for the construction, operation, maintenance, and reconstruction of a Cable System and the lawful successors, transferees, or assignees of that Person.

“Grantor” means the City, acting by and through its elected governing body, or such representative as the governing body may designate to act on cable matters in its behalf.

“Gross Annual Revenue” or “Gross Annual Receipts” or “Gross Receipts” means all revenue, as determined in accordance with Generally Accepted Accounting Principles, which is received, directly or indirectly, by Grantee and by each Affiliated Person from or in connection with the distribution of any Cable Service in the City, and any other Service which may, under now or then applicable federal law, be included in the Cable Act definition of cable service for the purpose of calculating and collecting the maximum allowable franchise fee for operation of the System, whether or not authorized by any Franchise, including, without limitation, leased access channel revenues received, directly or indirectly, from or in connection with the distribution of any Cable Service. It is intended that all revenue collected by the Grantee, from the provision of Cable Service over the system, whether or not authorized by the Franchise, be included in this definition if consistent with applicable laws. Further, any revenue received through any means which is intended to have the effect of avoiding the payment of compensation that would otherwise be paid to the Grantor for the franchise granted shall be included in this definition of Franchise Fees. Gross annual revenue also includes bad debt recovered and all advertising revenue which is received directly or indirectly by grantee, any affiliated person, or any other person from or in connection with the distribution of any service over the system in the city of the provisions of any service-related activity in connection with the system in the city. Gross Annual Revenue does not include (i) the revenue of any Person to the extent that said revenue is also included in the Gross Annual Revenue of Grantee; (ii) taxes imposed by law on Subscribers which Grantee is obligated to collect; and (iii) amounts which must be excluded pursuant to applicable law.

“Headed” means that central portion of the System where signals are introduced into and received from the balance of the System.

“Institutional Network” or “Institutional System” means a System or portion of a System intended primarily to service non-residential Subscribers.

“Lease Channel” means any channel leased pursuant to the Leased Access provision of the Cable Act.

“Local Origination Channel” means any channel where the Grantee is the primary designated programmer.

“Monitoring” or “Tapping” means observing or receiving a signal, where the observer is neither the sending nor receiving party and is not authorized by the sending or receiving party to observe said signal, whether the signal is observed or received by visual, electronic, or any other means whatsoever.

“Non-Broadcast Signal” means a signal that is not involved in over-the-air broadcast for general public reception.

“Open Channel” means any channel that can be received by all Subscribers without the use of special equipment not normally possessed by, or available to, anyone who may become a Subscriber.

“Pay Cable”, “Pay Service”, “Premium-Service” or “Pay Television” means signals for which there is a fee or charge to user over and above the charge for Basic Service, including any tiers of service; provided, however, the sale or lease of studio facilities, equipment, or tapes to local users shall not be deemed pay or premium services.

“PEG Channel” means a Public, Education or Government channel.

“Person” means any corporation, partnership, proprietorship, individual, or organization authorized to do business in the State of California.

“Plant” means the transmitting medium and related equipment which transmits signals between the Headend and Subscribers, including Drops.

“Pole Attachment Agreement” or “Attachment Agreement” means any agreement with the Grantor, any other governmental entity, or any public utility relating to the Grantee’s use of any utility poles, ducts, or conduits.

“Program” or “Programming” means the information content of a signal and the act or process of creating such content, whether that content is intended to be pictures and sound, sound only, or any other form of information whatsoever.

“Programmer” means any Person who provides program material or information for transmission by means of a System.

“Property of Grantee” means all property owned or leased within the Franchise Service Area by Grantee in the conduct of its System business under a Franchise.

“Public Channel”, “ Access Channel”, “Community Service Channel” or “Community Channel” means any channel for which members of the public, or any community organization, may provide non-advertiser supported programming; provided, however, sponsorship identification fees may be paid and accepted to further community programming.

“Resident” means any person residing in the Franchise Service Area, or as otherwise defined by applicable law.

“Residential Dwelling Unit” or “Dwelling Unit” means a home, mobile home, condominium, apartment, cooperative unit, and any other individual dwelling unit.

“Residential Subscriber” means a Subscriber who receives a Service in a Dwelling Unit.

“Service” means any kind of service or type of benefit provided by Grantee, or any group of related benefits obtained or made available to any person, involving the use of a signal transmitted via a Cable Communications System, whether the signal and its content constitute the entire service or comprise only a part of a service which involves other elements of any number of kind.

“Service Area” or “Franchise Service Area” means the entirety of the City of Imperial or as described in the Franchise Agreement.

“Service Interruption” means the loss of picture or sound on one or more cable channels, as it now or may hereafter exist.

“Service Tier” or “Tier” means a category of Cable Service or other Services provided by a Cable Operator and for which a separate rate is charged by the Cable Operator, other than per channel or per event programming or legitimate packages of per channel or per event programming.

“Streets and Public Ways” means the surface of, and the space above and below, any public street, sidewalk, alley, or other public way or right-of-way of any type whatsoever.

“Subscriber” means any Person electing to subscribe to, for any purpose, a Service provided by Grantee by means of or in connection with its Cable System.

“Telecommunications Act” means the Telecommunications Act of 1996.

“Unit” means a discrete place where System Services are used, such as a residence, apartment, office, store, etc.

“User(s)” means any Person who either received Services from a Cable System or who accomplishes any purpose by, in part or in whole, transmitting, or receiving information via a Cable System, or who creates programming for that purpose, or who received and uses programming.

b. Terms Not Defined. Words, terms, or phrases not defined herein shall first have the meaning as defined in the Cable Act, and then the special meanings or connotations used in any industry, business, trade, or profession where they commonly carry such special meanings. If those special meanings are not common, they will have the standard definitions as set forth in commonly used and accepted dictionaries of the English language.

