

ORDINANCE NO. 3727

AN ORDINANCE to repeal Chapter 3 (CABLE TELEVISION REGULATION) of, and to add a new Chapter 3 (ALEXANDRIA CABLE COMMUNICATIONS CODE) to, Title 9 (LICENSING AND REGULATIONS) of The Code of the City of Alexandria, 1981, as amended.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Chapter 3 of Title 9 of The Code of the City of Alexandria, 1981, as amended, be and the same hereby is repealed.

Section 2. That Title 9 of The Code of the City of Alexandria, 1981, as amended, be and the same hereby is amended by adding a new Chapter 3, to read as follows:

Chapter 3

Alexandria Cable Communications Code

Article A

General Provisions

Sec. 9-3-1 *Title.*

This chapter shall be known and may be cited as the "Alexandria Cable Communications Code."

Sec. 9-3-2 *Purpose.*

The City Council of Alexandria finds that the development of cable television systems has the potential to be of great benefit to those who reside and work in the city. Cable technology is rapidly changing, and cable plays an essential role as part of the city's basic infrastructure. Cable television systems make extensive use of scarce and valuable public rights-of-way in a manner that differs from the way in which the general public uses them. Moreover, a cable company typically operates a monopoly in its service area, or faces very limited competition. As a result, the grant of a franchise for the use of public rights-of-way has the effect of giving the holder extensive economic benefits and has the potential of placing the holder in a position to abuse its public trust. For these reasons, the city council finds that general welfare of the city requires that regulations be established to ensure that any cable television franchise granted by the city is in accord with and is operated in the public interest. In light of the foregoing, the following goals, among others, underlie the provisions set forth in this chapter:

(a) Cable television should be available to as many city residents as possible.

(b) A cable system should be capable of accommodating both the present and the reasonably foreseeable future cable-related needs of the community.

(c) A cable system should be constructed and maintained during a franchise term so that changes in technology may be integrated into existing system facilities to the maximum extent feasible.

(d) A cable system should be responsive to the needs and interests of the local community.

It is the intent of the city council that all provisions set forth in this chapter be construed to serve the public interest and the foregoing public purposes, and that any franchise issued pursuant to this chapter be construed to include the foregoing findings and public purposes as integral parts thereof.

ARTICLE B

Definitions and Word Usage

Sec. 9-3-11 *Definitions and usage - general.*

For the purposes of this chapter, the following terms, phrases, words and abbreviations shall have the meanings given in this article, unless otherwise expressly stated. Words not defined herein shall have a meaning set forth in Title 47 of the United States Code, Chapter 5, Subchapter V-A, 47 U.S.C. § 521, et seq., as amended, and, if not defined therein, should have their common and ordinary meaning within the cable television industry.

Sec. 9-3-12 *Access channel.*

"Access channel" shall mean any channel on a cable system set aside by a franchisee for public, educational or governmental use.

Sec. 9-3-13 *Affiliate.*

"Affiliate" shall mean any person who owns or controls, is owned or controlled by, or is under common ownership or control with a franchisee.

Sec. 9-3-14 *Administrator.*

"Administrator" shall mean the cable television administrator appointed by the city manager.

Sec. 9-3-15 *Basic service.*

"Basic service" shall mean any service tier that includes the retransmission of local television broadcast signals.

Sec. 9-3-16 *Cable act.*

"Cable Act" shall mean the Cable Communications Policy Act of 1984, 47 U.S.C. § 521, et seq., as it may be amended from time to time.

Sec. 9-3-17 *Cable service.*

"Cable service" shall mean (1) the one-way transmission to subscribers of video programming or other programming services, and (2) subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

Sec. 9-3-18 *Cable system or system.*

"Cable system" or "system" shall mean a facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and is provided to multiple customers within the city, but such term does not include any of the following: (1) any facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) any facility that serves only customers in one or more multiple unit dwellings under common ownership, control or management, unless such facility uses any public right-of-way, including streets or easements; (3) any facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Act, provided that such facility shall be considered a cable system if it is used in the transmission of video programming directly to subscribers, whether on a common carrier or non-common carrier basis; or (4) any facility of any electric utility used solely for operating its electric utility systems. A reference to a cable system refers to any part thereof, including, without limitation, converters.

Sec. 9-3-19 *City.*

"City" shall mean the City of Alexandria, Virginia.

Sec. 9-3-20 *City council or council.*

"City council" or "council" shall mean the governing body of the city.

Sec. 9-3-21 *Educational access channel.*

"Educational access channel" shall mean any channel on a cable system set aside by a franchisee for educational use.

Sec. 9-3-22 *FCC.*

"FCC" shall mean the Federal Communications Commission, its designee or any successor governmental entity.

Sec. 9-3-23 *Franchise.*

"Franchise" shall mean a non-exclusive authorization granted in accordance with this chapter to construct, operate and maintain a cable system along and within the public rights-of-way of the city or a specified portion thereof. Any such authorization, in whatever form granted, shall not include, or be deemed to include, an authorization to transact or carry on a business within the city, or to attach devices to poles or other structures, whether owned by the city or a private entity, or to excavate or perform work in or along any public right-of-way.

Sec. 9-3-24 *Franchise agreement.*

"Franchise agreement" shall mean a contract between the city and a franchisee that sets forth, subject to this chapter, the terms and conditions under which a franchise will be exercised.

Sec. 9-3-25 *Franchise area.*

"Franchise area" shall mean the area of the city that a franchisee is authorized to serve by its franchise agreement.

Sec. 9-3-26 *Franchisee.*

"Franchisee" shall mean a person who has been granted a franchise by the city.

Sec. 9-3-27 *Governmental access channel.*

"Governmental access channel" shall mean any channel on a cable system set aside by a franchisee for government use.

Sec. 9-3-28 *Gross revenues.*

"Gross revenues" shall mean any and all cash, credits, property and other consideration of any kind or nature received on an accrual basis directly or indirectly by a franchisee, any of its affiliates, any person in which a franchisee has a financial interest, or any other entity that is a cable operator of a system which is attributable to, arises from or is in any way derived from the operation of a franchisee's cable system, including the studios and other facilities associated therewith.

Gross revenues include, by way of illustration and not limitation, monthly fees charged subscribers for any basic, optional, premium, per-channel or per-program service; installation, disconnection, reconnection and change-in-service fees; leased channel fees; late fees and administrative fees; fees, payments or other consideration received from programmers for carriage of programming on the cable system; revenues from the rentals and sales of converters or other equipment; fees for the rental of studios and production equipment and the use of franchisee personnel; advertising revenues; revenues from program guides; revenues from the sale or carriage of non-cable services, including information services and bypass services; and revenues from home shopping and bank-at-home channels, including commissions from the sales of goods. Gross revenues shall be the basis for computing the franchise fee. Gross revenues shall not include barter, the franchise fee, or any taxes on services furnished by a franchisee which are imposed directly on any subscriber or user by the state, city or other governmental unit and which are collected by a franchisee on behalf of said governmental unit.

Sec. 9-3-29 *Person.*

"Person" shall mean a natural person, partnership, association, joint stock company, organization, corporation, limited liability corporation and any other legal entity, and any lawful successor thereto or transferee thereof, but such term does not include the city.

Sec. 9-3-30 *Public access channel.*

"Public access channel" shall mean any channel on a cable system set aside by a franchisee for use by the general public, including groups and individuals, and which is available for such use on a non-discriminatory basis.

Sec. 9-3-31 *Public rights-of-way.*

"Public rights-of-way" shall mean the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive or bridge, in which the city holds a property interest and which, consistent with the purposes for which it was acquired or dedicated, may be used for the installation, operation and maintenance of a cable system. No reference in this chapter or in any franchise agreement to a "public right-of-way" shall be deemed to be a representation or guarantee by the city that its interests or other rights in such right-of-way are sufficient to permit its use for the installation, operation and maintenance of a cable system, and a franchisee shall be deemed to gain only those rights which the city has the undisputed right and power to give.

Sec. 9-3-32 *Sale.*

"Sale" shall mean any sale, exchange or barter transaction.

Sec. 9-3-33 *Service tier.*

"Service tier" shall mean a package of two or more cable services for which a separate charge is made by a franchisee, other than a package of premium and pay-per-view services that are also sold on a genuine a la carte basis.

Sec. 9-3-34 *Subscriber.*

"Subscriber" shall mean any person who legally receives any service delivered over a cable system.

Sec. 9-3-35 *Transfer.*

(a) "Transfer" shall mean a transaction in which any of the following occurs:

(i) more than twenty percent of the ownership interest in a franchisee or in the cable system is sold, assigned, leased, subleased or mortgaged, whether directly or indirectly;

(ii) control of a franchisee is transferred;

(iii) the rights or obligations, or both, of a franchisee under a franchise are assigned or otherwise transferred, whether directly or indirectly;

(iv) one or more general partners, with management responsibilities, are removed from or added to a franchisee; or

(v) a debt that is secured, in whole or in part, by the cable system of a franchisee is materially increased, whether by the franchisee or an affiliate, in a manner that may adversely affect the cable system's rates or services.

(b) "Control," for purposes of this section, means the legal or practical ability to exert actual working control over the affairs of a franchisee, whether directly or indirectly and whether by contractual agreement, by majority or lesser ownership interest or by any other means.

(c) A rebuttable presumption that a transfer of the control of a Franchisee has occurred shall arise upon the acquisition or accumulation of five percent or more of the ownership of a franchisee by any person or group of persons acting in concert, where such person or group of persons did not, at the time the franchise was granted, already own or control fifty percent or more of the ownership of the franchisee.

Sec. 9-3-36 *Transmission of video programming directly to customers.*

"Transmission of video programming directly to subscribers" shall mean the delivery of programming to equipment located or subscriber premises, whether or not that programming is selected, controlled or marketed to subscribers by the entity that delivers it.

Sec. 9-3-37 *User.*

"User" shall mean a person utilizing a cable system channel or equipment and facilities for purposes of producing or transmitting material, as contrasted with the receipt thereof in the capacity of a subscriber.

ARTICLE C

General Franchise Characteristics

Sec. 9-3-51 *Grant of franchise.*

The city council may grant one or more cable television franchises in accordance with this chapter and, except as otherwise expressly provided in a franchise agreement, each such franchise shall be subject to the provisions of this chapter, as it may be amended from time to time.

Sec. 9-3-52 *Franchise required.*

No person may construct or operate a cable system without a franchise granted by the city council. No person may be granted a franchise without having entered into a franchise agreement with the city.

Sec. 9-3-53 *Operation of a cable system without a franchise.*

Any person who occupies public rights-of-way for the purpose of constructing or operating a cable system and who does not hold a valid franchise from the city shall be subject to all provisions of this chapter. In its discretion, the city may, at any time, require such person to enter into a franchise agreement with the city, require such person to remove its property and restore the area occupied by the property to a condition satisfactory to the city, remove the property itself and restore the area to a satisfactory condition and charge the person the costs therefor, or take any other action it is entitled to take under applicable law, including filing an action for damages. In no event shall a franchise be created unless it is issued by action of the city council and is subject to a written franchise agreement.

Sec. 9-3-54 *Franchise characteristics.*

(a) A franchise authorizes use of public rights-of-way for installing cables, wires, lines, optical fiber, underground conduit and other devices necessary and appurtenant to the operation of a cable system within a franchise area, but does not authorize a franchisee to provide service to, or install a cable system on, private property without the property owner's consent (except for use of compatible easements pursuant to section 621 of the Cable Act, 47 U.S.C. § 541(a)(2)), or to use conduits without a separate agreement with the owner of same.

(b) A franchise is non-exclusive and will not explicitly or implicitly preclude the issuance of other franchises to operate cable systems within the city, affect the city's right to authorize use of public rights-of-way by other persons to operate cable systems or for other purposes, or affect the city's right to construct, operate, or maintain a cable system itself, with or without a franchise.

(c) Once a franchise agreement has been executed by the city and a franchisee, the agreement shall constitute a contract between the franchisee and the city, and the terms, conditions, and provisions of the agreement, subject to this chapter and all other duly enacted and applicable laws (except as expressly otherwise provided in this agreement), shall define the rights and obligations of the franchisee and the city relating to the franchise.

(d) All privileges provided by a franchise shall be subordinate to any prior lawful occupancy of the public rights-of-way, and the city shall always retain the right to designate where a franchisee's facilities are to be placed within the public rights-of-way in order to avoid actual or potential conflicts between users of the public rights-of-way and to ensure the safety and convenience of the public.

(f) Except as otherwise provided in a franchise agreement, a franchisee may not enter into or enforce any exclusive contract with a subscriber (including, but not limited to, a building owner) as a condition of providing or continuing service.

Sec. 9-3-55 *Franchisee subject to other laws, police power.*

(a) At all times, a franchisee shall be subject to and shall comply with all applicable federal, state and local laws, and shall be subject to the lawful exercise of the city's police power authority, including all rights the city may have under the Cable Act, 47 U.S.C. § 552.

(b) Except as expressly otherwise provided in a franchise agreement, the city shall retain all authority, including that

given to it by federal and state law, to regulate cable systems, franchisees and franchises.

Sec. 9-3-56 *Acts at franchisee's expense.*

Any act that a franchisee is or may be required to perform under this chapter, a franchise agreement or other applicable law shall be performed at the franchisee's sole expense, unless expressly provided to the contrary in this chapter, the franchise agreement or other applicable law.

Sec. 9-3-57 *Eminent domain.*

Nothing in this chapter shall be deemed or construed to impair or affect, in any way or to any extent, any right the city may have to acquire the property of the franchisee through the exercise of the right of eminent domain, or be deemed or construed to contract away or to modify or abridge, either for a term or in perpetuity, any right of eminent domain the city may have with respect to any public utility.

Sec. 9-3-58 *Interpretation of franchise terms.*

(a) Except as otherwise expressly provided in a franchise agreement, in the event of a conflict between this chapter and a franchise agreement, the provisions of this chapter shall control.

(b) The provisions of this chapter and a franchise agreement shall be construed in favor of the city in order to effect the purposes of this chapter and to promote the public interest.

(c) Except as to matters that are governed solely by federal law or regulation, a franchise agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

Sec. 9-3-59 *Filing fees.*

To be acceptable for filing, applications and requests submitted under this chapter shall be accompanied by the following filing fees which are designed to cover the costs incurred by the city, other than out-of-pocket expenses, in processing the applications and requests:

(a) for the grant of an initial franchise:

(1) a request to initiate the bidding process pursuant to section 9-3-62: \$5,000;

(2) a bid submitted pursuant to section 9-3-63: \$50,000; provided, that, if more than one bidder submits a bid,

the city shall refund to each bidder a pro rata share of the fee paid so that the total fee received by the city is \$50,000;

(b) for the renewal of a franchise pursuant to section 9-3-71:

(1) not involving an administrative proceeding: \$25,000;

(2) involving an administrative proceeding: the sum set out in subsection (1) and an additional \$15,000;

(c) for the modification of a franchise or a franchise agreement pursuant to section 9-3-72: \$12,500;

(d) for approval of a transfer pursuant to section 9-3-80, et seq.:

(1) not involving a transfer of control: \$12,500;

(2) involving a transfer of control: \$25,000;

(e) for the approval of an increase in cable rates or charges pursuant to section 9-3-208:

(1) not involving a cost of service showing: \$15,000 (provided, that the administrator may reduce this fee where the proposed increase will not require significant review by the city);

(2) involving a cost of service showing: the sum set out in subsection (1) and an additional \$15,000.

In addition, the city may require a franchisee or, where applicable, a transferee to reimburse the city for its reasonable out-of-pocket expenses in receiving any of the applications and requests identified above, or others addressed in this chapter, including reasonable consultants' fees. Any payments made by a franchisee pursuant to this section, including for consultants' fees, fall within one or more of the exceptions in the Cable Act, 47 U.S.C. § 542(g)(2), and do not constitute a franchise fee, and no such payments may be passed through to subscribers in any form, except to the extent federal law or regulation provides that they may be passed through.

Sec. 9-3-60 *Public hearings.*

Any party submitting an application or a request, or otherwise seeking city approval, under this chapter shall be notified of any public hearing conducted by the city council on the subject of the application, request or matter sought, and shall be given an opportunity to be heard at any such hearing.

ARTICLE D

Initial Grant of Franchise

Sec. 9-3-61 *Length of franchise.*

No initial franchise shall be granted for a period of more than 15 years, although an initial franchise may be renewed pursuant to the terms of this chapter and the applicable franchise agreement.

Sec. 9-3-62 *Initiation of bidding process.*

(a) Any person wishing to obtain an initial franchise shall file with the administrator a request to initiate the franchise bidding process ("RIFBP") pursuant to the terms of this article, which should address the person's proposed cable system.

(b) A RIFBP shall include information sufficient to permit the city to determine whether it would be in the public interest to commence the franchise bidding process under sections 15.1-307 through 15.1-316, Code of Virginia (1950), as amended. Such information shall include, by way of illustration and not of limitation, information regarding:

(1) the impact of the proposed cable system on the cable-related needs and interests of the public;

(2) the impact of the proposed cable system on competition, including the effect that the proposed system would have on existing franchisees and potential future franchises;

(3) the impact of the proposed cable system on public convenience, including the extent to which installation would require replacement or involve disruption of property, public services and uses of public rights-of-way;

(4) the economic and fiscal impact of the proposed cable system;

(5) the impact of the proposed cable system on the public rights-of-way; and

(6) the impact of the proposed cable system on private property rights.

(c) The administrator, following review of a RIFBP, shall forward a recommendation on the request to the city council which shall determine whether the public interest would be served by commencing the requested franchise bidding process. In making this determination, the council may seek additional information from the party submitting the RIFBP or from other sources. If the council concludes that the public interest would be served by

initiating the franchise bidding process, the administrator shall cause the process provided for in section 9-3-63 to commence.

(d) Notwithstanding the prior provisions of this section, the city council may, on its own, commence the process provided for in section 9-3-63 if it determines that the public interest would be served thereby.

Sec. 9-3-63 *Grant of franchise: bids, notices, publications, acceptance.*

(a) The general law governing the granting of a franchise to use public property, found in sections 15.1-307 through 15.1-316, Code of Virginia (1950), as amended, is, to the extent applicable to the granting of initial franchises addressed in this article, hereby incorporated by reference into this article. Thus, by way of illustration, the city council will grant an initial franchise under this chapter in the following manner.

(b) Following a determination under section 9-3-62 to initiate the franchise bidding process, the city council shall enact an ordinance proposing to grant a franchise and calling for the solicitation of bids, which ordinance shall contain an ordinance making the franchise grant and containing the terms and conditions of the franchise (subject to the execution of a franchise agreement with a successful bidder). The ordinance proposing to make the grant shall be advertised once a week for four successive weeks in a newspaper having general circulation in the city. The advertisement shall invite the submission of bids for the franchise, which bids are to be in writing, are to comply with section 9-3-64 and are to be delivered to city council upon a day and hour named in the advertisement.

(c) Upon receipt of bids, the city council may refer the bids to the administrator for review and evaluation and for the submission of recommendations, and may make or provide for such other investigation as it may determine appropriate.

(d) In evaluating bids for an initial franchise, the city council, and if applicable the administrator, shall consider, among other things, the following factors:

(1) whether the bidder has the financial, technical and legal qualifications to construct, operate and maintain a cable system and to provide, or provide for the provision of, cable service;

(2) whether, the bidder has the financial, technical and legal qualifications to provide adequate public, educational and governmental access channel capacity and facilities, and adequate financial support for same;

(3) whether the bidder or an affiliate of the bidder owns or controls any other cable system in the city;

(4) whether issuance of a franchise to the bidder will eliminate or reduce competition in the delivery of cable service in the city; and

(5) whether issuance of a franchise to the bidder would be in the public interest considering the factors described in section 9-3-62(b).

(e) If the council determines to grant an initial franchise to a bidder, it shall enact the ordinance proposing to make the grant as advertised, subject to the execution of an appropriate franchise agreement specifying the details of the franchise. If the council determines to reject any bids, it shall issue a written decision explaining the basis for its determination.

(f) This chapter is not intended and shall not be interpreted to grant any bidder or any existing franchisee standing to challenge the issuance of a franchise to another person.

(g) Within 30 days after the enactment of the ordinance granting an initial franchise to it, the successful bidder shall present to the city a signed and notarized agreement accepting the provisions of the franchise. At that time, the successful bidder shall file any bonds and security fund deposits required, and fulfill any other requirements then imposed, by this chapter.

Sec. 9-3-64 *Contents of bid.*

Any bid submitted pursuant to section 9-3-63 shall contain, at a minimum, the following information:

(a) the name and address of the bidder and of the following persons: the 10 largest holders of an ownership interest in the bidder; all persons with five percent or more ownership interest in the bidder; all the persons who control the bidder; all officers and directors of the bidder; and, as to each such identified person who holds a five percent or more ownership interest in another cable system, the name of such system and the person's ownership interest in it;

(b) a demonstration of the bidder's technical ability to construct, operate and maintain the proposed cable system, including the identification of key personnel;

(c) a demonstration of the bidder's legal qualifications to construct, operate and maintain the proposed cable system, including a demonstration that the bidder meets the following criteria;

(1) the bidder has not had any cable television franchise validly revoked by any franchising authority within the three years preceding the submission of the bid;

(2) the bidder is authorized under Virginia law to operate a cable system;

(3) the bidder is not precluded by federal law from operating a cable system in the city, and possesses or is qualified to obtain any necessary federal franchises or waivers required to operate a system in the city;

(4) the bidder, within 10 years preceding the submission of the bid, has not been convicted of any act or omission of such character that the bidder cannot be relied upon to deal truthfully with the city and with subscribers of the cable system, or to comply with its obligations under applicable law;

(5) the bidder has not filed any materially misleading information with its bid and has not intentionally withheld information that is required to be provided; and

(6) no elected official of the city holds a controlling interest in the bidder or an affiliate of the bidder;

notwithstanding the foregoing provisions of this subsection, a bidder shall be provided an opportunity to show that it would be inappropriate to find it unqualified to obtain a franchise under this chapter by virtue of subsections (b)(2) or (b)(5), in light of the particular circumstances surrounding the matter and the steps taken by the bidder to cure all harms flowing therefrom and to prevent their recurrence, the lack of involvement of the bidder's principals, or the remoteness of the matter from the operation of a cable system;

(d) a statement prepared by a certified public accountant regarding the bidder's financial ability to complete the construction and to operate the proposed cable system;

(e) a description of the bidder's prior experience in cable system ownership, construction and operation, and an identification of communities in which the bidder or any of its principals have, or have had, a cable franchise or any interest in a cable franchise;

(f) an identification of the area of the city to be served by the proposed cable system;

(g) a detailed description of the physical facilities of the proposed cable system, including the system's channel capacity, technical design, performance characteristics, head-end and access facilities;

(h) a description of the construction of the proposed cable system, including an estimate of plant mileage and its location, a proposed construction schedule, a description, where appropriate, of how services will be converted from existing facilities to new facilities, and information on the availability of space in existing conduits, including, where appropriate, an estimate of the cost of any necessary rearrangement of existing facilities;

(i) the proposed rate structure for the proposed cable system, including projected charges for each service tier, installation, converters and other equipment or services;

(j) a description of the manner in which the bidder will reasonably meet the future cable-related needs and interests of the city, including descriptions of how the bidder will meet the needs described in any recent community needs assessment conducted by or for the city, and how the bidder will provide adequate public, educational, and governmental access channel capacity, facilities or financial support to meet the city's needs and interests;

(k) pro forma financial projections for the proposed franchise term, including a statement of projected income and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules;

(l) if the bidder proposes to provide cable service to an area already served by an existing cable franchisee, an identification of the area where the overbuild would occur, the potential subscriber density in the area that would encompass the overbuild, and the ability of the public rights-of-way and other property that would be used by the bidder to accommodate an additional cable system;

(m) any other information that may be reasonably necessary to demonstrate compliance with the requirements of this chapter, and any other information that the city may request of the bidder which is relevant to the city's consideration of the bid; and

(n)
(¶) an affidavit or declaration of the bidder or an authorized officer certifying the truth and accuracy of the information in the bid, acknowledging the enforceability of bid commitments, and certifying that the bid meets all federal and state law requirements.

Sec. 9-3-65 *Requests for initiation and bids.*

The original of any request for the initiation of the franchise bidding process, submitted pursuant to section 9-3-62, and of any bid, submitted pursuant to section 9-3-63, shall be accompanied by 12 copies and the filing fee set out in section 9-3-59, and shall contain all information required by this article.

Except as otherwise provided in this chapter, any such submitted request or bid shall be made available for public inspection.

Sec. 9-3-66 Public hearings.

Prior to the granting an initial franchise under this article, the city council shall hold at least one public hearing, following reasonable notice to the public, at which every bidder, all other interested parties and the public shall be afforded a reasonable opportunity to be heard. Reasonable notice to the public shall consist of an advertisement of the date, time, place and subject of such hearing that shall be published in a newspaper having general circulation in the city.

ARTICLE E

Franchise Renewal and Modification

Sec. 9-3-71 Renewal.

A franchise may be renewed by the city at its discretion for a period of no more than 15 years, upon application of the franchisee in accordance with the then-existing rules of the FCC and applicable law, including section 15.1-314, Code of Virginia (1950), as amended. The city retains the right to modify the terms of a franchise as a condition of any such renewal.

Sec. 9-3-72 Application for grant of a franchise renewal.

(a) An application by a franchisee for renewal of its franchise shall be filed with the administrator, and the application shall be received and reviewed in a manner consistent with the Cable Act, 47 U.S.C. § 546(a)-(g) If neither a franchisee nor the city activates in a timely manner, or can activate, the renewal process set forth in 47 U.S.C. § 546(a)-(g) (including, for example, if the said provisions are repealed), then, except for applications submitted pursuant to 47 U.S.C. § 546(h), the provisions of article D shall apply, and a franchise renewal application shall be treated as a request for the initiation of the bidding process and evaluated using the process and criteria governing the granting of initial franchises.

(b) If the provisions of 47 U.S.C. § 546(a)-(g) are properly invoked, and if the city act does not act under 47 U.S.C. § 546(h), the administrator shall forward the franchisee's application for renewal to the city council, and thereafter the council, having reviewed the franchisee's past performance under its existing franchise and considered the future cable-related needs and interests of the Alexandria community, may request the franchisee to submit a proposal defining the cable system it proposes to provide under a renewal franchise. If council so requests, the administrator shall establish deadlines for the

franchisee's proposal and may, before or after submission of the proposal, require the franchisee to provide information that the administrator deems pertinent to the franchisee's renewal application or its proposal, or both.

(c) Upon receipt of a franchisee's proposal and all additional information that the administrator has required, the administrator shall provide notice to the public of the receipt of the proposal. No later than 120 days following the receipt of the proposal, the administrator shall recommend to the city council, and the council shall preliminarily determine, by resolution, whether the franchisee's franchise is to be renewed.

(1) If the council determines preliminarily to renew the franchise, it shall direct the administrator to prepare a franchise agreement that incorporates, as appropriate, the commitments made by the franchisee in its franchise renewal proposal and contains other matters deemed pertinent by the administrator. If the franchisee accepts the franchise agreement prepared by the administrator, and the agreement is approved by the city council, the council shall grant a renewal franchise to the franchisee. If the franchise agreement prepared by the administrator is not accepted by the franchisee or is not approved by council within the time limit established by 47 U.S.C. § 546(c)(1), the franchisee's request for a franchise renewal shall be deemed preliminarily denied, and an administrative proceeding under the Cable Act shall be commenced if the franchisee, within 10 business days from the expiration of the time limit established by 47 U.S.C. § 546(c)(1), requests the commencement of such a proceeding.

(2) If the city council determines, preliminarily or otherwise, that a franchise should not be renewed, and the franchisee notifies the administrator no later than 10 business days of the council determination that it wishes to pursue its right to an administrative proceeding under the Cable Act, then such an proceeding shall be commenced in accordance with the Cable Act.

(d) If an administrative proceeding under the Cable Act is commenced on a franchisee's franchise renewal request, the request shall be evaluated on the basis of factors that are consistent with federal law, and shall be conducted in accordance with the following procedures:

(1) The city council shall, by resolution, appoint a hearing officer to preside over the proceeding, which officer can be the council itself.

(2) The hearing officer shall establish a schedule for the proceeding which allows for documentary discovery and interrogatory responses, production of evidence, and cross-examination of witnesses. Depositions shall not be permitted unless the party requesting the deposition shows that documentary

discovery and interrogatory responses will not provide it an adequate opportunity to present its case. The hearing officer may require the production of evidence as the interests of justice may require, including the production of evidence by the franchisee and any entity that owns or controls or is owned or controlled by the franchisee. The hearing officer may also issue protective orders. Enforcement of any order issued by the hearing officer shall be in and by the Circuit Court for the City of Alexandria.

(3) The hearing officer may conduct a prehearing conference and establish appropriate prehearing orders. Intervention by non-parties is not authorized, except to the extent required by the Cable Act.

(4) The hearing officer may require the city and the franchisee to submit prepared testimony prior to the initiation of the hearing. Unless the parties agree otherwise, the franchisee shall present its evidence first, followed by the city. The hearing officer shall see that a transcript is prepared of the proceeding.

(5) The primary factors to be considered by the hearing officer and the parties during the administrative proceeding are:

(i) whether the franchisee has substantially complied with the material terms of its existing franchise and with applicable law;

(ii) whether the quality of the franchisee's service, including signal quality, response to consumer complaints and billing practices, but without regard to the mix or quality of the programming and similar services provided over the cable system, has been reasonable in light of the needs of the Alexandria community;

(iii) whether the franchisee has the financial, legal and technical ability to provide the services, facilities and equipment, as set forth in the operator's proposal; and

(iv) whether the operator's proposal is reasonable to meet the future cable-related needs and interests of the Alexandria community, taking into account the cost of meeting those needs and interests.

(6) Following completion of any hearing, the hearing officer shall require the parties to submit proposed findings of fact with respect to the four factors identified in subsection (5). Based on the record of the proceeding, the hearing officer shall then prepare written findings of fact with respect to those factors, and shall submit those findings to the city council (unless the hearing officer is the council, in which case the

written findings shall constitute the final decision of the city), with copies to the administrator and the franchisee.

(7) Where the hearing officer is not the city council, the parties shall have 30 calendar days from the date the hearing officer's findings of fact are submitted to council to file, with the city clerk, their exceptions to the findings. Following the filing of such exceptions and within 90 days of the issuance of the hearing officer's findings of fact, the council, based upon the record before the hearing officer, the officer's findings and any exceptions that have been filed, shall determine whether to renew the franchise. Within 30 days of making its determination, the council shall commit its determination to writing, stating the reasons therefor, which determination shall be consistent with the requirements of the Cable Act and based on the record compiled before the hearing officer. A copy of the final decision of the council shall be provided to the franchisee.

(8) Any determination to deny a franchisee's request for the renewal of its franchise shall be based on one or more adverse findings made with respect to the factors described in subsection (5) and 47 U.S.C. § 546(c)(1), which findings are based on the record of the administrative proceeding conducted under this subsection. A determination to deny shall not be based upon a franchisee's failure to substantially comply with the material terms of its franchise under subsection (5)(i) or 47 U.S.C. § 546(c)(1)(A), or upon events considered under subsection (5)(ii) or 47 U.S.C. § 546(c)(1)(B), where such failure to comply or such events occur after the effective date of the Cable Act, unless the administrator has provided the franchisee with notice and the opportunity to cure, or where it is documented that the city has waived its right to object, or where the franchisee has given written notice of a failure or inability to cure and the city has failed to object within a reasonable time after receipt of such notice.

(9) Any administrative proceeding under this subsection shall be conducted with due speed, but with due regard for the right of the franchisee to fully present its case.

(10) In conducting the administrative proceeding under this subsection, and except as inconsistent with the foregoing, the hearing officer shall adhere, to the extent permissible and feasible, to the Virginia Administrative Process Act, § 9.6-14:1, et seq., Code of Virginia (1950), as amended, or any successor statute.

(e) Nothing in this section shall be construed as preventing a franchisee from submitting an informal request for the renewal of its franchise pursuant to 47 U.S.C. § 546(h), which application may be granted or denied in accordance with the provisions of 47 U.S.C. § 546(h).

(f) The provisions of this article shall be read and applied so that they are consistent with the Cable Act, 47 U.S.C. § 546.

Sec. 9-3-73 *Application for modification of a franchise or franchise agreement.*

(a) An application for modification of a franchise or a franchise agreement shall be filed with the administrator and shall include, at minimum, the following information:

(i) the specific modification requested;

(ii) the justification for the requested modification, including the impact of the requested modification on subscribers and others, and the financial impact on the franchisee if the modification is approved or disapproved, demonstrated through, inter alia, submission of financial pro formas;

(iii) a statement whether the modification is sought pursuant to the Cable Act, 47 U.S.C. § 545, and, if so, a demonstration that the requested modification meets the standards set forth in 47 U.S.C. § 545;

(iv) any other information that the franchisee believes is necessary for the city to make an informed determination on the application for modification; and

(v) an affidavit or declaration of the franchisee or an authorized officer certifying the truth and accuracy of the information in the application, and certifying that the application is consistent with all federal and state law requirements.

(b) Following review of the proposed modification, the administrator shall forward the modification, along with a recommendation, to the city council. In making a recommendation, the administrator shall utilize the factors identified below in subsection (c).

(c) Following a public hearing, the city council shall determine whether to approve the proposed modification. In making this determination, the council shall consider the extent to which the modification departs from the terms, conditions and intent of the existing franchise or franchise agreement, the justification for the modification and the extent to which the modification is consistent with and furthers the cable-related needs and interests of the Alexandria community.

ARTICLE F

Franchise Transfers

Sec. 9-3-81 *City approval required.*

No transfer shall occur without prior written application to and approval of the city council, and only then upon such terms and conditions as the council deems necessary and proper. A franchise is a privilege that is in the public trust and personal to the franchisee, and the franchisee's obligations under a franchise involve personal services whose performance involves personal credit, trust and confidence in the franchisee. Any transfer without the prior approval of the city council shall be considered to impair the city's assurance of due performance. The council approval of a transfer in one instance shall not render unnecessary council approval of any subsequent transfer.

Sec. 9-3-82 *Three-year holding requirement.*

No transfer shall be approved by city council within a three-year period following either the acquisition of a cable system, or the initial construction of a system, measured from the date on which cable service is activated to the system's first subscriber, except by a recorded affirmative vote of three-fourths of the members of the city council and in accordance with federal law and regulation.

Sec. 9-3-83 *Application for a transfer.*

(a) A franchisee shall promptly notify the administrator of any proposed transfer. If a transfer should take place without prior notice to the administrator, the franchisee shall promptly notify the administrator that such a transfer has occurred; provided, that such notice shall not be construed as curing the franchisee's failure, before the transfer, to provide the required notice to the administrator and to obtain the required city council approval of the transfer.

(b) At least 120 calendar days prior to the contemplated effective date of a transfer, a franchisee shall submit to the administrator an application for approval of the transfer, unless the administrator has waived this requirement in writing based upon the nature of the proposed transfer. Such an application shall provide complete information on the proposed transfer, including details on the legal, financial, technical and other qualifications of the transferee, and on the potential impact of the transfer on the cable system, cable service and subscriber rates. At a minimum, the following information shall, unless waived in whole or in part by the administrator, be included in the application:

(1) all information and forms required under federal law;

(2) all information required in section 9-3-64(a) through (e), (i), (j), (k), and (n), substituting in these provisions the term "proposed transferee" for the term "bidder";

(3) a detailed statement of the corporate or other business entity organization of the proposed transferee, together with an explanation of how decisions regarding the cable system will be made if the proposed is transfer approved;

(4) any business relationships or transactions of any kind, past, present or anticipated, between the franchisee, or its owners, subsidiaries or affiliates, and any of the proposed tranferees, or their corporate parents, subsidiaries or affiliates, other than the proposed transfer;

(5) any contracts, financing documents or other documents that relate to the proposed transfer, and all documents, schedules, exhibits or the like referred to therein;

(6) any documents related to the transfer, including any documents regarding rates that the transferee expects to charge, that have been provided to any entity that has been asked to provide financing (debt, equity or any other kind) for, or to underwrite any offering made in connection with, the proposed transfer;

(7) any documents provided to the boards of directors, executive committees or similar controlling bodies of the franchisee and of any proposed transferee, or their corporate parents, subsidiaries or affiliates, regarding the proposed transfer;

(8) any shareholder reports or filings with the Securities and Exchange Commission or the Federal Trade Commission that discuss the transaction, and any filings required under the Clayton Act in connection with the proposed transfer;

(9) complete financial statements for the franchisee and any potential transferees for the prior three years, including balance sheets, income statements, profit and loss statements, and documents detailing capital investments and operating costs;

(10) a detailed description of the sources and amounts of the funds to be used in the proposed transfer, indicating how the debt-equity ratio of the cable system will change in the course of the transaction, what entities will be liable for repayment of any debt incurred, what interest, payment schedule and other terms or conditions will apply to any debt financing, any debt coverages or financial ratios that any proposed

transferees will be required to maintain over the franchise term if the proposed transfer is approved, what financial resources would be available to the system under the control of the proposed transferee, and whether the proposed transferee can meet debt-equity or any other required ratios without increasing subscriber rates, with any assumptions underlying that conclusion, and, if not, what rate increases would be required and why;

(11) any other information necessary to provide a complete and accurate understanding of the financial position of the cable system before and after the proposed transfer, including but not limited to two sets of projected income statements and cash flow statements, including capital investments, for at least five years after the proposed transfer, one set assuming the transfer is approved, and one set assuming the transfer is not approved, and each set stating specifically what assumptions are being made with respect to any rebuild or upgrade of the system;

(12) complete information regarding any potential impact of the transfer on subscriber rates and service;

(13) a detailed analysis of franchise fee payments made by the franchisee, or any affiliate, during the life of the franchise, showing (i) total gross revenues, by category (e.g., basic, pay, pay-per-view, advertising, installation, equipment, late charges, miscellaneous, other), (ii) the revenues, by category, that were included in the calculation of the franchise fee, so that it is clear what, if any, revenues were not included and the dollar value of those exclusions, (iii) the value of any non-cash compensation received (e.g., trades for advertising spots), showing what amounts of non-cash compensation were included in the franchise fee calculation, (iv) what, if any, deductions were made from revenues in calculating the franchise fee (e.g., bad debt), and the amount of each deduction, and (v) if an outside agency was used to collect revenue (e.g., a collection agency, an advertising agency paid on the basis of percentage of sales), how much revenue was received by these agencies, and the total amount of such revenues included for purposes of the franchise fee calculation;

(14) information sufficient to permit the city to determine the franchisee's compliance with its franchise obligations over the term of the franchise, including specific descriptions of any noncompliance of which the franchisee or any potential transferee is aware;

(15) any representations made to anyone, in connection with the proposed transfer, about the franchisee's compliance with its franchise; and

(16) a brief summary of the proposed transferee's plans for at least the upcoming five years regarding line extension, plant and equipment upgrades, channel capacity, expansion or elimination of services, and any other changes affecting the performance of the cable system.

(c) For purposes of determining whether a proposed transfer should be approved, the city council, and the administrator, may inquire into all qualifications of the proposed transferee and such other matters as is deemed necessary to determine whether the transfer is in the public interest and should be approved, denied or conditioned.

(d) Following review of the application and the proposed transfer, the administrator shall forward the application, along with a recommendation on the proposed transfer, to the city council. In making a recommendation, the administrator shall utilize the factors identified in section 9-3-85.

Sec. 9-3-84 *Right of city to exercise first refusal.*

If a proposed transfer involves a change in control of the franchisee, as defined in section 9-3-35, the city shall have the right of first refusal to acquire the cable system at a price not to exceed its then fair market value. Any payment for the transfer or assignment of rights to the city shall be governed by the standards of section 9-3-95.

Sec. 9-3-85 *Determination by city council.*

(a) Following receipt of an application for approval of a transfer and the administrator's recommendation, the city council shall determine whether to approve or deny the application, or approve it subject to conditions. In making this determination, the council shall consider the following factors:

(1) the legal, financial and technical qualifications of the proposed transferee to operate the cable system in accordance with this chapter and the franchise agreement between the incumbent franchisee and the city;

(2) the potential impact of the transfer on subscriber rates or services;

(3) whether the incumbent franchisee is in compliance with this chapter and its franchise agreement with the city, and, if not, the proposed transferee's commitment and ability to cure such noncompliance;

(4) whether the proposed transferee owns or controls any other cable system in the city;

(5) the effect that the proposed transfer will have on the competition in the delivery of cable service in the city; and

(6) whether operation of the cable system by the proposed transferee would adversely affect subscribers, the city's interests under this chapter, the existing franchise agreement between the incumbent franchisee and the city, or the public interest, or make it less likely that the future cable-related needs and interests of the Alexandria community will be satisfied at a reasonable cost.

(b) Any transfer without the prior approval of the city council shall be ineffective, and shall make the franchise affected by the transfer subject to cancellation at the city's sole discretion and to any other remedies available under the franchise, this chapter or other applicable law.

(c) The city reserves the right to review, inter alia, the compensation and other consideration associated with any transfer, and to take any necessary steps to ensure that any negotiated sale value which the city deems unreasonable will not adversely affect subscriber rates, including denial of the transfer.

(d) Any mortgage, pledge or lease shall be subject and subordinate to the rights of the city under this chapter or other applicable law.

Sec. 9-3-86 *Transferee's agreement.*

No application for the approval of a transfer shall be approved by the city council unless the transferee agrees in writing that it will abide by and accept all terms of the franchise agreement between the incumbent franchisee and the city, and all applicable provisions of this chapter, and that it will assume the obligations, liabilities and responsibility for all acts and omissions, known and unknown, of the incumbent franchisee under the franchise agreement and this chapter, for all purposes, including renewal, unless the council, in its discretion, expressly waives all or part of this requirement.

Sec. 9-3-87 *Approval does not constitute waiver of city rights.*

Approval by the city council of a transfer does not constitute a waiver or release of any of the rights of the city under this chapter or a franchise agreement against the transferor franchisee, whether arising before or after the date of the transfer.

ARTICLE G

Termination of Franchise

Sec. 9-3-91 *Forms of termination.*

A franchise may, in accordance with this article, be terminated by revocation or terminate by expiration.

Sec. 9-3-92 *Revocation of franchise.*

(a) The city shall have the right to revoke a franchise, effective on a date set by the city council no less than 90 days following the date of the decision to revoke, for a franchisee's failure to construct, operate or maintain the cable system as required by this chapter or a franchise agreement, for any other material violation of this chapter or material breach of a franchise agreement, for a franchisee's defrauding or attempting to defraud the city or subscribers, or if the franchise or the cable system is assigned for the benefit of the creditors of the franchisee, or a receiver or trustee is appointed to take over the business of the franchisee, or the franchisee is declared a bankrupt.

(b) Prior to revoking a franchise for one or more of the grounds stated in subsection (a), the city shall follow the procedures in subsections (1), (2) and (3) below, except where the grounds for revocation involve the assignment of the franchise or the cable system for the benefit of creditors, the appointment of a receiver or trustee to take over the franchisee's business, or the franchisee is declared a bankrupt, in which case the provisions of subsection (c) only shall govern.

(1) Whenever the city believes there are grounds to revoke a franchise, written notice shall be provided to the franchisee informing it of those grounds and providing it with an opportunity to remove the grounds within a period of 30 or more days, except that no such opportunity need be provided where the franchisee is believed to have defrauded or attempted to defraud the city or subscribers in which case the notice required by this subsection may be provided and the city may then proceed immediately to the public hearing provided for in subsection (3).

(2) If, within the period stated in the city notice, the franchisee fails to remove the identified grounds for revocation, or at least to initiate and actively pursue corrective action to remove those grounds to the satisfaction of the city, a second written notice to the franchisee shall be provided to the franchisee informing it of the city's intention to pursue revocation of its franchise by holding a public hearing before the city council, or a designee of the council, and of the

date, time and place of the hearing, which shall be no less than 30 days after the date of the notice.

(3) At the public hearing on a franchise revocation, the franchisee shall be given the opportunity to be heard and to present information and evidence regarding the grounds for revocation that have been identified by the city. Following a hearing held before the city council, the council shall determine, based on the information and evidence presented at the hearing and other information of record, whether to revoke the franchise and, if so, the date on which the revocation shall be effective. Following a hearing held before a designee of council, the designee shall determine whether to recommend to council that the franchise be revoked or not revoked, and shall prepare and forward to the council a written report containing the designee's recommendation and the reasons for the recommendation. In addition, the designee shall forward to the council a copy of the record compiled in conjunction with the hearing. Following receipt of such report, the council shall determine, based on the report and the hearing record, whether to revoke the franchise. Whenever the city council determines to revoke a franchise, it shall issue a written decision setting forth the reasons for its decision, and a copy of the decision shall be transmitted to the franchisee.

(c) A franchise may, at the option of the city council following a public hearing, be revoked effective 120 days after the council decision, based upon an assignment of the franchise or the cable system for the benefit of the creditors of the franchisee, or the appointment of a receiver or trustee to take over the business of the franchisee, whether such assignment or appointment takes place in a receivership, reorganization, bankruptcy or other action or proceeding, unless within that 120-day period:

(1) such assignment, receivership or trusteeship has been vacated; or

(2) such assignee, receiver or trustee has fully complied with the terms and conditions of this chapter and the franchise agreement, and has executed an agreement, approved by a court of competent jurisdiction, in which the assignee, receiver or trustees assumes and agrees to be bound by the terms and conditions of this chapter and the franchise agreement, and such other conditions as may be established or as are required under article D of this chapter.

(d) In the event of foreclosure or other judicial sale of any of the facilities, equipment or property of a franchisee, the city may revoke the franchise, following a public hearing before the city council, by serving notice of the revocation on the franchisee and the successful bidder, in which event the franchise and all rights and privileges of the franchisee shall

be revoked and shall terminate 30 days after the service of the notice, unless:

(1) the city has approved the transfer of the franchise to the successful bidder; and

(2) the successful bidder has covenanted and agreed with the city to assume and be bound by the terms and conditions of the franchise agreement and this chapter, and such other conditions as may be established or as are required pursuant to article D of this chapter.

(e) If the city revokes a franchise, the city, pursuant to resolution of the city council, may acquire ownership of the cable system at its then-fair market value. Alternatively, in the case of revocation, the city council may require the former franchisee to remove its facilities and equipment from all, or some, public rights-of-way at the franchisee's sole expense. If the franchisee fails to do so within a reasonable period of time, the removal shall be undertaken by the franchisee's surety. If removal is not undertaken by said surety, the city may undertake the removal itself, and it shall then be reimbursed for all its expenses by the franchisee or the franchisee's surety, or both.

(f) Notwithstanding any other provision of this chapter to the contrary, where the city has granted a franchise requiring the completion of construction of a cable system or of a cable system upgrade, or the completion of other specific obligations, by a specified date, the failure of the franchisee to complete such construction or upgrade, or to comply with such other specific obligations, as required, may, at the option of the city council, result in the automatic termination of the franchise, without the procedures set out in this section, where such automatic termination is provided in the franchise or franchise agreement.

Sec. 9-3-93. *Expiration of franchise.*

A franchise shall terminate upon its expiration date, as set forth in the franchise itself or the franchise agreement. If an expired franchise is not renewed pursuant to article E, the city may, by resolution of the city council, acquire ownership of the franchisee's cable system at the system's then-fair market value. Alternatively, the city council may require the franchisee to remove its facilities and equipment from all, or some, public rights-of-way at the franchisee's sole expense. If the franchisee fails to do so within a reasonable period of time, the removal shall be undertaken by the franchisee's surety. If removal is not undertaken by said surety, the city may undertake the removal itself, and it shall then be reimbursed for all its expenses by the franchisee or the franchisee's surety, or both.

ARTICLE H

System Facilities, Equipment, and Services

Sec. 9-3-101 *Compliance with article.*

Except as otherwise specifically provided in a franchise agreement, a franchisee shall comply with the requirements set forth in this article, unless such compliance is prohibited by federal law.

Sec. 9-3-102 *Provision of service.*

After cable service has been established by activating trunk distribution cable for an area specified in a franchise agreement, a franchisee shall provide cable service to any household requesting cable service within that area, including each multiple dwelling unit in the area, except for multiple dwelling units to which it cannot obtain legal access.

Sec. 9-3-103 *Full service to municipal buildings.*

A franchisee shall install, at no charge to the city, at least one service outlet at each city building within the franchise area, and shall charge only its time and material costs for any additional service outlets to such facilities. The franchisee shall provide the cable services delivered on any service tier to all outlets in such buildings free of charge.

Sec. 9-3-104 *State law requirements.*

A franchisee shall make available a commonwealth access channel if required by state law, and shall comply with all requirements, if any, of the Virginia Public Telecommunications Council.

Sec. 9-3-105 *Leased access requirement.*

A franchisee shall provide leased access channels if and as required by federal law.

Sec. 9-3-106 *Technical standards.*

(a) Any cable system within the city shall meet or exceed the technical standards set forth in 47 C.F.R. § 76.601 and any other applicable technical standards required by federal or state law, including any such standards as hereafter may be amended or adopted by the city in a manner consistent with federal and state law.

(b) A franchisee shall use equipment generally used in high-quality, reliable, modern cable systems of similar design, including, but not limited to, back-up power supplies at all

active locations and at the head-end capable of providing power to the system for a minimum of three hours in the event of an electrical outage, and modulators, antennae, amplifiers and other electronics that permit and are capable of passing through the signal received at the head-end with minimal alteration or deterioration. This obligation shall include the obligation to install equipment to retransmit in stereo satellite and local broadcast signals provided in stereo. The obligation to provide backup power supplies requires the franchisee to install equipment that will (i) cut in automatically on failure of commercial utility AC power, (ii) revert automatically to commercial power when it is restored and (iii) prevent the standby power source from powering a "dead" utility line.

(c) A franchisee shall not design, install or operate its facilities in a manner that will interfere with the signals of any broadcast station, the facilities of any public utility, the cable system of another franchisee, or individual or master antennae used for receiving television or other broadcast signals.

Sec. 9-3-107 Proof of performance tests.

A franchisee shall perform proof of performance tests, as required by FCC rules, designed to demonstrate compliance with the technical standards in this article, the franchise agreement and FCC requirements. The franchisee shall provide the proof of performance test results promptly to the administrator. The franchisee shall provide the administrator 10 days' advance written notice when a proof of performance test is scheduled so that the city may, if it wishes, have an observer present. The city shall have the right to inspect the cable system during and after its construction to ensure compliance with the technical standards in this article, the franchise agreement and applicable provisions of federal, state and local law, and may require the franchisee to perform additional tests based on the city's investigation of cable system performance or on subscriber complaints.

Sec. 9-3-108 Interconnection.

(a) A franchisee shall design its cable system so that it may be interconnected with any other cable television system or similar communications systems in the Washington, D.C., metropolitan area. Such interconnection may be made by direct cable connection, microwave link, satellite or any other appropriate method.

(b) Upon receiving a request of the city to interconnect, a franchisee shall initiate and pursue negotiations with the other affected system or systems and shall, within a reasonable time, effect the requested interconnection unless the city council finds that the cost of interconnection would cause an

unreasonable increase in subscriber rates or, for other reasons, the interconnection would not be in the public interest.

(c) No interconnection shall take place without the prior approval of the administrator, and such approval shall be given if a franchisee demonstrates that all signals to be interconnected will comply with FCC technical standards for all classes of signals and will result in no more than a low level of distortion.

(d) A franchisee shall cooperate with any federal, state or regional regulatory agency established for the purpose of regulating, facilitating, financing or otherwise providing for the interconnection of communications systems beyond the boundaries of the city.

Sec. 9-3-109 *Integration of advancements in technology.*

(a) In addition to such upgrades as may be required under a franchise agreement, it shall be the responsibility of a franchisee to periodically upgrade its cable system to implement advancements in technology as may be required to meet the cable-related needs and interests of the Alexandria community in light of the costs thereof. It is recognized that subscribers in the city have an especially strong interest in a system design that will eliminate the need for set-top converters and will permit subscribers to utilize fully the capabilities of consumer electronic equipment while receiving cable service.

(b) To ensure that the franchisee is carrying out its responsibilities hereunder, a franchisee shall be required to submit a report on cable technology to the administrator every odd-numbered year during the franchise term. Each report shall describe developments in cable technology and the particular developments which the franchisee plans to incorporate into the system. The report also shall describe the effect which the developments to be incorporated will have on public, educational and governmental users of the cable system, and the effect of those technological changes on consumer electronic equipment. The report further shall describe how other cable companies have incorporated or are planning to incorporate technological developments into their systems and the estimated timetable for doing so. The administrator, upon receipt of each report, may schedule one or more hearings before the city council so that the council may consider whether the new technologies which the franchisee proposes to incorporate into the system are adequate to meet the future cable-related needs and interests of the Alexandria community. If the council considers such proposed technologies to be adequate, the franchisee shall implement them, subject to section 9-3-110, as if they were specific requirements set forth herein.

(c) A franchisee shall not provide basic services and other cable programming services (excluding premium and pay-per-view programming) in a compressed or digitized form unless authorized by the administrator or the city council; provided, that such authorization may not be unreasonably withheld. In providing such authorization, the administrator or the council, as the case may be, may impose such requirements as necessary to protect the public interest.

(d) Nothing in this section shall be construed as limiting a franchisee's ability to incorporate technological improvements or advances into its cable system to the time period immediately following the report required by subsection (b); provided, that any other improvements or advancements to the system shall be submitted to the administrator or the city council for approval, which approval may not be unreasonably withheld; and provided further, that the actual implementation of such improvements or advancements shall be subject to section 9-3-110.

Sec. 9-3-110 System design review process.

In addition to any requirements included in a franchise agreement, at least 60 days prior to the commencement of construction on any cable system upgrade occurring more than three years after the start of a franchise, the franchisee shall make a detailed system design and construction plan available for review by the city at the local office of the franchisee, which shall include at least the following elements:

(a) design type, trunk and feeder design, and number and location of hubs or nodes;

(b) distribution system-cable, fiber and equipment to be used;

(c) plans for standby power at head-end;

(d) longest amplifier cascade in system (number of amplifiers, number of miles, type of cable/fiber); and

(e) design maps and tree trunk maps for the system.

The proposed system design shall be shown on maps of industry standard scale using standard symbols, shall depict all electronic and physical features of the cable plant, and shall satisfy all design and construction obligations applicable to the franchisee under its franchise agreement, this chapter and other applicable law. The city may review the proposed system design and, within 30 days of the date the design is made available for city review, propose revisions that it believes are required to satisfy such obligations. Within 15 days of receipt of these proposed revisions, the franchisee shall submit a revised design to the city incorporating the revisions, unless the city finds,

after further discussion with the franchisee, that the revisions are not required to satisfy the franchisee's obligations.

Sec. 9-3-111 *Emergency alert system.*

A franchisee shall install and thereafter maintain for use by the city an emergency alert system. This system shall be remotely activated by telephone and shall allow a representative of the city to override the audio and video on all channels on the franchisee's cable system in the event of a civil emergency or for reasonable tests. The city shall provide reasonable notice to a franchisee prior to any test use of this system.

ARTICLE I

**Construction, Operation and
Maintenance of Cable System**

Sec. 9-3-121 *System construction schedule.*

(a) Every franchise agreement shall specify, or provide for the preparation of, the construction schedule that will apply to any required construction, upgrade or rebuild of the franchisee's cable system.

(b) Failure on the part of a franchisee to timely commence and thereafter to diligently pursue construction, or otherwise to comply with an agreed-upon construction schedule, shall be grounds for termination of the franchise or for the imposition of penalties under this chapter; provided, that the city council may, for good cause shown, provide additional time for a franchisee to comply with construction schedule requirements.

Sec. 9-3-122 *Construction, operation and maintenance requirements.*

(a) A franchisee shall construct, operate and maintain its cable system in compliance with all applicable laws, ordinances, rules and regulations. The system, and all parts thereof, shall be subject to periodic inspection by the city.

(b) No construction or other activity on or related to a cable system, including any activity within a public right-of-way, shall be commenced by a franchisee until all required permits and approvals have been obtained from the city and other authorities. Any such permit or approval may impose conditions that are necessary to protect structures in the public right-of-way, to ensure the proper restoration of the public right-of-way and any structures located therein, to provide for protection and the continuity of pedestrian and vehicular traffic, and otherwise to protect the public's utilization of the public right-of-way.

(c) The construction, operation and maintenance of a cable system shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, as amended, the National Electrical Safety Code, the National Electric Code and other applicable federal, state and local laws and regulations.

(d) All cable system transmission, distribution and other lines, equipment and structures shall be located and installed so as to cause minimum interference with the rights and convenience of property owners.

(e) All installation of electronic equipment shall be of a permanent nature, using durable components.

(f) Any cable system antennae and their supporting structures shall be constructed, painted, lighted and maintained in accordance with applicable rules and regulations of the Federal Aviation Administration and other applicable state and local laws and regulations.

(g) All of a franchisee's plant and equipment, including, but not limited to, its antennae site, head-end, distribution system, towers, house connections, structures, poles, wires, cable, coaxial cable, fiber optic cable, fixtures and apparatuses shall be constructed, reconstructed, installed, located, erected, replaced, removed, repaired, operated and maintained in accordance with good engineering practices, and shall be performed by experienced and properly trained maintenance and construction personnel so as not to endanger or unreasonably interfere with any public right-of-way or the use thereof, with any improvements located therein or with the legal rights of any property owner, and so as not to unnecessarily hinder or obstruct the public's use of the right-of-way, including pedestrian and vehicular traffic.

(h) All safety practices required by law shall be used during construction, maintenance and repair of a cable system. A franchisee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents that are likely to cause damage, injury or nuisance to the public.

(i) A franchisee shall not locate facilities, equipment or fixtures where they will interfere with, or in a manner which will cause them to interfere with, any gas, electric, telephone, water, sewer or other utility facility or equipment; nor shall a franchisee, through its facilities, equipment or fixtures, obstruct or hinder in any manner the various utilities serving the residents and businesses of the city or their use of any public rights-of-way.

(j) Any public right-of-way, public property or private property that is disturbed or damaged during, or as a result of,

the construction, reconstruction, repair, replacement, relocation, operation or maintenance of a cable system shall be promptly repaired by the franchisee, at its sole expense.

(k) A franchisee shall, by a time specified by the city and at its sole expense, protect, support, temporarily or permanently disconnect, temporarily or permanently remove or relocate, or take other specific action identified by the city with respect to any of its facilities, equipment, fixtures or other property when required by the city by reason of any of the following: traffic conditions; public safety demands; public right-of-way relocation, vacation, construction, regrading, maintenance or repair (including resurfacing or widening); construction undertaken by the city; construction, installation, replacement or repair of, or other work on, sewers, drains, water pipes, power lines, signal lines, tracks or any other type of communications system, public improvement or public utility by the city or any entity providing utility services to residents and businesses of the city; or any other activity undertaken for the general welfare; provided, that the franchisee may, in all such cases, abandon its property in place, so long as the city consents to the abandonment and the abandonment is done in accordance with any terms and conditions established by the city, including the removal of the abandoned property at the franchisee's sole expense.

(l) If a franchisee is required to take action with respect to its property in order to accommodate the construction, operation, maintenance or repair of, or a similar activity involving, the facilities, equipment, fixtures or other property of another person who is authorized to use the public rights-of-way, a franchisee shall take the action requested. The city may resolve disputes between the franchisee and other persons who are authorized to utilize public rights-of-way as to the responsibility for the costs associated with the action undertaken by the franchisee, where the parties are unable to do so themselves and resolution of the dispute is not governed by a contract between the parties or federal or state law or regulation.

(m) In the event of an emergency, or where a cable system creates or is contributing to an imminent danger to health, safety or property, the city may remove, disconnect, relay, repair or relocate, or take any other necessary action with respect to, any or all parts of the cable system without prior notice to the franchisee.

(n) A franchisee shall, on the request of any person holding a permit issued by the city to move a building, temporarily raise or lower its wires and other facilities to permit the moving of the building. The expense of such temporary removal or raising or lowering of facilities shall be borne by the person requesting same, and the franchisee may require such payment in advance,

except in the case where the requesting person is the city, in which case no payment shall be required. The franchisee shall be given at least 48 hours' advance notice of any building movement under this subsection.

(o) A franchisee may trim trees that overhang a public right-of-way so as to prevent the branches of such trees from coming in contact with the wires and cables of its cable system. However, no such tree trimming by a franchisee may take place unless pursuant to a tree trimming plan that has been reviewed and approved by the administrator. Moreover, any such tree trimming may, at the option of the city, be performed by the city itself, and the costs of the trimming shall be paid by the franchisee.

(p) In all areas of the city where electric utility lines or telephone lines, or both, are located overhead, all trunk, feeder, drop cables and lines, and other facilities, associated with a franchisee's cable system may be constructed, and may thereafter continue to be located (except as provided below), overhead. In all areas of the city where electric utility and telephone lines are located underground, all trunk, feeder, and drop cables and lines, and other facilities, associated with a franchisee's cable system shall be constructed, and thereafter shall continue to be located, underground, and any such facilities of the franchisee that are already constructed in said areas shall be relocated underground, and all such undergrounding shall be undertaken at the sole expense of the franchisee. Whenever and wherever electric utility lines and telephone lines are relocated from overhead to underground placement in an area of the city, all cables, lines and other facilities associated with a cable system in the area that are located overhead shall be relocated underground no later than 180 days following the undergrounding of the electric and telephone lines, or by another date determined by the city council.

(q) A franchisee shall use, with the owner's permission, existing underground utility conduits or overhead utility facilities whenever feasible, and shall not erect any poles or other structures or facilities in any public right-of-way without the express permission of the administrator and the director of transportation and environmental services. Copies of agreements for a franchisee's use of underground conduits and overhead utility facilities shall be filed with the administrator, if required by a franchise agreement or upon city request. To the extent and in the manner required by federal or state law, the owners of poles supporting electric, telephone or other utility lines shall make such poles available to a franchisee.

(r) The city shall have the right to install and maintain free of charge upon any poles owned by a franchisee any cables, lines, wires and other fixtures and facilities used for city communications purposes, so long as they do not unreasonably interfere with the operations of the franchisee's cable system.

(s) Except as otherwise provided in a franchise agreement, prior to the construction or installation of any towers, poles, underground conduits or other structures or facilities associated with a cable system, or the construction, upgrade or rebuild of a cable system or any part thereof, a franchisee shall submit to the administrator and any other persons designated by the administrator, for their approval, a concise description of the work to be performed, including engineering drawings and a map and plans indicating the proposed location of all proposed structures and facilities. No construction or installation work shall be commenced by the franchisee until approval therefor has been received from the administrator.

(t) Any contractor or subcontractor who assists in the construction, installation, operation, maintenance or repair of, or who undertakes any other work on a, cable system shall be properly licensed under the laws of the commonwealth and this code. Any such contractor and subcontractor shall perform work in compliance with all applicable provisions of law and any applicable franchise agreement, and the franchisee shall be responsible for ensuring that the work is so performed.

Sec. 9-3-123 *Use of public property.*

(a) In the event that the location or the grade, line or other characteristic of any public right-of-way that a franchisee is authorized to use and occupy is altered by the city, the franchisee shall, at its sole expense, relocate or otherwise modify its cable system so as to conform to the new location or the new grade, line or other right-of-way characteristic.

(b) In the event that an alteration is made to a sanitary or storm sewer or to any other structure or facility maintained by the city or the Alexandria Sanitation Authority and located in a public right-of-way, the franchisee shall, at its sole expense, relocate or otherwise modify its cable system or any part thereof as necessary to conform to such alteration. If any alternation to such a sanitary or storm sewer or to another structure or facility maintained by the city or the Alexandria Sanitation Authority is required on account of the presence in a public right-of-way of a franchisee's cable system or a part thereof, any such alternation shall be made at the sole expense of the franchisee.

(c) During any work associated with or performed on its cable system, the franchisee shall, at its sole expense, protect and, if damaged, repair any and all existing structures and facilities located within or adjacent to a public right-of-way, regardless of the person owning such structures and facilities.

(d) Any work by a franchisee in a public right-of-way shall be undertaken only after all city approvals have been obtained,

and shall be performed in the manner required by this code and by the city as part of such approvals.

Sec. 9-3-124 Interference with public projects.

Nothing in this chapter shall be construed to interfere with the right of the city and other governmental entities to construct, operate, repair and maintain public improvements and public works of every description, whether or not within a public right-of-way, and, in the event that a cable system interferes or poses a danger of interfering with the construction, operation, repair or maintenance of any public improvement or public works, the franchisee, at its sole expense, either shall undertake such protective measures identified by the city or other governmental entity as necessary to protect such improvement or works, or shall relocate its cable system, or any part thereof, as directed by the city or other governmental entity.

Sec. 9-3-125 Publicizing proposed construction and other work.

A franchisee shall publicize scheduled construction work by causing written notice of such work to be delivered to the administrator at least one week prior to the commencement of the work and by notifying those persons most likely to be affected by the work, by telephone, in person, by mail, by distribution of flyers to residences, or in another manner approved by the administrator that is reasonably calculated to provide adequate notice. In addition, before entering onto any person's property, a franchisee shall make a reasonable effort to contact the property owner or, in the case of residential property, the property's occupant; provided that, if a franchisee must enter a single family home or another structure used as a person's residence (e.g., a condominium or apartment), it shall schedule an appointment to do so at the convenience of the owner or occupant.

Sec. 9-3-126 Continuity of service.

(a) It is the right of all subscribers located in a franchisee's franchise area to receive all available services from the franchisee, so long as their financial and other obligations to the franchisee are satisfied.

(b) A franchisee shall ensure that all subscribers receive continuous uninterrupted service. At the city's request, a franchisee shall continue to operate its cable system for a temporary period (the "transition period") whenever necessary following the termination, sale or transfer of its franchise to maintain service to subscribers, and it shall cooperate with the city to ensure an orderly transition to another franchisee. The transition period shall be no longer than the reasonable period required for the selection of another franchisee and the construction of a replacement system, and shall be no longer than

36 months, unless extended by the city for good cause. During such transition period, a franchisee shall continue to be obligated to comply with the terms and conditions of its franchise agreement, this chapter and other applicable laws and regulations.

(c) If a franchisee abandons its cable system during the term of its franchise, or fails to operate its system in accordance with the terms of its franchise agreement and this chapter during the term of its franchise or any transition period, the city may, at its option, operate the system, designate another entity to operate the system temporarily until the franchisee restores service under conditions acceptable to the city or until the franchise is revoked and a new franchisee is providing service, or obtain an injunction requiring the franchisee to continue operations. If the city is required to operate or designate another entity to operate the cable system, the franchisee shall reimburse the city or its designee for all reasonable costs and damages incurred that are in excess of the revenues derived from the operation of the cable system.

(d) The city shall be entitled to injunctive relief under the preceding subsection if:

(1) The franchisee fails to provide cable service in accordance with its franchise and franchise agreement for more than 20 percent of the franchise area for 96 consecutive hours, unless the city authorizes a longer interruption of service; or

(2) The franchisee, for any period following notice from the city, willfully and without cause refuses to provide cable service in accordance with its franchise and franchise agreement over any portion of the franchise area.

ARTICLE J

Operation and Reporting Provisions

Sec. 9-3-151 *Open books and records.*

(a) The city shall have the right, upon 24 hours written notice, to inspect and copy, during normal business hours and at such location as the city may designate, all books, receipts, maps, plans, financial statements, contracts, service complaint logs, performance test results, records of requests for service, computer records, codes, programs, disks and other storage media, and other like materials which may be relevant to the franchisee's compliance with the requirements and obligations imposed upon it by this chapter, a franchise agreement or applicable law. The right of the city under this section to inspect extends to the materials identified above that are in the possession or under the control of the franchisee, of an affiliate of the franchisee, and of any other person responsible

for managing and administering the cable system. The franchisee is responsible for collecting the materials covered by this section and producing it at the location designated by the city or, in the case of materials meeting the requirements of section 9-3-156, at its option, for paying all costs incurred by the city in inspecting the materials where they are located. Upon a request for confidentiality by franchisee, information obtained by the city pursuant this section shall be made available only to persons needing access to the materials in order to perform their responsibilities on behalf of or for the city and, as to all other persons, shall, to the extent permitted by law, be treated as confidential.

(b) A franchisee shall maintain separate financial records governing its operations in the franchise area.

(c) Access to a franchisee's records shall not be denied by the franchisee on the basis that said records contain "proprietary" information. A franchisee's refusal to provide information required under this section to the city shall be grounds for revocation of the franchise.

(d) A franchisee shall maintain a file of the records that are to be open to public inspection under FCC rules and regulations.

Sec. 9-3-152 *Communication with regulatory agencies.*

Upon request by the administrator, a franchisee shall file with the administrator, in a form acceptable to the administrator, all reports required by the FCC, including, but not limited to, proof of performance test results, equal employment opportunity reports and all petitions, applications and communications of all types regarding the cable system, or a group of cable systems of which the franchisee's cable system is a part, submitted or received by the franchisee, an affiliate or any other person on the behalf of the franchisee, either to or from the FCC, the Securities and Exchange Commission or any other federal or state regulatory commission or agency having jurisdiction over any matter affecting operation of the franchisee's system. Public access to such reports received by the city shall not be denied.

Sec. 9-3-153 *Reports.*

(a) Annual report. No later than 90 days following the close of its fiscal year, a franchisee shall submit a written report to the city council, in a form directed by the administrator. The report shall be presented at a regular meeting of the council no earlier than 10 days following submission of the report. The report shall include the following information pertaining to the franchisee's immediately preceding fiscal year:

(1) a summary of the year's activities in the development of the cable system, including but not limited to services begun or discontinued and subscribers gained or lost;

(2) a summary of the year's complaints, identifying both the number and nature of the complaints received and an explanation of their dispositions;

(3) an audited and certified financial report for the year, including the following: a year-end balance sheet; an income statement showing gross revenues for the year, subscriber revenue from each category of service and non-subscriber revenue from each source, line item operating expenses, depreciation expense, interest expense and taxes paid; a statement of cash flows; and a depreciation schedule;

(4) a statement of all capital expenditures, including for construction and equipment, made during the year;

(5) a statement of construction plans and major equipment expenditures for the current and the next fiscal years;

(6) an ownership report, indicating all persons who at any time during the year held an ownership interest in the franchisee of five percent or more;

(7) a list of the individuals who served during the year as officers and as members of the board of directors of the franchisee;

(8) an organizational chart (i) identifying all persons with more than a five percent ownership interest in the franchisee and stating, for each such person, its legal form (e.g., corporation, limited liability company, partnership, natural person), and (ii) for each person with more than a thirty-three percent ownership interest in the franchisee, identifying all persons with more than a thirty-three (33) percent interest in the ownership of said person and stating their legal form; and

(9) such other information as the administrator or the city council may direct.

(b) Annual opinion survey report. The franchisee shall prepare and submit to the administrator, by August 31 of each year or such other date as set by the administrator, the results of an opinion survey which shall identify the satisfaction and dissatisfaction among the franchisee's subscribers and the cable-related needs and interests of the Alexandria community that are being met and those that are not being met by the franchisee. The opinion survey shall be conducted in conformance with such requirements, including supervision, as the administrator and the city council may direct.

(c) Annual plant survey report. The franchisee shall prepare and submit to the administrator, by August 31 of each year or such other date as set by the administrator, a complete survey of and a full report on its plant. The purpose of the report shall be to assure the city that the technical standards of the FCC are being maintained. This plant survey shall include appropriate electronic measurements and shall be conducted in conformance with such requirements, including supervision, as the administrator and the city council may direct.

(d) Special reports and documents. A franchisee shall deliver the following special reports and documents. Unless otherwise specified in the subsections below, these reports and documents shall be delivered to the administrator within five days of their completion, filing or receipt by, or on behalf of, the franchisee.

(1) A report shall be prepared and submitted to the administrator bimonthly that describes any cable system construction that is ongoing, including any system rebuild.

(2) Any notice of deficiency or forfeiture or any other document issued by any state or federal agency instituting an investigation or a civil or criminal proceeding regarding the cable system, the franchisee or any affiliate of the franchisee, to the extent the same may affect the franchisee's operations in the city, shall be filed with the administrator.

(3) Any petition or request for protection under bankruptcy laws filed by or on behalf of, or any judgment related to a declaration of bankruptcy by, the franchisee or any person holding more than a twenty percent ownership interest in the franchisee shall be filed with the administrator.

(4) Any report or other document containing or discussing technical tests, or the results of such tests, required by the city as specified in this chapter or a franchise agreement shall be filed with the administrator.

(5) A report shall be filed with the administrator within 30 days of the end of each calendar quarter, stating the number of service calls, by type of service requested, received by the franchisee during the prior quarter and, for each type of service, the percentage of service calls compared to the subscriber base.

(6) A report shall be filed with the administrator within 30 days of the end of each calendar quarter, (i) stating the number of outages and service degradations that occurred during the prior quarter, (ii) identifying separately each planned outage that occurred during the quarter, the time it occurred, its duration and the estimated area and number of subscribers affected, (iii) identifying each unplanned outage or

service degradation that occurred during the quarter, the time it occurred, its duration and the area and number of subscribers affected, and (iv) stating the total hours of outages and service degradations, the total number of viewing hours that subscribers lost due to the outages and degradations (i.e., hours of outages and degradations multiplied by the number of subscribers affected), and the percentage such viewing hours were of the total potential subscriber viewing hours during the quarter.

(e) General reports. A franchisee shall prepare and file with the administrator, at the times and in the form prescribed by the administrator, such additional reports with respect to the franchisee's operations, affairs, transactions or property as may be reasonably necessary or appropriate to the performance of any of the rights, functions or duties of the city in connection with this chapter or the franchise agreement.

Sec. 9-3-154 *Records required.*

(a) A franchisee shall at all times maintain:

(1) records of complaints received. The term "complaints" as used herein and in this chapter refers to any written or verbal statement of dissatisfaction with one or more aspects of a cable system, including service outages, the technical quality of video transmissions, and the performance by franchisee's employees, but not including the quality or nature of programming, that a franchisee receives in its administrative offices or in the field from a subscriber, whether or not the complaint requires a service call;

(2) a full and complete set of plans, records and "as built" maps showing the exact location of all cable system equipment installed or in use in the city, exclusive of subscriber service drops;

(3) records of service outages, indicating date, duration, area and the estimated number of subscribers affected, type of outage, and cause;

(4) records of service calls for repair and maintenance, indicating the date and time service was requested, the date of acknowledgement, the date and time service was scheduled (if it was scheduled), the date and time service was provided, and (if different) the date and time the problem was solved; and

(5) records of installation/reconnection and requests for service extension, indicating date of request, date of acknowledgment, and the date and time service was extended.

(b) A franchisee shall maintain records and provide information in addition to the records and information specified

in subsection (a) as are reasonably required by the administrator.

Sec. 9-3-155 *Performance evaluation.*

(a) The city may, at its discretion, hold performance evaluation sessions. All such evaluation sessions shall be open to the public.

(b) Topics that may be discussed at an evaluation session may include, but are not limited to, cable system performance and construction, franchisee compliance with this chapter and a franchise agreement, customer service and complaint response, subscriber privacy, services provided, programming offered, service rate structures, franchise fees, penalties, free or discounted services, applications of new technologies, judicial and FCC filings, and line extensions.

(c) During the review and evaluation by the city, a franchisee shall cooperate with the city and shall provide such information and documents as the city may need to reasonably perform its review.

Sec. 9-3-156 *Voluminous materials.*

If any books, records, maps, plans or other documents requested from a franchisee by the city are too voluminous to copy or move, or for security reasons cannot be moved, then a franchisee may request that the city's inspection take place where such documents are located rather than at a location designated by the city, provided that the franchisee must (i) make necessary arrangements for copying, at its sole expense, the documents selected by the city after review, and (ii) pay all transportation, lodging and other travel-related expenses incurred by the city in inspecting the documents or having the documents inspected by its designee where the documents are located. The parties agree that any payments made by the franchisee under this section are not a franchise fee and fall within one or more of the exceptions in the Cable Act, 47 U.S.C. § 542(g)(2).

Sec. 9-3-157 *Retention of records; relation to privacy rights.*

A franchisee shall take all reasonable steps to ensure that it is able to provide the documents and information which must be provided or may be requested under this chapter or a franchise agreement, including by providing appropriate subscriber privacy notices. Nothing in this section shall be read to require a franchisee to violate the Cable Act, 47 U.S.C. § 551. A franchisee shall be responsible for redacting from documents any data that federal law prevents it from providing to the city. Unless otherwise required by federal law, records required to be

complied by this chapter shall be maintained by a franchisee for at least five years.

ARTICLE K

Consumer Protection Provisions

Sec. 9-3-171 *General provisions.*

A franchisee shall comply with the customer service standards set forth in this article. A franchisee shall also comply with any additional or stricter customer service standards or requirements established by federal or state law or regulation. Nothing in this article shall relieve a franchisee of its obligation to comply with applicable consumer protection laws.

Sec. 9-3-172 *Telephone and office availability.*

(a) A franchisee shall maintain an office at a convenient location in the city that shall be open during the hours of 8:00 a.m. to 9:00 p.m., Monday through Friday, 8:00 a.m. to 5 p.m. on Saturday, and, if found by the administrator to be reasonably necessary, 12:00 p.m. to 5:00 p.m. on Sunday, to allow subscribers to request service, pay bills and conduct other business. A franchisee shall perform service calls, installations and disconnects during at least the hours 8:00 a.m. to 8:00 p.m., Monday through Saturday, and shall respond to outages 24 hours a day, seven days a week. A franchisee shall establish a publicly-listed, local toll-free telephone number. The phone at such number must be answered by customer service representatives at least during the hours of 8:00 a.m. to 8:00 p.m., Monday through Saturday, for the purpose of receiving requests for service, inquiries and complaints from subscribers. After those hours, a franchisee shall arrange for the phone to be answered so that customers can register complaints and report service problems on a 24-hour per day, seven-day per week basis, and so that the franchisee can respond to service outages as required herein.

(b) Telephone answering time shall not exceed 30 seconds, and the time to transfer a call to a customer service representative, including hold time, shall not exceed an additional 30 seconds. This standard shall be met 95 percent of the time, measured quarterly. Under normal operating conditions, customers shall receive a busy signal less than three percent of the time. When the business office is closed, an answering machine or service capable of receiving and recording service complaints and inquiries shall be employed. The after-hours answering service shall comply with the same telephone answer time standards set forth in this subsection. Upon request of the administrator, a franchisee shall supply statistical data to verify that it has met the standards set forth in this subsection.

(c) A franchisee shall hire sufficient staff fluent in both Spanish and English so that it can adequately respond to customer inquiries, complaints and requests for service in its office, over the phone and at a subscriber's residence.

Sec. 9-3-173 *Scheduling work.*

(a) All appointments for service, installation or disconnection shall be specified by date. A franchisee shall identify a specific time at which the work shall be done, or offer a choice of time blocks which shall not exceed four hours in length. A franchisee shall also, upon request, schedule service installation calls outside normal business hours, for the convenience of the customer, provided the customer pays a reasonable additional charge for such service. If, at any time, an installer or technician believes it impossible to make a scheduled appointment time, an attempt to contact the subscriber shall be made prior to the time of appointment, and the appointment shall be rescheduled at a time convenient to the subscriber.

(b) Subscribers who have experienced two missed appointments due to the fault of a franchisee, if the appointment was for installation, shall receive installation free of charge or other cable services of comparable value; if such installation was to have been free of charge or if the appointment was for a reason other than installation, subscribers shall receive three months of the franchisee's most widely subscribed-to service tier free of charge or other cable services of comparable value.

(c) With regard to mobility-limited subscribers, upon their request, a franchisee shall arrange for pickup and/or replacement of converters or other franchisee equipment at the subscribers' address or by a satisfactory equivalent (such as the provision of a postage-prepaid mailer).

(d) Requests for service, repair and maintenance must be acknowledged by a trained customer service representative of the franchisee within 24 hours or prior to the end of the next business day, whichever is earlier. A franchisee shall respond to all other inquiries, including billing inquiries, and to all complaints within five business days of the inquiry or complaint.

(e) Standard installations made within 125 feet of a franchisee's existing distribution system shall be completed within seven business days after the order is placed. Other installations shall be commenced as soon as reasonably possible after the order is placed and thereafter diligently pursued to completion. Repairs and maintenance for service interruptions and other repairs not requiring in-unit work must be commenced within 24 hours of the subscriber request or complaint, and thereafter diligently pursued to completion. Work on all other requests for service shall be commenced by the close of the next

business day after notification of the service problem, and shall be completed within three days from the date of the initial request. Where, for reasons beyond the franchisee's control, service work cannot be completed within the specific time period set out in this subsection even with the exercise of all due diligence, the franchisee shall complete the work in the shortest time reasonably possible. Except as federal law requires, no charge shall be made to a subscriber for repairs or maintenance work by a franchisee, except for the cost of repairs to the franchisee's equipment or facilities where it can be documented that the equipment or facility was damaged by the subscriber.

(f) A franchisee shall not cancel a service or installation appointment with a customer after the close of business on the business day immediately preceding the appointment.

(g) The standards set out in subsection (d) and in subsection (e) shall be met by a franchisee at least 95 percent of the time, measured on a quarterly basis.

Sec. 9-3-174 Notice to subscribers.

(a) A franchisee shall provide each subscriber, at the time cable service is installed and at least once a year thereafter, written instructions for placing a service call, filing a complaint or requesting an adjustment. As part of the notice provided at the time of installation, the franchisee shall provide the telephone number of the city office responsible for receiving customer complaints, a schedule of rates and charges, a statement of channel positions, a description of programming services, a copy of the service contract between the franchisee and the subscriber, a description of delinquent subscriber disconnect and reconnect procedures, and a description of other franchisee policies and procedures that may affect its subscribers. Copies of the installation and the annual notice shall be provided to the administrator. Except as otherwise provided below in article L, a franchisee shall provide the administrator and all subscribers at least 60 days' prior notice of any significant changes in the information that is required by this subsection to be provided to subscribers. Such notice shall be in writing, either delivered or mailed to subscribers and the administrator, and by announcement on the cable system.

(b) A franchisee's promotional materials, announcements and advertising of residential cable service to subscribers and the general public, where price information is listed in any manner, shall clearly and accurately disclose price terms. In the case of pay-per-view or pay-per-event programming, all promotional materials shall clearly and accurately disclose price terms. In the case of telephone orders, a franchisee shall take reasonable steps to ensure that price terms are clearly and accurately disclosed to potential customers.

(c) A franchisee shall maintain a file containing a copy of each notice provided to subscribers as required by this article, as well as a copy of each promotional offer made to subscribers.

Sec. 9-3-175 Interruptions of service.

A franchisee may intentionally interrupt service on the cable system only for good cause and for the shortest time possible and, except in emergency situations, only after a minimum of 48 hours prior notice to subscribers and the administrator of the anticipated service interruption; provided, that planned maintenance that does not require more than two hours interruption of service and that occurs between the hours of 12:00 a.m. and 6:00 a.m. shall not require any notice to subscribers, and notice of such interruption to the administrator may be given at least 24 hours prior to the anticipated service interruption.

Sec. 9-3-176 Billing.

(a) A franchisee's first billing statement after a new installation or service change shall be prorated as appropriate and shall reflect any security deposit.

(b) A franchisee's billing statement shall be clear, concise and understandable, shall itemize each category of service and equipment provided to the subscriber, and shall state the charge for each such category of service and equipment.

(c) A franchisee's billing statement shall show a specific payment due date that is the later of (i) 20 days after the date the statement is mailed, or (ii) the fifteenth day of the month in which the service being billed is rendered.

(d) A franchisee's billing statement shall notify subscribers that they can remit payment in person at the franchisee's office in the city and shall state the address of that office.

(e) Subscribers shall not be charged a late fee or otherwise penalized for any failure by a franchisee, including a failure to timely or correctly bill the subscriber or to properly credit the subscriber for a payment timely made.

(f) The account of any subscriber shall be credited a prorated share of the monthly charge if the subscriber is without service or service is substantially impaired for any reason for a period exceeding four hours during any 24-hour period, except where the franchisee can show that the service outage or impairment was caused by the subscriber or was part of a planned outage that occurred between the hours of 12:00 a.m. and 6:00 a.m.

(g) A franchisee shall respond to all written billing complaints from a subscriber within 30 days of its receipt of the complaint.

(h) Refund checks to subscribers shall be issued no later than (i) the earlier of the subscriber's next regular billing date or 30 days following resolution of the refund request, or (ii) where service has been terminated, the date on which all equipment has been returned to the franchisee.

(i) Credits for service shall be issued no later than the subscriber's next regular billing date after the determination that a credit is warranted.

Sec. 9-3-177 *Disconnection/downgrades.*

(a) A subscriber may terminate service at any time.

(b) A franchisee shall promptly disconnect from its cable system, or downgrade the level of service of, any subscriber who so requests. No period of notice prior to voluntary termination or downgrade of service may be required of subscribers by a franchisee. No charge may be imposed for any voluntary disconnection, and downgrade charges must comply with the requirements of federal law. So long as the subscriber returns equipment necessary to receive a service within five business days of the disconnection, no charge may be imposed by a franchisee for any cable service delivered after the date of the disconnect request.

(c) A subscriber may be asked, but not required, to disconnect a franchisee's equipment and return it to the franchisee's business office.

(d) Any security deposit and other funds due a subscriber shall be refunded on disconnected accounts after the converter has been recovered by the franchisee. Any refund to which a subscriber who has requested service disconnection is due shall be received by the subscriber no more than 30 days following the date on which the franchisee received the disconnection request.

(e) If any subscriber fails to pay a monthly subscriber or other fee or charge, a franchisee may disconnect the subscriber's service outlet; provided, that no such disconnection shall be effected until after 45 days from the due date of the monthly subscriber fee or other charge, and after 10 days from the subscriber's receipt of written notice of the franchisee's intent to disconnect following expiration of such 45-day period. If the subscriber pays all amounts due, including late charges and any special charges of which the subscriber has been notified, before the date scheduled for disconnection, the franchisee shall not disconnect service. After disconnection, upon payment by the subscriber in full of all due fees or charges, including any

reconnection charge, the franchisee shall promptly reinstate service.

(f) A franchisee may immediately disconnect a subscriber if the subscriber is damaging or destroying the franchisee's cable system or equipment. After disconnection, the franchisee shall restore service after the subscriber provides adequate assurance that the subscriber has ceased the practices that led to disconnection, and after the subscriber has paid all proper fees and charges, including any reconnect fees and any amounts owed the franchisee for damage to its cable system or equipment.

(g) A franchisee may disconnect a subscriber who causes signal leakage in excess of federal limits. It may do so after five days written notice to the subscriber, if the subscriber fails to take steps to correct the problem. It may also do so without notice, provided that, immediately after the disconnection, the franchisee notifies the subscriber of the problem and, once the problem is corrected, reconnects the subscriber without charge.

(h) Except as federal law may otherwise provide, a franchisee shall remove its property from a subscriber's premises within 30 days of the termination of service, whether the termination is voluntarily or involuntarily. If a franchisee fails to remove its property in that period, the property shall be deemed abandoned.

Sec. 9-3-178 *Changes in service.*

In the event a franchisee decides to alter the service (e.g., by retiering or restructuring service) that it provides to a class of subscribers, it shall provide each subscriber a 60 days advance notice that explains the substance and full effect of the alteration and provides to the subscriber the right within the sixty-day period to select any combination of services offered by the franchisee. Except as federal law otherwise provides, a subscriber may not be required to pay any charge (other than the regular service fee), including an upgrade or downgrade charge, in order to receive the services selected; provided, that the franchisee may impose its regular installation charge if installation work is required by a subscriber's selection of services. No charge may be made for any service or product that a subscriber has not affirmatively selected. A subscriber's payment of the regular monthly bill shall not in and of itself constitute an affirmative selection of a service or product.

Sec. 9-3-179 *Deposits.*

A franchisee may require a reasonable, non-discriminatory deposit on equipment that is provided to subscribers.

Sec. 9-3-180 *Parental control option.*

A franchisee shall provide control devices to any subscriber who wishes to be able to block the video or audio portion of any, or any channels of, cable service programming entering the subscriber's home. This control option shall be provided at no charge, except as federal law may otherwise provide.

Sec. 9-3-181 *Exclusive contracts and anti-competitive acts prohibited.*

(a) Except as otherwise provided by federal law or a franchise agreement, a franchisee shall not enter into an exclusive contract for the provision of cable service with any person, or demand the exclusive right to serve a person or location as a condition of extending service.

(b) A franchisee shall not engage in acts that have the purpose or effect of limiting competition for the provision of cable service or services similar to cable service in the city, except for such actions as are expressly authorized by federal or state law.

ARTICLE L

Rate Regulation

Sec. 9-3-201 *Scope and applicability.*

(a) This article governs the regulation of rates and charges for basic cable service and equipment within the city for any franchisee which has been notified that (i) the city has been certified by the FCC to regulate its basic cable service and equipment rates and charges, and (ii) the city has adopted regulations governing the regulation of basic cable service and equipment rates and charges. The provisions set forth in this article are intended to be consistent with all regulations of the FCC governing the regulation of basic cable service rates and equipment charges, and the city will regulate and interpret the provisions of this article so that they are consistent with such regulations, as if the regulations were set forth herein. A franchisee is prohibited from engaging in any activity which it is prohibited from engaging in under the regulations of the FCC.

(b) For purposes of this article, the term "equipment" means all equipment and services subject to regulation under 47 C.F.R. § 76.923.

Sec. 9-3-202 *Local regulatory framework.*

(a) The city shall regulate all rates and charges for cable service imposed on subscribers by a franchisee, except to the extent the city is prohibited from doing so by law, and no such rate or charge may be imposed or increased without the prior approval of the city except such rates and charges that the city is prohibited from regulating. Subject to the foregoing, the imposition of any rate or charge for cable service, or the increase in any such rate or charge, without the prior approval of the city shall be illegal. A franchisee is prohibited from requesting or requiring a subscriber to pay an illegal rate or charge as a condition of providing cable service.

(b) All rates and charges that are subject to regulation by the city must be reasonable. The city may, by ordinance or by regulation proposed by the city manager and approved by council, adopt such rules, procedures and standards as it deems necessary to implement rate regulation.

(c) By its acceptance of a franchise, a franchisee agrees that no costs associated with franchise obligations that are in effect on the date the franchisee is notified that it is subject to rate regulation may be passed through to subscribers in any form.

(d) In addition to any filing fees imposed for rate filings by this chapter, a franchisee shall pay the reasonable out-of-pocket costs incurred by the city in conducting rate regulation for the franchisee, including but not limited to consultants' fees and costs. By its acceptance of a franchise under this chapter, a franchisee agrees that such filing fees and consultants' fees and costs are not franchise fees, but fall within one of the exceptions in the Cable Act, 47 U.S.C. § 542(g)(2).

Sec. 9-3-203 *Schedule of rates, rules and regulations.*

A franchisee shall prepare and file with the administrator a schedule of rates and charges for all services offered to the subscribing public under its franchise. The schedule shall state the cost of each offered service or combination of offered services, together with all rules and requirements affecting the installation, maintenance and provision of service or which otherwise affect the quality or cost of service to a subscriber. The schedule shall be printed and filed in the form and manner specified by the administrator and within the time periods set out in section 9-3-207. The schedule shall be made available for public inspection during normal business hours, in an accessible and convenient place in the offices of the franchisee. Copies of the schedule shall be provided to subscribers in accordance with section 9-3-204.

Sec. 9-3-204 *Notice to subscribers.*

(a) A franchisee shall provide each subscriber, at the time cable service is installed and at least once a year thereafter, written instructions for placing a service call, filing a complaint or requesting a billing adjustment. As part of the notice provided at installation, a franchisee shall provide the telephone number of the city officer responsible for receiving customer complaints, a schedule of rates and charges for cable service and equipment, a statement of channel positions, a description of programming services, a copy of the service contract between franchisee and the subscriber, a description of delinquent subscriber disconnect and reconnect procedures, and a description of other franchisee policies and procedures that may affect its subscribers. Copies of the installation and the annual notices shall be provided to the administrator.

(b) A franchisee shall maintain a file containing a copy of each notice provided to subscribers under this section. This file shall be available for inspection upon the request of the administrator.

Sec. 9-3-205 *Departure from schedules prohibited.*

No rate or charge shall be made or billed to a subscriber, nor shall any service be provided, by or on behalf of a franchisee unless the franchisee has prepared and filed the schedule as required by section 9-3-203. Except under circumstances as may be specified in its schedule, a franchisee shall not impose, collect or receive any rates or charges other than those specified in its schedule. Nor shall a franchisee refund or remit, in any manner or by any device, any portion of compensation received from a subscriber or confer any special privilege or concession upon a subscriber, except as may be specified in its schedule.

Sec. 9-3-206 *Discrimination and preferences prohibited.*

A franchisee shall not, by a special rate schedule, rebate, concession or any other device or practice, impose upon or collect from any subscriber, directly or indirectly, rates or charges that differ from the rates and charges that the franchisee imposes upon and collects from other subscribers for a like and contemporaneous service under substantially similar circumstances or conditions; provided, that this section shall not be construed to prohibit the establishment of special rates or charges for subscribers who are 65 years of age or older or are handicapped persons, or the establishment of other special rates or charges that are permitted by law.

Sec. 9-3-207 *Establishment of rates, charges and rules.*

(a) A franchisee's initial schedule of rates, charges and other matters, required by section 9-3-203, shall be filed with the administrator within 60 days of the commencement of service by the franchisee. If a franchisee is providing services on the effective date of this section, it shall file the required schedule with the administrator within 30 days after the effective date of this section.

(b) No change shall be made in the rates, charges and other matters set out in a schedule required by section 9-3-203 and filed with the administrator, except upon not less than 60 days notice to the administrator and each subscriber; provided, that the administrator may, by general regulation or in particular instances, permit changes to be made on lesser notice to correct errors, to provide special or new service, or to address special emergency conditions. Notice of a proposed change in the rates, charges or other matters set out in a schedule shall consist of a statement which shall describes each matter as to which a change is proposed, the manner in which the current schedule treats the matter, the change that is proposed and the reason for the proposed change.

(c) Any proposed change in a schedule of rates, charges and other matters filed with the administrator shall be examined by the administrator for compliance with the requirements of the franchise, this chapter, applicable federal law and FCC regulations, and any specifications established by the administrator governing form. The administrator shall inform the franchisee filing the proposed change, no later than 20 days prior to the effective date of the proposed change, that it is or is not in compliance with such requirements. If found to be not in compliance, the proposed change in the schedule of rates, charges and other matters shall be rejected and returned to the franchisee with a statement of the reasons for the rejection, and thereafter any action implementing the proposed change shall be unlawful, null and void. Any such rejection may be appealed to city council pursuant to section 9-3-215.

Sec. 9-3-208 *Filing and review of rates and charges.*

(a) Rate filings by franchisee.

(1) If a franchisee is notified by the city that its basic service and equipment rates and charges are subject to regulation, it shall file a submission ("rate filing") within 30 days of the notification, justifying its then-existing basic service and equipment rates and charges. All such rates and charges, for all customer classifications, shall be justified. Once a franchisee has been notified by the city that its basic service and equipment rates and charges are subject to regulation, it may not thereafter increase any such rates or

charges without the prior approval of the city. This prohibition applies in all cases, including rate and charge increases announced but not implemented prior to the date of the city notice informing the franchisee that its rates and charges are subject to regulation. In addition to its initial rate filing, franchisee shall file a rate filing for any increase in basic service or equipment rates and charges, and for any new basic service or equipment rate or charge (collectively, a "rate increase"). An "increase" occurs when there is an increase in rates or charges, or a decrease in program or customer services without a corresponding decrease in rates or charges. Rate filings proposing a rate or charge increase shall be filed at least 30 days in advance of the proposed effective date of the increase. This requirement does not alter or eliminate any other notice requirement.

(2) Every rate filing shall be filed with the city's office of citizen assistance, and shall be considered filed on the date that the original and three copies of the filing (including all supporting materials) are received by that office. Information that the franchisee claims is proprietary under section 9-3-213 must be clearly identified and segregated from the remainder of the filing so that the city may determine the manner in which it was used by the franchisee in setting rates.

(3) Subject to any FCC rules governing the burden of proof, a rate filing submitted by a franchisee shall demonstrate that the rates and charges being proposed for basic service and equipment are reasonable. Except as inconsistent with FCC rules:

(i) The rate filing shall state in a cover letter whether it addresses the existing rates and charges of the franchisee or a proposed increase in the franchisee's rates and charges, and shall contain a brief, narrative description of the existing or the proposed increase in rates and charges. The letter shall also identify any rate that is based, in whole or in part, upon cost of service, and identify any pages of the rate filing that contain information that the franchisee claims is proprietary. If the filing proposes an increase in rates or charges, the cover letter shall also state whether any part of the proposed increase is based on an inflation adjustment or an increase in external costs.

(ii) The pages of the rate filing shall be numbered sequentially.

(iii) The rate filing shall contain all applicable FCC forms which shall be correctly completed.

(iv) If the rate filing proposes, for different classes of customers, different rates or charges for basic service, it shall demonstrate that the classifications of

customers and the differences in rates or charges are reasonable and consistent with federal law.

(4) Except as inconsistent with FCC rules:

(i) If a franchisee seeks to support a rate or charge based upon the cost of providing cable service, the city will establish a rate that provides the franchisee an opportunity to recover the reasonable costs associated with providing basic cable service, including a reasonable profit. An expense or investment shall not be presumed to be reasonable merely because the franchisee has incurred or made it.

(ii) If a franchisee seeks to justify all or any part of its rates or charges based upon the cost of providing cable service, then, in addition to information the city requires the franchisee to provide, and unless the city grants a waiver of this provision, the franchisee shall also submit a complete cost of service analysis that shows all expenses it incurs and all revenues derived from its cable system, directly or indirectly, by the franchisee or any person that constitutes a cable operator of the system within the meaning of the Cable Act, 47 U.S.C. § 522(5). This cost of service analysis shall identify the accounting level (as that term is used in the FCC regulations) at which each expense or revenue identified was aggregated, and shall show how the expense or revenue was allocated. The franchisee may not include costs at an accounting level unless it also includes the revenues from that same level that are attributable to the system or to a group of systems of which the system serving the city is a part. The cost of service analysis shall also identify the replacement cost of a comparable cable system and contain a justification for the identified figure. Further, the analysis shall identify the name and address of any person with which the franchisee has a contract, other than a programmer, and which derives revenues from the system, and shall state whether and how the revenues and costs of that person are included in the analysis. In addition, the analysis shall show the rate that is being proposed by the franchisee for each channel on the system and, for each such rate, the derivation of the rate and the application of the rate to yield a basic service rate. The analysis shall also show, for each of the items listed below, the manner in which the item was used in the derivation of the basic service rate:

- (A) operation and maintenance expenses;
- (B) administrative and general expenses;
- (C) programming expenses (identifying retransmission consent costs and copyright fees separately);
- (D) costs for public, educational and governmental access channel programming;

- (E) franchise fee expenses;
- (F) investment in the system and associated depreciation;
- (G) other expenses, including federal, state and local taxes, itemized; and
- (H) the proposed return on equity and the actual interest expense paid by the franchisee.

(iii) Notwithstanding the foregoing, a franchisee seeking to base its rates and charges upon the cost of providing cable service is not required to submit the cost of service analysis described in subsubsection (ii) of this section for equipment rates, and instead may complete, submit and support the costs of equipment using applicable FCC forms and presenting any other information the city deems necessary or appropriate, consistent with FCC regulations. The cost of service analysis submitted to justify basic service rates must show that it does not include equipment costs.

(b) City review.

(1) After receiving a rate filing, the office of citizen assistance shall publish a notice in a newspaper having general circulation in the city that the filing has been received and that, except for those parts which may be withheld as proprietary, it is available for public review. The notice shall state that interested parties may comment on the filing, and shall provide such parties at least ten calendar days from the date of the notice to submit written comments on the filing to the office. The office shall submit any comments it has received, along with the city manager's recommendations on the filing to the city council, and shall provide a copy of those comments and recommendations to the franchisee at least ten calendar days before the consideration of the filing by council. The franchisee may submit a response to the comments and recommendations no later than four calendar days before the date scheduled for consideration of the filing by council. The response shall be filed with the office of citizen assistance and, if submitted in a timely fashion, shall be forwarded to the council.

(2) After conducting a public hearing on the filing and within 30 days of the date of the rate filing, the city council shall issue a written order, which may be in any lawful form, approving the rates and charges proposed in the filing in whole or in part, denying the rates and charges in whole or in part, or tolling the rates and charges in whole or part. If the council takes the latter action, its order shall explain that it requires additional time to review the rate filing, shall identify any deficiencies in the franchisee's filing then known to the

council, and shall state that the franchisee may cure the deficiencies by submitting a supplemental filing as provided in subsection (c) of this section. With respect to a filing that addresses franchisee's existing rates and charges, tolling means that the rates and charges may remain in effect, subject to refund. With respect to a filing that proposes an increase in rates and charges, tolling means that the increase, or the portion thereof, that is tolled may not go into effect. If the council issues an order allowing the rates to go into effect subject to refund, the franchisee shall thereafter maintain an accounting in accordance with 47 C.F.R. § 76.933.

(c) Supplemental filing.

(1) If the city council tolls a rate filing in whole or in part, the franchisee shall file a supplemental filing within 20 days from the date the tolling order issues, containing corrections, if any, to its filing (including any required supplement to its cost of service analysis) and containing, at the option of the franchisee, a response to information and comments presented by interested parties or to the recommendations of the office of citizen assistance, or any additional information necessary to support the filing. A supplemental filing shall be filed in accordance with section 9-3-208(a)(2).

(2) A supplemental filing shall also contain such information, reasonably related to the issues addressed by the filing, as the city directs the franchisee to provide.

(3) In addition to information the city requires the franchisee to provide, unless the city grants a waiver of this provision, and except to the extent inconsistent with FCC rules, a franchisee seeking approval of a rate based, in whole or in part, upon the adjustments for inflation and external costs contemplated by 47 C.F.R. § 76.922(d)(1)-(2) shall submit, as part of its supplemental filing, the following:

(i) as to the adjustment for inflation, a statement relating it to the rates and charges for which the franchisee is seeking approval, and a calculation showing how the adjustment was made;

(ii) as to the adjustment for external costs, a statement relating it to the rates and charges for which the franchisee is seeking approval, and a calculation showing how the adjustment was made;

(iii) as to each external cost (as defined by FCC rules) for which the franchisee seeks an adjustment, a statement describing the make-up of the cost, and the amount of the cost for the two calendar years prior to the year in which the supplemental filing is made and for the portion of such year

prior to the date of the filing, and the projected amount of the cost for the remainder of such year and for the following calendar year;

(iv) if the filing seeks approval of rates and charges based, at least in part, upon one or more increases in programming service costs, the contract for each programming service whose cost has increased, a sworn statement identifying each programming service whose costs increased where the programmer is an affiliate of the franchisee (as defined by FCC regulations), the contract for each programming service whose cost has decreased over the two calendar years prior to the year in which the supplemental filing is made, and, for any contract for programming services that has been in effect less than 12 months, the prior contract for the services; and

(v) a sworn statement by the franchisee's chief financial officer or an independent, certified accountant that:

(A) states that the individual has examined all of the franchisee's external costs (including all programming costs) for the two years immediately prior to the supplemental filing and has offset against the claimed increase in those costs both the amount of any decreases in external costs incurred during such period and the amount by which the increase in external costs (net of such decreases) was below the Gross National Produce Fixed Weight Price Index (GNP-PI), as required by 47 C.F.R. § 76.922(d)(2);

(B) affirms that the franchisee is only seeking to recover external costs to the extent that such costs exceed the GNP-PI; and

(C) affirms that the franchisee has not attempted to recover any increase in the cost of programming purchased by an affiliate, except as authorized in 47 C.F.R. § 76.922(d)(2)(vi).

(4) Upon receipt of a supplemental filing, the office of citizen assistance shall promptly publish a notice in a newspaper with general circulation in the city that the filing has been received and that it is available for public review, except those parts which may be withheld as proprietary. The notice shall state that interested parties may comment on the filing, and shall provide interested parties twenty days to submit written comments on the filing to the office. The office shall submit the comments it receives, along with its recommendations on the filing to the city council, and shall provide a copy of those comments and recommendations to the franchisee at least twenty business days before the consideration of the filing by council. The franchisee may submit a response to the comments and recommendations no later than ten business days before the date scheduled for the council consideration of

the filing. The response shall be filed with the office of citizen assistance and, if timely, shall be forwarded to the council.

(5) After conducting a public hearing on the supplemental filing, the city council shall, within the periods identified in subsection (6), issue a written order, which may be in any lawful form, approving the proposed rate in whole or in part, or denying the proposed rate in whole or in part.

(6) The order specified in subsection (5) shall be issued within 90 days after the tolling order for any rate the franchisee justifies based on the benchmark rates set out in the FCC regulations. The order shall be issued within 150 days of the tolling order for any rate the franchisee justifies on the basis of a cost of service analysis.

Sec. 9-3-209 Provisions generally applicable to rate orders.

(a) Any rate order of the city council shall be effective upon the date and upon such terms and conditions as specified by the council. A rate order shall be released to the public and the franchisee. In any case where the council approves, denies or tolls a rate or charge, orders that a rate or charge may go into effect subject to refund, orders refunds or establishes a rate or charge, a public notice shall be published in a newspaper with general circulation in the city stating that the order has been issued and is available for review in the office of citizen assistance. Any such order shall be in writing, and explain the basis for the city's decision.

(b) Except as prohibited by federal law, the city council may, as part of a rate order, impose terms and conditions on a franchisee that, it concludes, reasonably advance the public interest. Any order establishing rates or charges other than those proposed by the franchisee shall explain why the franchisee's proposed rates or charges were unreasonable and why the rates and charges established by the order are reasonable. In no event may an order establishing rates or charges other than those proposed by the franchisee or requiring a franchisee to make refunds to subscribers be issued by the city council unless and until the franchisee has been given notice of, and an opportunity to comment upon, the order.

Sec. 9-3-210 Obligations of franchisee.

(a) A franchisee shall implement remedial requirements, including refunds and prospective rate reductions, within 60 days of the date on which the city council issues the order imposing the requirements.

(b) Within 90 days of the date on which an order mandating a remedy is issued, a franchisee must file a certification, signed by an authorized representative, stating:

(1) whether the franchisee has complied with all provisions of the council order;

(2) describing the measures taken to implement the council order; and

(3) showing how any refunds (including interest thereon) were calculated and distributed.

(c) It is the franchisee's obligation to maintain books and records of account so that it can make proper refunds.

(d) It is the franchisee's obligation to submit as complete a rate filing as possible.

(e) Information requests.

(1) A franchisee and any other person having records showing revenues or expenses that are allocated to the franchisee's cable system in the city shall respond to requests for information from the administrator within reasonable deadlines established by the administrator. A franchisee is responsible for ensuring that such other entity responds to the city's requests.

(2) Because federal law limits the time available to the city to provide an initial response to a rate filing, a franchisee shall be prepared to respond to a request for information from the administrator, made prior to the issuance of an order under section 9-3-208(b), within five days of the date it receives the request; provided, that a franchisee may decline to respond to such a request if it consents to the issuance of a tolling order by the council, pursuant to section 9-3-208(b), and to providing the requested information as part of its supplemental filing pursuant to section 9-3-208(c). Information requests made under this section may include a request for information that the franchisee would be required to provide as part of a supplemental filing.

Sec. 9-3-211 *Duties of the office of citizen assistance and administrator.*

(a) The office of citizen assistance and the administrator shall be responsible for administering the provisions of this article, as provided below. Without limitation and by way of illustration, and except as inconsistent with FCC regulations:

(1) The office shall ensure that notices are given to the public and the franchisee as required by this article and by FCC regulations.

(2) The administrator may submit requests for information to a franchisee and establish deadlines for the franchisee's response to them.

(3) For good cause, the administrator may extend any filing or response deadline except as to matters that are mandatory under FCC regulations.

(4) The administrator shall rule on any request for confidentiality.

(5) The office shall prepare the recommendations to the city council under section 9-3-208. If the office recommends that a proposed increase in rates and charges be denied in whole or in part, it shall:

(i) recommend other rates and charges, which may be the franchisee's existing rates and charges, and explain the basis for its recommendation;

(ii) determine whether the franchisee shall make refunds and, if so, recommend an amount of refunds and explain the basis for its determination and recommendation; and

(iii) notify the franchisee of its recommendations and determinations at the time they are submitted to the council.

Sec. 9-3-212 *Penalties and forfeitures.*

Except as prohibited by federal law, a request by a franchisee for approval of rates and charges may be denied, if the franchisee:

(a) knowingly submits false or fraudulent information to the city in connection with any request; or

(b) fails to comply with any lawful order or request of the city, including, but not limited to, a request for information and an order setting rates.

Sec. 9-3-213 *Proprietary information.*

(a) If any provision of this article, or if any request for information properly made pursuant to this article, requires a franchisee to produce for the city what the franchisee considers to be proprietary information, the franchisee shall produce the information. However, at the time such information is produced, the franchisee may request that all or specific, identified portions of the information be treated as confidential and withheld from public disclosure. Such a request shall state the reasons why the identified information should be treated as proprietary and the facts that support those reasons. Requests for the confidential treatment of proprietary information will be reviewed by the administrator based upon FCC regulations and state and local law, as applicable. Any determination by the administrator that information is proprietary and is to be withheld from public disclosure shall be made in writing, and such information shall be placed in a file for inspection by the public. If a franchisee's request for the confidential treatment of proprietary information is denied, the franchisee may seek review of the denial by filing a request for review with the city attorney within five working days of the denial, in which case disclosure of the alleged proprietary material shall be stayed pending review. Notwithstanding any provision of this section to the contrary, where a franchisee which is proposing an increase in its rates or charges has submitted what it considers to be proprietary information and has requested the confidential treatment of that information, the city shall, upon the franchisee's withdrawal of its rate filing, immediately return the information.

(b) Information that a franchisee claims is proprietary must be clearly identified. If it is part of a larger submission, such as a rate filing, the proprietary information must be segregated from the remainder of the submission. It must also be clearly marked so that the city may determine where the proprietary information belongs within the submission and how it relates to the remainder of the submission.

(c) Any interested person may file with the administrator a request to inspect material that is being withheld as proprietary. In determining such requests, the administrator shall weigh the considerations favoring non-disclosure against the reasons given for permitting inspection in light of the facts of the particular case. The administrator may grant, deny or conditionally grant a request. The administrator shall promptly notify the requesting person and the franchisee as to the disposition of the request. The party aggrieved by such disposition may seek review of the disposition by filing a request for review with the city attorney. Disclosure will be stayed pending review. Notwithstanding any provision of this subsection to the contrary, the administrator shall deny any

request to inspect proprietary material whenever such inspection is prohibited by federal or state law.

Sec. 9-3-214 Petition for change in effective competition status.

A franchisee may petition for a change in effective competition status, and the city shall consider that petition, in accordance with 47 C.F.R. § 76.915. The petition and three copies shall be filed with the office of citizen assistance.

Sec. 9-3-215 Regulation of rates; complaints.

(a) Whenever, including following receipt of a complaint from any subscriber or other person or receipt of an inquiry from the city council, the administrator has reason to believe that any provision of this article or any term, condition or provision of a franchise or franchise agreement pertaining to rates and charges that are subject to this article, has been, is being or will be violated, the administrator shall promptly undertake to investigate the matter. Notice of the investigation shall be given to the franchisee, and the administrator shall undertake to mediate or otherwise adjust informally the matter raised in the complaint or inquiry. If the matter cannot be adjusted informally, the administrator shall, upon notice to the franchisee and the complainant or the city council, as the case may be, set the matter for public hearing in accordance with the provisions of subsection (b).

(b) In any public hearing under this section, the hearing officer shall be the administrator, unless the council designates otherwise. The hearing officer shall provide the franchisee and the complaining party or city council, whichever is applicable, with written notice of the date, time and place of the hearing by first-class mail at least 10 days in advance of the hearing. The hearing officer shall conduct the hearing in such a manner as will expeditiously and accurately ascertain the facts at issue. As far as reasonably possible, the hearing shall be informal and free from technical rules of evidence. The franchisee and complainant shall have the right to be represented by counsel at the hearing, to present evidence and testimony, and to cross-examine witnesses. The hearing officer shall receive and consider such evidence and testimony at the hearing as is deemed relevant. The franchisee shall furnish all books, papers or other records requested for review and consideration by the hearing officer, and shall make employees or agents available for testimony at the hearing. A taped or stenographic record of the proceeding shall be made.

(c) Not more than 60 days following the hearing, the hearing officer shall issue a written decision which shall be final and binding unless appealed. Within 20 days of the date that the written decision is issued, the franchisee, the complainant or any subscriber to the franchisee's system who is aggrieved by the

decision may appeal it to the city council. The decision may be appealed by filing with the city clerk a petition which describes the hearing officer's decision, sets forth the reasons why the decision is erroneous, and requests the council to review the decision. If an appeal is taken, the decision of the hearing officer shall be stayed until the council issues a decision on the appeal.

(d) The administrator shall give public notice of the hearing officer's written decision, and the text of the decision shall be made available to the public.

ARTICLE M

Franchise Fee

Sec. 9-3-231 *Finding.*

The city council finds that public rights-of-way of the city to be used by a franchisee for the operation of a cable system are valuable public properties that have been acquired and maintained by the city, and in some cases the commonwealth of Virginia, at substantial expense to the taxpayers. The city council further finds that the grant of a franchise to use public rights-of-way for a cable system is a valuable property right without which a franchisee would be required to invest substantial capital.

Sec. 9-3-232 *Payment to city.*

As compensation for use of the public rights-of-way, a franchisee shall pay the city a franchise fee in an amount no less than three percent (3%) of its gross revenues. Every franchise agreement shall specify the actual percentage of the franchisee's gross revenues that the franchisee is initially required to pay as a franchise fee. If the percentage of gross revenues that is specified in a franchise agreement is the maximum which, at the time the agreement is executed, federal and state law authorizes the city to assess as a franchise fee, and if federal or state law is subsequently amended to increase that maximum percentage, then the franchise fee, as a percentage of gross revenues of the franchisee subject to the agreement, shall automatically increase to such larger maximum percentage, effective upon the effective date of the amended federal or state law, unless the city expressly declines to apply the larger percentage.

Sec. 9-3-233 *Not a tax or in lieu of any other tax or fee.*

(a) Payment of the franchise fee shall not be considered a tax or a payment in the nature of a tax.

(b) The franchise fee is in addition to all other taxes and payments that a franchisee may be required to pay under any federal, state or local law, and to any other tax, fee or assessment imposed by utilities or cable operators for use of their services, facilities or equipment, including any applicable amusement taxes, except to the extent that such fees, taxes or assessments are required to be treated as a franchise fee under the Cable Act, 47 U.S.C. § 54.

Sec. 9-3-234 *Payments.*

(a) Unless otherwise provided in a franchise agreement, the franchise fee and any other costs assessed by the city against a franchisee shall be paid monthly to the city and shall commence as of the effective date of a franchise. The city shall be furnished at the time of each payment with a statement, certified by the franchisee's chief financial officer or an independent certified public accountant, stating that the figure which is reported by the franchisee as its gross revenues for the payment period, and upon which the franchisee fee payment has been based, is a correct representation of the franchisee's gross revenues for the period. Unless otherwise provided in a franchise agreement franchise fee payments shall be made to the city no later than 30 days following the end of applicable payment period. Within 90 days of the end of any fiscal year, a franchisee shall file with the administrator an audited financial statement, certified by an independent public accountant, for the just concluded fiscal year, which shall include a statement of the franchisee's gross revenues for the year.

(b) In the event any franchise fee payment is not made on or before its due date as specified in this section, the franchisee shall pay a penalty in the amount of 10 percent of the payment and, in addition, interest charges computed from the payment's due date until the payment is made, using an annual rate of interest equal to the average commercial prime rate of interest of the city's primary depository bank during the period the payment is unpaid.

Sec. 9-3-235 *No accord or satisfaction.*

The acceptance of any payment by the city shall not be construed as a release or an accord and satisfaction of any claim the city may have for further or additional sums payable as a franchise fee under this article, or as the penalty and interest due on an unpaid franchisee fee payment, or for the performance of any other obligation of a franchisee.

Sec. 9-3-236 *Audit and related records.*

(a) The city shall have the right to inspect and copy records related to a franchisee's gross revenues that are in the possession or under the control of the franchisee, an affiliate

or any other person that collects or receives funds related to the franchisee's operation in the city. The franchisee shall be responsible for providing such records to the city, without regard to the person possessing them. A franchisee shall ensure that the records which are subject to the city's right of inspection and copying under this section are maintained for at least five years.

(b) The city shall have the right to audit a franchisee's fiscal and financial records, and to recompute any amounts that are payable under this article by the franchisee. The expenses for such an audit shall be borne by the city unless the audit discloses an underpayment by a franchisee, in which case the costs of the audit shall be borne by the franchisee as a cost incidental to the enforcement of its franchise. Any additional amounts due to the city as a result of the audit shall be paid, together with a penalty of 10 percent of such amounts and interest calculated in accordance with section 9-3-234, within 30 days following written notice to the franchisee by the city of the underpayment, which notice shall include a copy of the audit report.

(c) A franchisee shall maintain its fiscal and financial records, and ensure that all relevant fiscal and financial records are maintained by others on its behalf, in such a manner as to enable the city to determine the cost of assets of the franchisee which are used in providing services within the city and to determine the franchisee's gross revenues.

ARTICLE N

Insurance; Indemnification; Performance Guarantees

Sec. 9-3-251 Insurance required

A franchisee shall maintain and, by its acceptance of a franchise, shall have agreed that it will maintain, throughout the term of the franchise, at least the following liability insurance coverages insuring both the city and the franchisee: worker's compensation and employer liability insurance to meet all requirements of Virginia law; comprehensive general liability insurance with respect to the construction, operation and maintenance of the cable system and the conduct of the franchisee's business in the city; and commercial automobile liability insurance covering all motor vehicles owned or leased by franchisee and any other vehicles while driven by franchisee's employees, in the minimum amounts of:

(a) \$2,500,000 for property damage resulting from any one occurrence;

(b) \$5,000,000 for personal bodily injury or death resulting from any one occurrence; and

(c) \$1,000,000 for all other types of liability.

The city may review these policy limits no more than once a year and may require reasonable adjustments to them. In the event that the franchisee objects to an increase in a policy limit and the parties are unable to agree on a mutually acceptable amount, the dispute shall be resolved by arbitration in accordance with the procedures of the American Arbitration Association.

Sec. 9-3-252 Qualifications of sureties.

All insurance policies shall be with sureties qualified to do business in the commonwealth of Virginia, with an A-1 or better rating of insurance by Best's Key Rating Guide, Property/Casualty Edition, and shall be in a form approved by the city.

Sec. 9-3-253 Policies available for review.

All insurance policies maintained by a franchisee shall be available for review by the city, and, for each policy, a certificate of insurance shall be filed with the administrator.

Sec. 9-3-254 Additional insureds; prior notice of policy cancellation.

All general liability and automobile liability insurance policies shall name the city, its officers, boards, commissions, commissioners, agents and employees as additional named insureds, and shall further provide that any cancellation or reduction in coverage shall not be effective unless 30 days' prior written notice thereof has been given to the administrator. A franchisee shall not cancel any insurance policy required by this article without obtaining alternative insurance that has been approved by the city.

Sec. 9-3-255 Failure constitutes material violation.

Failure to comply with the insurance requirements set forth in this article shall constitute a material violation of a franchise.

Sec. 9-3-256 Indemnification.

(a) A franchisee shall, at its sole cost and expense, fully indemnify, defend and hold harmless the city, and its officers, employees and agent from and against any and all losses and any and all claims, suits, actions, liability and judgments for damages or other relief, or otherwise subject to the Cable Act, 47 U.S.C. 558, arising out of the installation, construction, operation or maintenance of the franchisee's cable system, including but not limited to any claim for bodily injury, for property damage, for the violation of civil rights, for the invasion of the right of privacy, for defamation of any person,

for the violation or infringement of any copyright, trade mark, trade name, service mark or patent, or for the violation of any other right of any person. This indemnity requirement does not apply to programming carried on any channel set aside for public, educational or government use, or any channel leased pursuant to 47 U.S.C. § 532, unless the franchisee was engaged in determining the editorial content of the program, or had a policy of prescreening programming for the purported purpose of banning indecent or obscene programming.

(b) The indemnity obligation of a franchisee under this section shall include, but is not limited to, providing legal representation and otherwise defending the city and city offices, employees and agents against any claim, suit, or action referenced in subsection (a).

(c) The city shall provide a franchisee with prompt notice of any loss, claim, suit or action referenced in subsection (a).

Sec. 9-3-257 No Limit of liability.

Neither the provisions of this article nor any damages recovered or indemnification received by the city shall be construed to limit the liability of a franchisee for damages under any franchise issued pursuant to this chapter.

Sec. 9-3-258 No recourse.

Without limiting such immunities as it may have under applicable law, the city shall not be liable to a franchisee for any loss or damages that the franchisee may suffer as the result of the city's exercise of its authority pursuant to this chapter, a franchise agreement or other applicable law.

Sec. 9-3-259 Security fund.

(a) Prior to a franchise becoming effective, the franchisee shall post with the city a cash security deposit to be used as a security fund to ensure the franchisee's faithful performance of and compliance with all provisions of this chapter, the franchise agreement and other applicable law, and all orders, permits and directions of the city, including the franchisee's payment of any claims, liens, fees, taxes or other payments due the city under this chapter, the franchise agreement or other law. The amount of the security fund shall be equal to three percent of the franchisee's projected annual average gross revenues.

(b) In lieu of a cash security fund, a franchisee may file and maintain with the city an irrevocable letter of credit with an acceptable surety in the amount specified in the preceding paragraph to serve the same purposes as set forth therein. Said letter of credit shall remain in effect for the full term of the franchise plus an additional six (6) months thereafter. The

franchisee and its surety shall be jointly and severally liable under the terms of the letter of credit for the franchisee's failure to ensure its faithful performance of and compliance with all provisions of this chapter, the franchise agreement and other applicable law, and all orders, permits and directions of the city, including the franchisee's payment of any claims, liens, fees, taxes or other payments due the city under this chapter, the franchise agreement or other law. The letter of credit shall provide for 30 days' written notice to the city prior to its cancellation, non-renewal or any material alteration of its terms. Neither the filing of a letter of credit with the city, nor the city's receipt of any payment thereunder, shall be construed to excuse the franchisee's faithful performance of and compliance with all provisions of this chapter, the franchise agreement and other applicable law, and all orders, permits and directions of the city, or to limit the liability of the franchisee for damages.

(c) The rights of the city with respect to the security fund are in addition to all other rights of the city provided by this chapter, other law, a franchise and a franchise agreement, and no action, proceeding or exercise of a right with respect to such security fund or letter of credit shall affect any such other rights of the city.

(d) The following procedures shall apply to drawing on the security fund and letter of credit:

(i) If the franchisee fails to make timely payment to the city of any amount due under its franchise, a franchise agreement or applicable law, fails to make timely payment to the city of any taxes due, or fails to compensate the city within 10 days of written notification that such compensation is due for damages, costs or expenses that the city has incurred by reason of any act or omission of the franchisee in connection with its franchise or franchise agreement, or by reason of the city's enforcement of this chapter, the franchise or the franchise agreement, the city may withdraw the amount which it is due, with any interest and penalties that are payable, from the security fund or from monies available under the letter of credit.

(ii) Within three days of a withdrawal from the security fund or under the letter of credit, the city shall, by certified mail, return receipt requested, provide written notification of the amount, date and purpose of such withdrawal to the franchisee.

(iii) If, at the time of a withdrawal from the security fund and under the letter of credit by the city the amounts available are insufficient to provide the total payment towards which the withdrawal is directed, the balance of such payment shall continue as the obligation of the franchisee to the city until it is paid.

(iv) No later than 30 days after providing the notice under subsection (ii), the franchisee shall deliver to the city, for deposit in the security fund, an amount equal to the amount so withdrawn and shall restore the letter of credit to its original amount. Failure to make timely delivery of such amount to the city or to restore the letter of credit shall constitute a material violation of the franchise.

(v) Upon termination of the franchise under conditions other than those providing for forfeiture of the security fund, the balance then remaining in the fund shall be withdrawn by the city and paid to the franchisee within 90 days of such termination, provided that there is then no outstanding default on the part of the franchisee.

Sec. 9-3-260 Performance bond.

(a) Prior to any cable system construction, upgrade or other cable-related work in the public rights of way, a franchisee shall establish in the city's favor a performance bond, in an amount specified in the franchise agreement or other authorization, to ensure the franchisee's faithful performance of the construction, upgrade or other work. Except as otherwise provided in a franchise agreement, the amount of any required performance bond shall be equal to 10 percent of the total cost of the work.

(b) In the event a franchisee subject to a performance bond fails to complete the construction, upgrade or other work secured by the bond in a safe, timely and competent manner in accord with the provisions of a franchise agreement, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the city as a result of the franchisee's failure, including the full amount of any compensation, indemnification or cost of removing any property of the franchisee from the public rights-of-way, or the cost of completing or repairing the system construction, upgrade or other work in the public rights-of-way, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond. The city may also recover against the security fund any amount recoverable under the bond, in cases where the monies available under the bond are insufficient.

(c) Upon completion of a cable system's construction, upgrade or other work in the public rights-of-way and payment of all construction obligations of the franchisee, to the satisfaction of the city, the city shall eliminate the bond or reduce its amount after a reasonable time to determine whether the work performed was satisfactory, which time shall be established considering the nature of the work performed. The city may subsequently require a new bond or an increase in the bond amount for any subsequent construction, upgrade or other work in the public rights-of-way. In any event, unless otherwise provided in

a franchise agreement, the total amount of the bond shall equal 10 percent of the cost of the work.

(d) The performance bond shall be issued by a surety, with an A-1 or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition, shall be subject to the approval of the administrator and shall contain the following endorsement:

"This bond may not be canceled, or allowed to lapse, until 60 days following receipt by the City of Alexandria, Virginia, of a written notice of an intent to cancel or not to renew the bond that has been sent to the city by certified mail, return receipt requested."

Sec. 9-3-261 Failure constitutes material violation.

Failure to maintain the security fund, letter of credit and performance bond required by this article shall constitute a material violation of a franchise.

Sec. 9-3-262 Remedies.

In addition to any other remedies available at law or equity, the city may apply any one or a combination of the following remedies in the event a franchisee violates any provision of this chapter, its franchise agreement or applicable state or federal law:

(a) In the event of a material violation, the city may terminate the franchise or shorten its term pursuant to the procedures specified in this chapter.

(b) In the case of any violation, the city may impose penalties available under section 9-3-266 and other applicable state and local laws for violation of city ordinances.

(c) In addition to or in lieu of any other remedy, in the case of any violation, the city may seek legal or equitable relief from any court of competent jurisdiction.

(d) In the case of any violation, the city may utilize any remedy provided for in a franchise agreement.

Sec. 9-3-263 Remedies cumulative.

All remedies under this chapter and a franchise agreement are cumulative unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another; nor shall the exercise of a remedy or the payment of liquidated damages or penalties relieve a franchisee of its obligations to comply with its franchise. Remedies may be used singly or in combination,

In addition, the city may exercise any rights it has at law or equity.

Sec. 9-3-264 Relation to insurance and indemnity requirements.

Recovery by the city of any amounts under an insurance policy, a performance bond, a security fund or a letter of credit required by this chapter, or otherwise made available by a franchisee, shall not limit the franchisee's duty to indemnify the city for any additional amounts to which the city is due. Nor shall such recovery relieve a franchisee of its obligations under a franchise, limit amounts otherwise owed to the city, or prevent the city from exercising any other rights or remedies it may have.

Sec. 9-3-265 Cost of consultant.

When necessary to aid in the review or analysis of matters relating to rates and charges, technical standards, system construction or upgrades, market surveys or in the city's performance of other activities under this chapter, the city shall be entitled to employ the services of consultants to assist and supplement the administrator and the office of citizen assistance. Except as otherwise provided in a franchise agreement or as the city and a franchisee may agree, all reasonable consultant fees incurred by the city in this regard shall be paid by the franchisee, or the franchisees, for or with regard to which such work is undertaken by the city. By its acceptance of a franchise, a franchisee agrees that such costs are not franchise fees, but fall within one of the exceptions in the Cable Act, 47 U.S.C. § 542(g)(2). The terms of this section shall not apply to any research by the city in connection with the right of the city to purchase the system.

Sec. 9-3-266 Penalties

For violation of provisions of this chapter or a franchise, penalties shall be payable from a franchisee's security fund as follows:

(a) For a failure to submit any plans relating to the construction, installation or upgrade of any part of a system: \$100/day for each day the violation continues;

(b) For a failure to commence operations in accordance with the requirements of the franchise: \$1,000/day for each day the violation continues;

(c) For a failure to substantially complete construction in accordance with the franchise: \$1,000/day for each day the violation continues;

(d) For transferring a franchise without approval: \$2,000/day for each day the violation continues;

(e) For a failure to comply with a requirement pertaining to the provision of public, educational and governmental access channels or to the use of the cable system by members of the public, by educational entities or by governmental agencies: \$1,000/day for each day the violation continues;

(f) For failure to comply with a requirement under this chapter or a franchise agreement pertaining to, or for failure to respond to a request of the city for, information, records or documents: \$100/day for each day the violation continues;

(g) For a violation of any customer service standard: \$200; and

(h) For any other violation for which actual damages may not be ascertainable: \$1,000/day for each day the violation continues.

ARTICLE O

Administrator

Sec. 9-3-281 *Cable television administrator.*

The position of cable television administrator, under the city manager, is hereby established. The administrator shall be appointed and may be removed by the manager. Whenever the administrator is authorized by this chapter to present a recommendation, report or other matter to the city council, such presentation shall be made through the city manager. The manager may designate any additional staff as needed to assist the administrator in the performance of the administrator's duties.

Sec. 9-3-282 *Responsibilities of administrator.*

The administrator shall be responsible for the day-to-day administration and enforcement of this chapter, of franchises granted pursuant to this chapter and of franchise agreements. The administrator's responsibilities shall include, but not be limited to, the following:

(a) to assist in the preparation of the invitation to bid for a franchise, to establish criteria for review and ranking of franchise bids, to review and screen bids for a franchise and to make recommendations to the city council;

(b) to monitor the timely performance of franchisees in making application for and obtaining all certificates, permits and agreements as required under this chapter or any franchise agreement;

(c) to monitor the performance of franchisees in meeting the construction timetable as provided for in this chapter or any franchise agreement;

(d) to advise and make recommendations to they city council on matters which may constitute grounds for revocation of a franchise in accordance with this chapter;

(e) to advise and make recommendations to the city council on the regulation of rates in accordance with this chapter;

(f) to cooperate with cable systems and government agencies in other jurisdictions and with other franchisees in the development of, and in the supervision of, the interconnection of systems;

(g) to review all franchise records, as required by this chapter, and all franchise reports filed with the FCC and, in the administrator's discretion, to require the preparation and filing by a franchisee of information in addition to that required in this chapter;

(h) to monitor franchisees' performance under the terms of this chapter and any franchise agreement, and to make recommendations to the council to ensure such compliance;

(i) to promote, develop and coordinate the use of public access channels in conjunction with the Alexandria Cable Television Advisory Commission;

(j) to make an annual report to the council, which shall include an account of franchise fees received and distributed by the city, the total number of hours of utilization of various channels with hourly sub-totals for various programming categories, and a review of any plans submitted during the year by each franchisee for development of new services;

(k) to conduct, with franchisees, evaluations of the city's cable systems at least every three years, and to make recommendations to the city council regarding amendments to this chapter or to franchise agreements;

(l) to receive and investigate complaints against franchisees by any person or upon direction of the city council and, if warranted, to initiate enforcement action in connection with the complaint;

(m) to provide staff assistance and information to the Alexandria Cable Television Advisory Commission; and

(n) to assist the city council in the regulation of rates.

Sec. 9-3-283 Expenditures.

The administrator may make expenditures to carry out the duties assigned in this chapter, subject to the availability of funds.

ARTICLE P

Alexandria Cable Television Advisory Commission

Sec. 9-3-291 Creation.

There shall be established a commission to advise the city council about cable television and to promote and develop access to cable systems. The commission shall be known as the Alexandria Cable Television Advisory Commission ("Commission").

Sec. 9-3-292 Members and term.

The city council shall appoint eight members of the Commission, who shall be residents of the city. Five members shall be citizen at-large members. One member shall be a representative of the Alexandria Campus of Northern Virginia Community College, one member shall be a representative of the Alexandria city public schools, and one member shall be a representative of the Alexandria library system. Each member shall serve a three-year term. Any interim vacancy shall be filed by the council for the unexpired portion of the term. No employee of or person with any ownership interest in a franchisee or a franchise granted pursuant to this chapter shall be eligible for membership on the Commission.

Sec. 9-3-293 Officers; quorum; meetings; action by majority.

A quorum of four members present shall be required before the Commission may take official action. A member present but not voting shall be considered in counting a quorum. The Commission shall meet at least six times per year. Additional meetings may be held when necessary and may be called by the chairperson or any two members with 48 hours' notice to all members. All members shall be entitled to vote, and decisions of the Commission shall be determined by majority vote of the members present. Members shall serve without compensation, but may receive reimbursement for expenses subject to the availability of funds.

Sec. 9-3-294 Functions of the Commission.

The Commission shall have the following functions:

(a) to make recommendations and advise the city government in the formulation and implementation of general cable communications policy and promote citizen participation in the formulation of such policy through public information programs;

(b) to encourage the use of public access channels among the widest range of persons, including institutions and public agencies;

(c) to advise the city council concerning the use of funds for cable television access and local origination programming, concerning the construction and maintenance of facilities for the production of such programming, and concerning the education of the public in the use of such facilities when they become available;

(d) to request the administrator to provide additional information on complaints against a franchisee where injury to the public interest is deemed by the Commission to have occurred. Such complaints will be investigated according to procedures established by the Commission. Complaints not resolved in a manner deemed satisfactory by the Commission will be so noted in the permanent files maintained by the administrator;

(e) to perform such other duties and functions to support the community access channels as may be appropriate in order to maximize use among the widest range of individuals, institutions and community groups; and

(f) to make an annual report to the city council which shall include a review and evaluation of the activities of the Commission, along with any comments or recommendations relative to its functions that it may choose to make.

ARTICLE Q

State Regulation

Sec. 9-3-301 *Virginia public telecommunications board.*

A franchisee shall comply with all requirements of the Virginia Public Telecommunications Board not in conflict with FCC regulations, as such requirements may be amended from time to time.

ARTICLE R

Rights of Individuals

Sec. 9-3-311 *Discriminatory practices prohibited.*

(a) A franchisee shall not deny service, deny access or otherwise discriminate against subscribers, programmers or

residents of the city on the basis of race, color, sex, religion, ancestry, national origin, marital status, familial status, age, sexual orientation or disability.

(b) A franchisee shall not discriminate or take any retaliatory action against a person because of the person's exercise of any right under federal, state or local law; nor may a franchisee require a person to waive any such rights as a condition of receiving service.

(c) A franchisee shall not deny access or levy different rates or charges on any group of potential residential cable subscribers because of the income of the residents of the local area in which the group resides.

(d) A franchisee shall not discriminate in its rates or charges among, and shall not grant undue preferences to, subscribers, potential subscribers or any group of subscribers or potential subscribers; provided, that a franchisee may offer temporary, bona fide promotional discounts in order to attract or maintain subscribers, so long as such discounts are offered on a non-discriminatory basis to similar classes of subscribers throughout the city,, and may offer discounts for the elderly, the handicapped or the economically disadvantaged, and such other discounts as it is expressly entitled to provide under federal law, if such discounts are applied in a uniform and consistent manner. A franchisee shall comply with all applicable federal, state or local laws and regulations relating to non-discrimination in the provision of cable service.

Sec. 9-3-312 Equal employment opportunity.

A franchisee shall not refuse to employ, and shall not discharge from employment or discriminate in compensation or in any other terms, conditions or privileges of employment against, any person because of race, color, sex, religion, ancestry, national origin, marital status, familial status, age, sexual orientation or disability. A franchisee shall comply with all federal, state and local laws and regulations governing equal employment opportunities, as the same may be from time to time amended.

Sec. 9-3-313 Subscriber privacy.

(a) A franchisee shall at all times protect the privacy of all subscribers pursuant to the provisions of the Cable Act, 47 U.S.C. § 551. A franchisee shall not condition subscriber service on the subscriber's grant of permission to disclose information which, under federal or state law, cannot be disclosed without the subscriber's explicit consent.

(b) Neither a franchisee, nor its agents or employees shall, without the prior written authorization of a subscriber, sell or

otherwise make available for commercial purposes the name, address or telephone number of the subscriber, or any information that identifies the individual viewing habits of the subscriber.

(c) A franchisee shall take reasonable steps to ensure that the privacy interests of subscribers, programmers and general citizens are not infringed as a result of any device or signal associated with the system.

Sec. 9-3-314 Restrictions on cable monitoring.

(a) Except as otherwise provided by federal law or by this section, a franchisee shall not monitor, arrange for the monitoring of or permit any person, expressly or impliedly with its knowledge, to monitor any subscriber outlet or receiver for any purpose whatsoever, without the specific written authorization of the subscriber being monitored and then only to the extent so authorized by the subscriber; provided, that a franchisee may conduct such monitoring as may reasonably be necessary for the maintenance and operation of its cable system, and the collection of data for the purpose of ascertaining viewer response to programming.

(b) Any data collected for the purpose of ascertaining viewer response to programming may be disseminated, so long as the data do not reveal any information, including identity, as to individual subscribers.

Sec. 9-3-315 Permission of property owner required.

Except as statutory or common law provides otherwise, no cable, line, wire, amplifier, converter or other equipment owned by a franchisee or used in conjunction with a cable system shall be installed by a franchisee over, under or upon any property without first securing the permission of the owner of the property or, if applicable, the owner of an easement which the equipment is to occupy. If such permission is subsequently validly revoked, the franchisee shall remove any of its equipment which is visible and movable, and promptly restore the property to its original condition, at its expense.

ARTICLE S

Resolution of Disputes

Sec. 9-3-330 Reasonable conduct.

A franchisee and the city shall act reasonably and in good faith, and shall deal fairly and cooperate with each in furtherance of the purposes of this chapter.

Sec. 9-3-331 *Intent.*

It is the intent of the city to provide for the orderly resolution of any dispute between a franchisee and the city arising out of the interpretation or enforcement of any provision of this chapter, a franchise, or a franchise agreement or any rule, regulation or procedure relating to cable communications matters. Fact-finding and mediation shall be the method of resolving such disputes, except that disputes specifically designated in this chapter as arbitrable may be submitted to that process for binding resolution. None of these methods, however, shall be the first resort of the parties, but shall be undertaken only after reasonable time and effort to resolve the dispute by negotiation and agreement.

Sec. 9-3-332 *Fact-finding.*

Any dispute, upon the election of either a franchisee or the city, shall be submitted to an expert individual, acceptable to both parties, for an investigation of the facts and a report thereof. Such fact-finding shall be for the purpose of developing better information for the use of both parties and shall not be binding on either party.

Sec. 9-3-333 *Mediation.*

Any dispute, upon the election of either a franchisee or the city, shall be submitted to an expert individual, acceptable to both parties, for the purpose of facilitating discussion and receiving new perspectives on the issues and new proposals for compromise. Such mediation shall not be binding on either party.

Sec. 9-3-334 *Arbitration.*

Only those matters which are expressly arbitrable under the provisions of this chapter may be submitted for arbitration. Arbitrable matters may be submitted to a single expert individual, if both parties agree to do so. Otherwise, the parties shall agree to a three-member panel. Within 30 calendar days after appointment of the arbitrators and upon at least 15 calendar days written notice to the parties, the arbitrators shall commence a hearing on the dispute. Arbitration shall be held under the rules and procedures of the American Arbitration Association. Arbitration shall be binding on all parties. Arbitration matters shall be held to have been adjudicated and settled, and not open, either directly or indirectly, for review, pursuant to the rules and procedures of the American Arbitration Association.

Sec. 9-3-335 *Selection procedures.*

(a) In the case of fact-finding or mediation, each party shall, with 15 calendar days of the election by one party to

proceed with fact-finding or mediation, present up to three names each for possible service as experts. If there is no agreement on any of the names and if one of the parties agrees, the American Arbitration Association shall select an individual to fulfill the function as expert.

(b) In the case of arbitration, both parties shall, within 15 calendar days of their decision to proceed with arbitration, agree upon the number of persons to serve on the arbitration panel. Such number shall be either one or three. If a single-member panel is agreed upon, both parties shall jointly name the person, utilizing the procedures established for fact-finding and mediation. If a three-member panel is agreed upon, the membership shall be one person named by the franchisee, one person named by the city and a third person jointly named by the franchisee and the city. Said third person shall serve as the presiding officer of the panel. If there is no agreement on the single arbitrator or the presiding officer of a three-member panel, the parties may decline to proceed to arbitration or may select the single arbitrator or the panel's presiding officer, as the case may be, by requesting the American Arbitration Association to select an individual to serve as arbitrator or presiding officer.

Sec. 9-3-336 *Fees and expenses.*

All fees of single experts and arbitrators and all other expenses resulting from fact-finding, mediation or arbitration shall be shared equally by the franchisee and the city.

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Miscellaneous Provisions

Sec. 9-3-351 *Compliance with laws.*

A franchisee shall comply with all applicable federal, state and local laws (including all city ordinances), rules and regulations apart from this chapter, heretofore and hereafter adopted and amended.

Sec. 9-3-352 *Captions.*

The captions to sections throughout this chapter are intended solely to facilitate reading and reference to the sections and provisions of this chapter. Such captions shall not affect the meaning or interpretation of this chapter.

Sec. 9-3-353 *No recourse against the city.*

A franchisee shall have no recourse against the city or its officials, boards, commissions, agents or employees for any loss, cost, expense, damage or liability arising out of any provision

or requirement of this chapter or arising out of the enforcement of this chapter, unless the same shall be caused by criminal acts or by willful or gross negligence of a city officer or employee.

Sec. 9-3-354 Rights and remedies.

(a) The rights and remedies provided by this chapter are cumulative and shall be in addition to and not in derogation of any other rights and remedies which the city, a franchisee or another person may have with respect to the subject matter of this chapter.

(b) The city hereby reserves to itself the right to intervene in any suit, action or proceeding involving any provision of this chapter.

(c) Specific mention of the materiality of any of the provisions herein is not intended to be exclusive of any others for the purpose of determining whether any failure of compliance hereunder is material and substantial.

(d) No franchisee shall be relieved of its obligation to comply with any provision of this chapter by reason of a failure on the part of the city to initiate enforcement action against the franchisee for a violation of the provision. Nor shall any a failure by the city to enforce a provision of this chapter be deemed to waive the franchisee's violation or to void that provision.

Sec. 9-3-355 Day-to-day enforcement.

The day-to-day enforcement of the provisions of this chapter and any franchise granted pursuant to the chapter shall be the responsibility of the administrator.

Sec. 9-3-356 Powers of court to enforce obedience to franchises.

Nothing in this chapter shall be construed to prevent any party from enforcing compliance with the terms and conditions contained in any franchise, pursuant to section 15.1-315 of the Code of Virginia (1950), as amended.

Sec. 9-3-357 Subsequent action by state or federal agencies.

Should the commonwealth of Virginia, the FCC or any other agency of the federal government require a franchisee to deliver any signals in addition to those required by this chapter, to perform any act which is inconsistent with any provision of this chapter or to cease to perform any act required by this chapter or a franchise agreement, the franchisee shall so notify the city.

Sec. 9-3-358 *Amendments to this chapter.*

In order to further the purposes of this chapter, to facilitate the provision of additional communications services to the city through the use of cable television and cable systems, and to ensure that the benefits of such services will reach city residents, the city retains the right to amend this chapter, and no provision to the contrary in a franchise or franchise agreement shall be of any force or effect.

Sec. 9-3-359 *Incorporation by reference.*

Except as otherwise agreed by a franchisee and the city, a franchise granted pursuant to this chapter shall incorporate by reference this chapter into such franchise as fully as if set forth therein.

Sec. 9-3-360 *Prohibition of ownership by city employees.*

Persons employed by the city who are involved in the administration or enforcement of this chapter and members of their immediate families shall not own any individual or joint interest, control or holding, direct or indirect, in a franchisee in the form of shares of stock, notes or other indebtedness, in trust or otherwise. The prohibition of this section shall also apply to members of the city council, the city attorney and members of their immediate families.

Sec. 9-3-361 *Force majeure.*

A franchisee shall not be deemed in default with provisions of its franchise where performance was rendered impossible by war or riots, civil disturbances, natural catastrophes or other circumstances beyond the franchisee's control, and a franchise shall not be revoked or a franchisee penalized in such a situation, provided that the franchisee takes immediate and diligent steps to bring itself into compliance with its Franchise without unduly endangering the health, safety and integrity of the franchisee's employees or property, or of public rights-of-way, public or private property or the public.

Sec. 9-3-362 *Public emergency.*

In the event of a major public emergency or disaster, as determined by the administrator, a franchisee immediately shall make its cable system, employees and property, as may be necessary, available for use by the city or a civil defense or governmental agency designated by the city to operate the system for the term of such emergency or disaster, for emergency purposes. The city shall return use of the system, employees and property to the franchisee after the emergency or disaster has ended or has been dealt with.

Sec. 9-3-363 *Connections to system; use of antennae.*

(a) Subscribers shall have the right to attach devices to a franchisee's cable system that will allow them to lawfully transmit signals or services, for which they have paid the franchisee, to VCRs, receivers and other terminal equipment, and a franchisee shall provide information to subscribers that will enable them to adjust such devices so that they may be used with the franchisee's system. Subscribers also shall have the right to use their own remote control devices and converters, and other similar equipment.

(b) A franchisee shall not, as a condition of providing cable service, require any subscriber or potential subscriber to remove any existing antenna, shall not disconnect an antenna except at the express direction of the subscriber or potential subscriber, and shall not prohibit or discourage a subscriber from installing an antenna switch, provided that the subscriber's equipment and installation are consistent with applicable codes.

Sec. 9-3-364 *Severability.*

If any provision of this chapter shall, to any extent, be held to be invalid or unenforceable, the remainder of the chapter shall be valid in all other respects and shall continue to be effective. In the event of a subsequent change in applicable law under which the provision that had been held invalid is no longer invalid, the provision shall thereupon return to full force and effect without further action by the city, unless the city determines otherwise.

Section 3. That this ordinance shall become effective upon the date and at the time of its final passage.

PATRICIA S. TICER
Mayor

Final Passage: June 18, 1994