

ORDINANCE NO. 725

AN ORDINANCE GOVERNING THE CONSTRUCTION, OPERATION, MAINTENANCE,
REGULATION, AND CONTROL OF CABLE TELEVISION COMMUNICATION SYSTEMS
WITHIN THE CITY OF CANBY.

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. Short Title. This Ordinance shall be known and cited as the "Cable TV Enabling Ordinance" or the "Cable Communications Ordinance" of the City of Canby.

Section 2. Definitions. Unless it is apparent from the context that it has a different meaning, each of the following words and phrases has the meaning herein stated wherever it is used in this ordinance. When not inconsistent with the context, words used in the plural number include the singular number, and words used in the singular include the plural number.

2.1 APPLICANT: Any person or corporation submitting an application for a cable communications franchise.

2.2 BASIC SERVICE: That service regularly provided to all subscribers at a basic monthly rate including, but not limited to, the retransmission of local and distant broadcast television signals, non-premium satellite services, automated services, local origination and access services.

2.3 CABLE COMMUNICATIONS SYSTEM OR CATV SYSTEM: A system employing antennae, microwave, wire, wave-guides, coaxial cables, or other conductors, equipment or facilities designed, constructed or used for the purpose of:

(A) Collecting and amplifying local and distant broadcast television or radio signals and distributing and transmitting them;

(B) Transmitting original cablecast programming not received through television broadcast signals;

(C) Transmitting television pictures, film and video-tape programs, not received through broadcast television signals, whether or not encoded or processed to permit reception by only selected receivers;

(D) Transmitting and receiving all other signals: digital, voice, audio-visual, or other forms of electronic or electrical signals.

2.4 CHANNEL: A six megahertz (MHz) frequency band, which is capable of carrying either one standard audio/video television signal, or a number of audio, digital or other non-video signals.

2.5 CITY: The City of Canby, a municipal corporation of the State of Oregon, in its present incorporated form or in any later reorganized, consolidated enlarged or reincorporated form as designated by the City Charter.

2.6 CITY COUNCIL: The legislative body of the City of Canby.

- 2.7 CITY ADMINISTRATOR: The City Administrator of the City of Canby.
- 2.8 COMMUNITY ACCESS CHANNEL or ACCESS CHANNEL: Any channel or portion of a channel utilized for programming on a non-profit basis.
- 2.9 EDUCATIONAL CHANNEL: Any channel or portion of a channel on which educational institutions are the only designated programmers.
- 2.10 ENTERTAINMENT SERVICES: Television services provided on a one-way non-interactive basis including but not limited to broadcast channels, local origination channels, pay channels or any other channels supplied to subscribers at a basic or premium charge where the content of the transmitted signals is uniform to all subscribers or individual classes of subscribers and program selection is accomplished by operation of a tuner or converter under the sole control of the subscriber.
- 2.11 FEDERAL COMMUNICATIONS COMMISSION or FCC: The present federal agency of that name as constituted by the Communications Act of 1934, or any successor agency created by the United States Congress.
- 2.12 FRANCHISE or FRANCHISE AGREEMENT: Any authorization granted hereunder in terms of a franchise, privilege, permit or license to construct, operate and maintain a cable television system within the City of Canby. Any such authorization, in whatever form granted, shall not mean and include any license or permit required for the privilege of transacting and carrying on a business within the City as required by other ordinances and laws of this City.
- 2.13 FRANCHISE PROPERTY: All facilities retained by the Grantee in, along and across streets under authority of a franchise or business license.
- 2.14 GOVERNMENT CHANNEL: Means any channel or portion thereof dedicated to the use of the municipal agencies.
- 2.15 GRANTEE: A person or corporation to whom a franchise or business license is granted by the Council, or any person or corporation to which it may thereafter be lawfully transferred and which has filed with the Council an acceptance and bond and deposit referred to in Sections 3.4, 12.4 and 12.5 hereof.
- 2.16 GRANTOR: The City of Canby acting through its City Council.
- 2.17 GROSS REVENUES: Any and all compensation in whatever form, directly or indirectly received by Grantee, from the source specified, not including any taxes on services furnished by the Grantee, which taxes are imposed directly on a subscriber or user by a City, County, State or other governmental unit, and collected by the Grantee for such entity.
- 2.18 INSTITUTION: A building or buildings where service may be utilized in connection with a business, trade, profession, public agency or service, school, or non-profit organization.
- 2.19 INSTITUTIONAL SERVICES: Services delivered on the institutional subscriber network.

2.20 INSTITUTIONAL NETWORK: A cable communications network designed principally for the provision of non-entertainment interactive services to businesses, schools, public agencies or other non-profit agencies for use in connection with the on-going operations of such institutions.

2.21 INSTITUTIONAL SUBSCRIBER: A place of business, public agency, school or non-profit corporation receiving institutional services on the institutional subscriber network.

2.22 INTERACTIVE SERVICES: Services provided to subscribers where the subscriber either (a) both receives information consisting of either television or other signals and transmits signals generated by the subscriber or equipment under his control for the purpose of selecting what information shall be transmitted to the subscriber or for any other purpose; or (b) transmits signals to any other location for any purpose.

2.23 LEASED ACCESS CHANNEL: Any channel or portion of a channel available for programming for a fee or charge by persons or entities other than the Grantee.

2.24 LOCAL ORIGINATION CHANNEL: Any channel or portion of a channel where the Grantee is the only designated programmer, and which is utilized to provide television programs to subscribers.

2.25 NON BASIC SERVICE: Any communications service in addition to regular subscriber services including, but not limited to, access channel carriage including origination programming, pay television, burglar alarm service, fire alarm service, data transmission, facsimile service, home shopping service, etc.

2.26 PAY CHANNEL OR PREMIUM CHANNEL: A channel on which television signals are delivered to subscribers for a special charge fee or charge to subscribers over and above the regular charges for basic subscriber service, on a per program, per channel, or other subscription basis.

2.27 PERSON OR PERSONS: Any corporation, partnership, proprietorship, individual or organization authorized to do business in the State of Oregon.

2.28 PREMIUM SERVICE: Pay-per-program, pay-per-channel, or subscription service, i.e., delivered to subscribers for a fee or charge over and above the regular charges for basic service.

2.29 PUBLIC ACCESS CHANNEL: Any channel or portion of a channel where any member of the general public may be a programmer on a first-come, first-served basis, subject to appropriate rules formulated by the City and/or franchisee.

2.30 RESIDENTIAL SERVICES: Services delivered on the residential subscriber network.

2.31 RESIDENTIAL SUBSCRIBER: A subscriber who receives residential services on the residential subscriber network.

2.32 RESIDENTIAL NETWORK: A cable communications network designated principally for the delivery of entertainment, community access or interactive services to individual dwelling units.

2.33 STREETS, PUBLIC WAYS or RIGHT-OF-WAYS: The surface of and the space above and below any public street, avenue, road, highway, freeway, boulevard, lane, concourse, driveway, bridge, tunnel, park, parkway, sidewalk, waterway, dock, pier, alley, court, right-of-way, public utility easement, or any other public place, ground or water, now or hereafter existing as such within the Franchise Area.

2.34 SUBSCRIBER: Any person or institution that elects to subscribe to, for any purpose, a service provided by the Grantee by means of or in connection with the cable communications system whether or not a fee is paid for such service.

2.35 TAPPING: The observing of a communications signal exchange where the observer is neither of the communicating parties, whether the exchange is observed by visual or electronic means, for any purpose whatsoever.

Section 3. Franchise Grant.

3.3 AUTHORITY TO GRANT FRANCHISES OR LICENSES FOR CABLE TELEVISION: It shall be unlawful to commence or engage in the construction, operation or maintenance of a cable communications system without a franchise issued under this Ordinance. The City Council may, by ordinance, award a franchise to construct, operate and maintain a cable communications system within all or any portion of the City to any person, whether operating under an existing franchise or not, who makes application for authority to furnish a cable communications system which complies with the terms and conditions of this Ordinance. Provided, that this section shall not be deemed to require the grant of a franchise to any particular person or to prohibit the City Council from restricting the number of Grantees should it determine such a restriction would be in the public interest. Any franchise or business license for the construction, maintenance and operation of cable television systems using the public streets, utility easements, other public rights or way or places shall conform to the provisions of this Ordinance.

3.2 INCORPORATION BY REFERENCE:

(A) The provisions of this Ordinance shall be incorporated by reference in any franchise agreement or license approved hereunder.

(B) The provisions of any proposal submitted and accepted by the City may be incorporated by reference in any applicable franchise or license.

3.3 NATURE AND EXTENT OF THE GRANT: Any franchise granted hereunder by the City shall authorize the Grantee, subject to the provisions herein contained,

(A) To engage in the business of operating and providing cable communication service and the distribution and sale of such service to subscribers within the City.

(B) To erect, install, construct, repair, replace, reconstruct, maintain, and retain in, on, over, under, upon, across and along any street, cable, conductors, ducts, conduit, vaults, manholes, antennae, amplifiers, and appliances, attachments, supporting structures, and other property as may be necessary and appurtenant to the cable communications system; and, in addition, so to use, operate, and provide similar facilities, or properties

rented or leased from other persons, firms or corporations, including but not limited to any public utility or other Grantee franchised or permitted to do business in the City.

(C) To maintain and operate said franchise properties for the origination, collection, transmission, amplification, distribution and reception of electrical or radiant energy.

3.4 DURATION OF GRANT:

(A) A franchise shall be effective on the 31st day after approval of the franchise agreement or license, provided that the Grantee has filed, within twenty (20) days prior to such effective date, a written instrument, addressed to the Council accepting a franchise or license and agreeing to comply with all of the provisions hereof.

(B) A franchise or license shall expire fifteen (15) years after acceptance thereof unless sooner terminated by ordinance.

(C) The City Council may terminate any franchise granted pursuant to the provisions of this Ordinance in the event of the willful failure, refusal or neglect by Grantee to do or comply with any material requirement or limitation contained in this Ordinance, or any other applicable rule or regulation of this Ordinance, or any other applicable rule or regulation of this Council or City Administrator validly adopted pursuant to this Ordinance.

(1) The City Administrator may make written demand that the Grantee comply with any such requirement, limitation, term, condition, rule or regulation. If the failure, refusal or neglect continues after notice for an unreasonable period of time, determined as such by the City Administrator, following such written demand, the City Administrator may place his request for termination of the franchise upon a regular Council meeting agenda. The City Administrator shall cause to be served upon such Grantee, at least thirty (30) days prior to the date of such Council meeting, a written notice of his intent to request such termination, and the time and place of the meeting.

(2) The Council shall consider the request of the City Administrator and shall hear any persons interested therein, and shall determine, in its discretion, whether or not any failure, refusal or neglect by the Grantee was with just cause.

(3) If such failure, refusal or neglect by the Grantee was with just cause, the Council shall direct the Grantee to comply within such time and manner and upon such terms and conditions as are reasonable.

(4) If the Council shall determine such failure, refusal or neglect by the Grantee was without just cause, then the Council may, by ordinance, declare that the franchise with such Grantee shall be terminated and forfeited, Grantee shall be required to sell all interests and title in all of its

plant and system operated under the franchise including any rights under the unexpired portion of the franchise.

(D) In the event of termination, the City may purchase or require any successor Grantee to purchase, Grantee's facilities at a cost not to exceed its then fair market value, with a reduction for uncompensated damages incurred by the City in connection with Grantee's operation. In order to determine the fair market value of Grantee's system as specified above, the following procedure will be followed:

(1) Grantee and the purchaser each shall select one qualified appraiser experienced in the evaluation of cable communications systems.

(2) The two selected appraisers shall select a third appraiser. The three appraisers shall be employed to determine the fair market value of Grantee's system. The fair evaluation shall be the average of the three

(3) evaluations of the appraisers. The appraisers shall be directed to reach their determination within thirty (30) days. Grantee and the purchaser shall each pay fifty percent (50%) of the costs of employing such appraisers.

(3) Upon determination of the fair market value, and upon payment of such sum by the purchaser, Grantee shall transfer all rights, titles, and interests in the subject property to the purchaser within thirty (30) days.

(4) The term "fair market value" shall not include the value of the rights granted pursuant to a franchise.

(E) Nothing herein shall be deemed or construed to impair or affect, in any way or to any extent, the right of the City to acquire the property of the Grantee through the exercise of the right of eminent domain, nor any other of the rights of the City under the franchise or any other provisions of law.

(F) In the event of any holding over after expiration or other termination of any franchise granted hereunder, without the prior consent of the City, expressed by resolution, the Grantee shall pay to the City, reasonable compensation and damages, of not less than one hundred percent (100%) of its gross revenue derived from all sources within the City during said period.

3.5 PURCHASE UPON DURATION OF GRANT:

(A) Upon thirty (30) days notice prior to the expiration of a franchise the City may purchase the franchise property by a tender within ninety (90) days after the expiration of the franchise. Said notice shall extend the franchise for the tender period.

(B) The compensation shall be determined pursuant to Section 3.4(D).

Section 4. Construction of Franchise.

4.1 INTERPRETATION: Unless otherwise specifically prescribed herein the following provisions shall govern the interpretation and construction of a franchise:

(A) Time is of the essence. The Grantee shall not be relieved of its obligation to promptly comply with any provision hereof, or the ordinance granting the franchise, by any failure of the City to enforce prompt compliance with the same or any other provision.

(B) Any right or power conferred, or duty imposed upon any officer, employee, department, or board of the City, is subject to transfer by operation of law to any other officer, employee, department or board of the City.

(C) The Grantee shall have no recourse whatsoever against the City for any loss, costs, expenses or damages, arising out of any provision or requirement of a franchise or the enforcement thereof.

(D) A franchise does not relieve the Grantee of any requirement of the City Charter or of any ordinance, rule, regulation, or specification of the City, including, but not limited to any requirement relating to street work, street excavation permits, or the use, removal or relocation of property in streets.

(E) The granting of a franchise or any of the provisions contained herein shall not be construed to prevent the City from granting any identical or similar franchise to any person or corporation other than the Grantee.

4.2 LIMITATIONS UPON GRANT:

(A) No privilege or exemption is granted or conferred by a franchise except those specifically prescribed herein.

(B) Any privilege claimed under a franchise by the Grantee in any street shall be subordinate to any prior lawful occupancy of the street. The City reserves the right to reasonably designate where a Grantee's facilities are to be placed within the public ways.

(C) A franchise is a privilege to be held in personal trust by the original Grantee. It cannot in any event be transferred in part, and it is not to be sold, transferred, leased, assigned, or disposed of as a whole, either by forced sale, merger, consolidation, or otherwise, without prior consent of the City expressed by ordinance, and then only under such conditions as may be therein prescribed; and provided also that such consent shall be required for any transfer in trust, mortgage, or other hypothecation, as a whole, or in part, to secure an indebtedness.

(D) The Grantee shall at all times comply with all applicable present and future rules of the Federal Communications Commission.

(E) A Grantee shall, at all times during the life of its franchise, be subject to the lawful exercise of the City's police power and such reasonable regulations as the City Council may subsequently promulgate thereunder.

(F) Nothing contained in this Ordinance shall be deemed to prohibit in any way the right of the City to levy non-discriminatory occupational license taxes on any activity conducted by Grantee.

(G) Nothing contained in this Ordinance shall be deemed to prohibit in any way the right of the City to provide, for consideration, rights or privileges in addition to those set forth in Section 3.3.

(H) Any franchise granted shall not relieve the Grantee of any obligations involved in obtaining conduit space from any department of the City, utility company, or from others maintaining utilities in the public ways.

(I) Whenever in the judgment of the Grantor it is deemed impracticable to permit construction of underground conduit system by any other utility which may at the time have authority to construct or maintain a conduit in a street area, the Grantor may require the Grantee herein to afford to such utility the right to use such facilities of the Grantee as the Grantor finds practicable for use in common with the Grantee, both parties sharing the costs incident thereto and under such rules and regulations as they may agree upon, but in case they fail to agree within a reasonable time, then upon such terms, conditions and regulations governing the same as the Grantor may determine to be just and reasonable.

(J) Any franchise granted shall be in lieu of any and all other rights, privileges, powers, immunities, and authorities owned, possessed, controlled, or exercisable by Grantee, or any successor to any interest of Grantee, of or pertaining to the construction, operation or maintenance of any cable communications system in the City.

(K) No franchise shall authorize use of any public property other than public right-of-way and public utility easements owned by the City, unless such franchise or subsequent resolution of the Council expressly authorizes use of other public property.

(L) No franchise granted shall ever be given any value by any court or other authority, public or private, in any proceeding of any nature or character, wherein or whereby the City shall be a party or affected therein or thereby.

(M) Grantee shall be subject to all provisions of the other ordinances, rules, regulations, and specifications of the City heretofore or hereafter adopted, including but not limited to those pertaining to works and activities in, on, over, under, and about public right-of-ways.

(N) Any privilege claimed, under any such franchise granted, in any public right-of-way or other public property shall be subordinate to the public use and any other lawful use thereof.

(O) Grantee shall be subject to the provisions of general laws of Clackamas County and the State of Oregon or as hereafter amended, when applicable to the exercise of any privilege contained in any franchise granted pursuant to this ordinance, including but not limited to those pertaining to works and activities in and about state highways.

(P) Grantee shall be prohibited from directly or indirectly doing any of the following:

(1) Imposing a fee or charge for any service or repair to subscriber-owned receiving or transmitting devices except for the connection of its service or for the determination by Grantee of the quality of signal reception and/or transmission;

(2) Soliciting, referring, or causing or permitting the solicitation or referral of any subscriber to persons engaged in any business herein prohibited to be engaged in by Grantee;

(3) Providing information concerning the viewing patterns of identifiable individual subscribers to any person, group or organization for any purpose.

(Q) If the Federal Communications Commission or the Public Utilities Commission of the State of Oregon or any other Federal or State body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of any franchise granted, then to the extent such jurisdiction shall preempt or preclude the exercise of like jurisdiction by the City, the jurisdiction of the City shall cease and no longer exist.

(R) The preemption or preclusion of the exercise by the City of any of its police power shall not diminish, impair, or affect any other contractual benefit to the City of Grantee nor any other contractual obligation of the Grantee under any franchise granted.

(S) Any and all minimum standards governing the operation of Grantee and any and all maximum rates, ratios, and charges specified in any franchise granted, existing now and at any time in the future, including such time as any paramount jurisdiction shall preempt or preclude that of the City, and any and all rights, powers, privileges, and authorities of the City to determine, establish, or fix any of the same, are each and all are hereby declared by the City and by any Grantee accepting any franchise to be contractual in nature and to be for the benefit of the City.

(T) The form of the Grantee's contract with the subscriber shall also be subject to approval of the City.

(U) It is not necessarily the City's intention to prohibit the erection or controlled use of individual television antennae, and no one is or will be required to receive cable communications service or connect with a cable communications system.

(V) Should the Grantee ever fail to pay any sum of money to the City owing to the City under provisions of this Ordinance, or the franchise ordinance, when such sum becomes due and payable, Grantee shall pay interest to the City on the delinquent sum, until it is fully paid at two (2) interest points above the prime rate of interest charged in the Canby area as calculated by the City.

(W) A franchise to proceed with construction or operation of a cable communications system shall not be construed as any limitation upon the right of the City to grant to other persons or corporations, rights, privileges or authority similar to or different from the rights or authority set forth herein or the franchise document itself, in the same or other streets, alleys, public highways, public places, or other public right-of-ways by agreement, franchise, permit or otherwise.

(X) Nothing in this Ordinance shall be construed to prohibit any person from constructing or operating any private non-commercial satellite receiving station to the extent permitted by City, County, State and Federal law.

4.3 RIGHTS RESERVED TO CITY: There is hereby provided and reserved to the City every right and power which is required to be herein reserved or provided by any provision of the Charter of the City or its ordinances, as amended, and the Grantee by its acceptance of a franchise agrees to be bound thereby and to comply with any action or requirement of the City in its exercise of any such right or power.

(A) Neither the granting of a franchise nor any provision hereof shall constitute a waiver or bar to the exercise of any governmental right or power of the City, including regulation of subscription rates as permitted by law.

(B) Nothing herein and/or in the franchise shall be deemed or construed to impair or affect, in any way, to any extent, the right of the City to acquire the property of the Grantee, either by purchase or through the exercise of the right of eminent domain, at a fair and just value, which shall not include any amount for the franchise itself or for any of the rights or privileges granted thereby, and nothing herein contained shall be construed to contract away or to modify or abridge, whether for a term or in perpetuity, the City's right of eminent domain.

(C) There shall be reserved to the City every right and power which is required to be reserved or provided by law, and the Grantee, by its acceptance of the franchise, agrees to be bound thereby and to comply with any action or agreements of the City in its exercise of such rights of power, theretofore, or thereafter enacted or established.

(D) Neither the granting of the franchise nor any provision thereof shall constitute a waiver or bar to the exercise of any governmental right or power of the City.

(E) The City hereby reserves to itself the right to intervene in any suit, action, or proceeding involving any provision of this Ordinance and/or Grantee's franchise. The Council may do all things which are necessary and convenient in the exercise of its jurisdiction under this Ordinance and/or Grantee's franchise, and may determine any question of fact which may arise during the existence of any franchise granted. The City Administrator and the City Attorney, with the approval of the City Council, are hereby authorized and empowered to adjust, settle, or compromise any controversy or charge arising from the operations of any Grantee under the franchise either on behalf of the City, the Grantee, or any subscriber, and which may appear to be in the best interest of the public.

(F) The City at its option, when for sufficient cause as deemed by the

City Administrator, may require that the annual proof-of-performance test, addressed in Section 6 of this Ordinance, be conducted or observed by a qualified member of the City's staff or its designated representatives. The City reserves the right to have the measurements, associated with City observed performance tests, conducted at City selected test points and to a greater number of test points than the minimum required by Section 76.601 FCC Rules.

(G) Any delegable right, power, or duty of the Council, the City or any officials of the City may be transferred or delegated to an appropriate officer, employee, or department of the City.

(H) The City reserves the right to negotiate other reasonable technical and operational performance standards for system franchises granted pursuant to this Ordinance. Grantee shall have the duty to negotiate in good faith with the City.

(I) The City reserves the right to enact reasonable regulations pertaining to a franchise granted pursuant to this Ordinance which may include, but is not limited to:

- (1) use of conduits by City;
- (2) Common user;
- (3) filing of pole user agreement;
- (4) reservation of street rights;
- (5) restoration of streets;
- (6) movement of facilities; and
- (7) trimming of trees.

(J) The City reserves the right to further regulate the conduct of the Grantee in regard to the privacy and property rights of private citizens. Such regulations may include but are not limited to the security of all records maintained by the Grantee containing privacy sensitive information, personnel practices relating to such records and any other matters related to privacy and individual rights.

(K) The City reserves the right to establish a cable communications regulatory and advisory commission to assist the Council in regulating cable activity in the City. The members and duties of any such commission shall be established by the Council.

(L) Should the State of Oregon, or any agency of the Federal Government, require the Grantee to act in a manner which is inconsistent with any provisions of this Ordinance, Franchise Ordinance or associated resolutions and orders, the Grantee shall so notify the City. Upon receipt of such notification

the City shall determine if a material provision of the franchise is affected. Upon such determination, the City shall have the right to modify or amend any of the sections of the franchise to such extent as may be necessary to carry out the full intent and purpose of this Ordinance or the Franchise. In the event that the City determines that substantial and material compliance with the terms of the franchise has been frustrated by such State or Federal requirement, Grantee shall renegotiate in good faith with the City a new franchise agreement. The City may terminate the franchise in the event it determines that no satisfactory new franchise agreement can be reached.

(M) No Grantee nor any major stockholder of a Grantee shall directly or indirectly with the City use the position as cable Grantee to gain a competitive advantage in the business of selling, leasing, renting, servicing, or repairing radio or television sets or other receivers or parts thereof, or data access and transfer equipment, which make use of entertainment and information signals, provided that nothing herein shall prevent Grantee from making modifications to the tuner input circuit of the subscribers' communications transmitters and/or receivers, and the fine tuning of the customers' operating controls only, to ensure proper operation under conditions of cable connection at the time of installation, or in repairing receivers and other equipment belonging to other cable system operators for use in the conduct of their businesses.

(N) The City shall have the right, free of charge, of installing, maintaining and operating upon antenna towers and poles, or in underground ducts of the Grantee, antenna, amplifiers, coaxial cable, wire, fixtures and appurtenances necessary for a City communication system; provided such equipment is installed, maintained and operated so as not to interfere with property or operations of the Grantee, and that the Grantee shall not be responsible for any damage without his fault resulting to the signs, wires, cables or property of the City from such use by the City.

(O) The City shall have the right to inspect at any time during normal business hours, at the local and parent corporation offices of the Grantee, all books, records, maps, plans, income tax returns, financial statements, service complaint logs, performance test results and other like materials of the Grantee which relate to the operation of the Grantee. Access to the aforementioned records shall not be denied by the Grantee on the basis that said records contain "proprietary" information.

(P) Copies of all petitions, applications, communications, and reports submitted by the Grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other Federal and State regulatory commission or agency having jurisdiction in respect to any matters affecting cable communications operations authorized pursuant to the franchise, shall also be submitted simultaneously to the City. Copies of responses or any other communications from the regulatory agencies to the Grantee shall likewise be furnished simultaneously to the City.

(Q) Any intra-state interconnection of interactive services between the system operated by Grantee and any other system shall be subject to the regulatory authority of the City.

(R) The reservation of any particular right shall not be construed to limit the promulgation of other reasonable rules and regulations.

Section 5. Franchising Procedures.

5.1 FRANCHISE APPLICATION:

(A) This Ordinance itself grants no authority to operate a cable communications system to any person(s). Such grants are only made by the adoption of a separate ordinance awarding a specific franchise to an applicant who has complied with the provisions of this Ordinance.

(B) Each application for a franchise to construct, operate, or maintain any cable communications system(s) in this City shall be filed with the City Recorder, and shall contain or be accompanied by the following, as a minimum:

(1) The name, address, and telephone number of the applicant;

(2) A detailed statement of the corporate or other business entity organization of the applicant, including but not limited to, the following and to whatever extent required by the City.

(i) the names, residence and business addresses of all officers, directors and associates of the applicant.

(ii) the names, residence and business addresses of all officers, persons and entities having, controlling, or being entitled to have or control of 1% or more of the ownership of the applicant and the respective ownership share of each such person or entity.

(iii) the names and addresses of any parent or subsidiary of the applicant, namely, any other business entity owning or controlling applicant in whole or in part or owned and controlled in whole or in part by the applicant, and a statement describing the nature of any such parent or subsidiary business, entity, including but not limited to cable television systems owned or controlled by the applicant, its parent and subsidiary and the areas served thereby.

(iv) a detailed description of all previous experience of the applicant in providing cable television communications system service and in related or similar fields.

(v) a detailed and complete financial statement of the applicant.

(vi) a statement identifying, by place and date, any and all cable television franchises awarded to the applicant, or its parent or subsidiary; the status of said franchises with respect to completion thereof; the total cost of completion of such systems; and the amount of applicant's and its parent's or subsidiary's resources committed to the completion thereof.

(3) A thorough, detailed description of the proposed cable communications system and plan of operation of the applicant which shall include, but not be limited to, the following:

(i) a detailed map indicating all areas proposed to be served, and a proposed time schedule for the installation of all equipment necessary to become operational throughout the entire area to be served.

(ii) a detailed, informative and referenced statement describing the actual equipment and operational standards proposed by the applicant. In no event shall said operational and performance standards be less than those adopted by the Rules and Regulations of the Federal Communications Commission (contained in Title 47, Subpart K, Sections 76.601 et seq. 9), and as augmented herein and modified by the franchise awarded.

(iii) a detailed estimate of the cost of constructing the applicant's proposed system.

(iv) a copy of the form of any agreement, undertaking or other instrument proposed to be entered into between the applicant and any subscriber.

(v) a detailed statement setting forth in its entirety any and all agreements and undertakings, whether formal or informal, written, oral, or implied, existing or proposed to exist between the applicant and any person, firm or corporation which materially relate or pertain to or depend upon the application and the granting of the franchise.

(vi) a statement or schedule setting forth all proposed classifications of rates and charges to be made against subscribers and all rates and charges as to each of said classifications, including installation charges and service charges.

(4) A copy of any agreement existing between the applicant and any public utility subject to regulation by the Oregon Public Utilities Commission providing for the use of any facilities of the public utility, including but not limited to poles, lines or conduits, within the City and/or adjacent areas.

(5) Any other details, statements, information or references pertinent to the subject matter of such application which shall be required or requested by the Council, or by any provision of any other ordinance of the City.

(6) An application fee in a sum to be set by the City which shall be in the form of cash, certified or cashier's check, or money order which is to pay the costs of studying, investigating, and otherwise processing such application, and which shall be in consideration thereof and not returnable or refundable in whole or in part.

(C) The Council may, by advertisement or otherwise, solicit for any other applications for cable communications system franchises, and may determine and fix any date upon or after which the same shall be received by the City, or the date before which the same shall not be received, and may make any other

determinations and specify any other times, terms, conditions or limitations respecting the soliciting, calling for, making and receiving of such applications

(D) Upon receipt of any application for franchise, the Council shall refer the same to the City Administrator or Cable Advisory Committee, if such exists, who shall prepare a report and make recommendations respecting such application, and cause the same to be completed and filed with the Council within one hundred and twenty (120) days.

(E) In making any determinations hereunder as to any application the Council shall give due consideration to the character and quality of the service proposed, rates to subscriber, income to the City, experience, character, background, and financial responsibility of any applicant, and its management and owners, technical and performance quality of equipment, willingness and ability to meet construction and physical requirements, and to abide by policy conditions, franchise limitations and requirements, and any other consideration deemed pertinent by the Council for safeguarding the interest of the City and the public, The Council, in its discretion, shall determine the award of any franchise on the basis of such considerations and without competitive bidding.

(F) If the Council, after public hearing, shall determine to reject such application, such determination shall be final and conclusive, and the same shall be deemed rejected,

(G) If the Council shall determine to further consider the application, the following shall be done:

(1) The council shall decide and specify by resolution the terms and conditions of any franchise to be granted hereunder and as herein provided.

(2) The Council shall give notice of its intention to consider the granting of such a franchise, stating the name of the proposed Grantee, and that copies of the proposed franchise may be obtained at the office of the City Recorder, fixing and setting forth a time and public place certain when and where interested parties may inspect all the bona fide applications, fixing and setting forth a day, hour, and place certain when and where any persons having any interest therein or objection to the granting thereof may file written protests and appear before the Council and be heard, and directing the City Recorder to publish notice of said resolution's adoption and brief summary of it, at least once within ten (10) days of the passage thereof in a newspaper of general circulation within the City.

(H) At the time set for the hearing, or at any adjournment thereof, the Council shall proceed to hear and consider all protests. Thereafter, the Council shall make one of the following determinations:

(1) That such franchise be denied; or

(2) That such franchise be granted upon such terms and conditions as the Council deems appropriate, which conditions may include, on a not to exceed basis, where in accordance with applicable FCC regulations and State laws:

- (l) charges for installation;
- (ii) subscriber rates;
- (iii) service rates for separate classifications of service such as additional connections.

(I) If the Council shall determine that a franchise be denied, such determination shall be expressed by Resolution; if the Council shall determine that franchise be granted, such determination shall be expressed by Ordinance granting a franchise to the applicant. The action of the Council shall be final and conclusive.

(J) The Grantee shall pay to the City a sum of money sufficient to reimburse it for all expenses incurred by the provisions of this Ordinance, beyond those defrayed by application fees. Such payment shall be made within thirty (30) days after the City furnishes the Grantee with a written statement of such expenses.

5.2 REPLACEMENT FRANCHISE:

(A) The service provided by the Grantee under a franchise may be required to continue uninterrupted beyond the expiration or cancellation of a franchise. To assure continued service to the subscribers, application for a replacement franchise shall be submitted at least twelve (12) months prior to the expiration date thereof. If the Grantee fails to make said application, the City may commence procedures for the issuance of another franchise(s).

(B) Any franchise may be renewed for a term not to exceed fifteen (15) years, at any time prior to the expiration of the same. An application therefor shall be submitted to the City Administrator containing the following information:

- (1) The information required pursuant to Section 5.1(B) (1) and (2) hereof;
- (2) A map of the area proposed to be included in the franchise service area;
- (3) A schedule of rates and charges proposed;
- (4) A narrative and/or pictorial description of the facilities in place, and a narrative description of proposed additions and/or replacements thereto, if any.

(C) Upon receipt of such an application the City Administrator or Cable Advisory Committee, if such exists, shall review the same and forward to the City Council a report containing the recommendations as to whether the renewal franchise should be granted or not. Upon receipt of such a report, the City Council shall conduct a public hearing, noticed as is provided in Subsection 5.1(G) (2) hereof. At the time of such hearing, or continuance

hereof, the City Council shall, based upon the application, report, and relevant evidence received, determine whether the public interest, convenience and necessity require the issuance of such franchise. If the City Council determines to deny the application for renewal, it shall do so by resolution. If it determines that the said franchise should be granted, it shall do so in the manner provided in Subsection 5.1(H) (2) hereof. In the event of non-renewal or termination of a franchise, the City may purchase, or require any successor Grantee to purchase Grantee's facilities at a cost not to exceed its then fair market value, with a reduction for any uncompensated damages incurred by the City in connection with the Grantee's operation. If such fair market value cannot be agreed upon by the parties, it shall be determined by a three-member Arbitration Panel, in accordance with the arbitration process specified in Subsection 3.4(D) of this Ordinance. The parties shall divide expenses of arbitration evenly among themselves.

5.3 FRANCHISE ACCEPTANCE:

(A) No franchise granted under this Ordinance shall become effective for any purpose unless and until written acceptance thereof shall have been filed with the City Recorder. Written acceptance, which shall be in the form and substance approved by the City Attorney, shall also be and operate as an acceptance of each and every term and condition and limitation contained in this Ordinance, and in such franchise, or otherwise specified as herein and therein provided.

(B) The written acceptance shall be filed by the Grantee within twenty (20) days prior to the effective date of the ordinance granting such franchise, in the event this day falls on a non-working day, then the next business day will suffice.

(C) In default of the filing of such written acceptance as herein required, the Grantee shall be deemed to have rejected and repudiated the franchise. Thereafter the acceptance of the Grantee shall not be received nor filed by the City Recorder. The Grantee shall have no rights, remedies, or redress in the premises, unless and until the Council, by resolution, shall determine that such acceptance be received or filed, and then upon such terms and conditions as the Council may impose.

(D) In any case, and in any instance, all rights, remedies and redress in these premises which may or shall be available to the City, shall at all times be available to the City, and shall be preserved and maintained and shall continuously exist in and to the City, and shall not be in any manner or means modified, abridged, altered, restricted, or impaired by reason of any of these premises or otherwise.

(E) Any franchise granted and accepted under this Ordinance shall be in lieu of any and all other conflicting rights, privileges, powers, immunities, and authorities owned, possessed, controlled, or exercisable by the Grantee, of or pertaining to the construction, operation, or maintenance of any cable communications system(s) in the City.

5.4 FRANCHISE TRANSFER OR ASSIGNMENT:

(A) Any such franchise shall be a privilege to be held in personal trust by the Grantee. The franchise shall not be sublet or assigned, nor shall any of the rights or privileges therein granted or authorized be leased, assigned, mortgaged, sold, transferred, or disposed of, either in whole or in part, either by forced or involuntary sale, or by voluntary sale, merger, consolidation or otherwise, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person(s) except the Grantee, either by act of the Grantee or by operation of law, without the consent of the City expressed by Ordinance.

(B) The Grantee shall promptly notify the City of any proposed change in, or transfer of, or acquisition by, any other party of control of the Grantee with respect to which the consent of the Grantor is required, pursuant to Subsection 5.4(A) above. Such change of control shall make this franchise subject to revocation unless and until the City Council shall have consented thereto.

(C) Consent of the City Council shall not be granted until it has examined the proposed assignee's legal, financial, technical, character and other qualifications to construct, operate and maintain a cable communications system in the City and has afforded all interested parties notice and an opportunity to be heard on the question. The Grantee shall assist the City in any such examination.

(D) The said consent of the Council may not be unreasonably refused; provided, however, the proposed assignee must show financial responsibility as determined by the Council and must agree to comply with all provisions of the franchise and of this Ordinance; and provided, further, that such consent shall also be required for a transfer in trust, mortgage, or other hypothecation, in whole or in part, to secure an indebtedness. Such consent shall not be withheld unreasonably.

(E) In the event that Grantee is a corporation, prior approval of the City Council shall be required where there is an actual change in control or where ownership of more than 50% of the voting stock of Grantee is acquired by a person or group of persons acting in concert, none of whom already own 50% or more of the voting stock, singly or collectively. Any such acquisition occurring without prior approval of the City Council shall constitute a failure to comply with a provision of this Ordinance within the meaning of Subsection 3.4(C).

(F) Any such transfer or assignment shall be made only by an instrument in writing, which shall include an acceptance of all terms and conditions of the franchise and a duly executed copy of which shall be filed with the City Recorder within 30 days after any such transfer or assignment.

Section 6. Systems Design, Construction and Technical Performance Standards.

(A) Standards of cable communications system(s) construction, safety, and operation shall meet, but not limited to, the following referenced specifications unless exception is agreed upon between the City and the Grantee.

(1) Applicable City, County, State and National/Federal Codes and ordinances as they apply to the construction of buildings, tower structures, and cable system installation;

(2) Applicable utility joint attachment practices;

(3) National Electrical Safety Code, NFPA No. 70;

(4) Local utility code requirements;

(5) Local right-of-way procedures.

(B) The overall system(s) will be designed and constructed to meet all FCC technical performance specifications and standards over a temperature range of + 50 degrees F from the mean temperature of the Canby area, and to function throughout all environmental extremes expected.

(C) The forward portion of any cable communications system shall be capable of initial activation of a minimum carriage of 54 Class I television channels, the full FM broadcast band, and Pilot Carriers or other such auxiliary signals as required for system control.

(D) The combined forward trunk and distribution system will deliver signals to each and every subscriber's receiver that will meet or exceed the franchise ordinance specifications at the mean system temperature + 50 degrees F, unless otherwise indicated. This shall include the effects of drop cables, interior splits, and any terminal equipment such as descramblers and set top converters.

(E) The reverse portion of the residential system shall be capable of initial activation of a minimum of 5 to 30 MHz in bandwidth, with return signals from each subscriber and institutional (including all schools) signal sources to the extreme end of any area in compliance with the specifications set forth in the franchise ordinance.

(1) where applicable, the end of the system specifications shall include the effects of any signal reprocessing equipment necessary to achieve forward transmission.

(2) for Class I signals, the signal delivered to the subscribers' TV receiver, after being transmitted to the headend, processed and retransmitted down a forward channel shall meet the specifications of the franchise ordinance.

(F) All cable communications systems authorized to be constructed and operated pursuant to this Ordinance, shall be, insofar as financially and technically feasible, compatible one with another. Signal specifications compliance determination for forward, and/or institutional channels interchanged between other cable communication systems and a Grantee's system are to be determined by applying the combined contribution of distortion of all pertinent components of the worst case (temperature and location) signal path. The combined contribution shall meet or exceed the specified technical

specifications at the termination of the worst case signal path the channel could encounter. At the interconnect point the party delivering a channel or channels will provide signals, transported either in the forward or reverse system to the interconnect point, that meet or exceed the franchise ordinance specifications at the mean system temperature + 50 degrees F. The Signals are to be in compliance as stated at a point which best represents the most direct signal path between the party providing the signal and the party receiving the signal. Only one such interconnect point is to be specified for all signal exchanges.

(G) A comprehensive routine preventative maintenance program shall be developed, effective and maintained for each system by the respective Grantee to ensure continued top quality cable communications operating standards in consonance with FCC Part 76 and the technical specifications stipulated in the franchise ordinance.

(H) No newly constructed system services shall be offered for sale prior to proof-of-performance testing in accordance with FCC Part 76.601 and technical specifications and standards listed in the Franchise Agreement. This initial proof-of-performance testing, and annual proof-of-performance testing, may be conducted by the City, or its designated representative, at the City's option, as deemed necessary by the Council, or its designated representative. The City reserves the right to have the measurements, associated with City observed performance tests, conducted at City selected test points and to a greater number of test points than the minimum required by Sub-Part 76.601, FCC Rules. Additionally, the Grantee shall reimburse the City for all expenses incurred by it in connection with the City conducting or observing the annual performance tests, when the results of those tests are deemed by the City to fall below a 90% level of compliance with the technical standards set forth in FCC Part 76 and in the Franchise Agreement.

(I) Grantee's proof-of-performance testing procedures must be approved by the City for implementation prior to the initial proof-of-performance testing addressed in Paragraph (H) immediately above. The results of proof-of-performance tests shall be retained for at least 5 years and available for inspection by the City.

(J) All system antennae and mounts shall be designed, installed and constructed to withstand 100 MPH winds and 1" radial ice.

(K) All underground cable should be flooded and be armour-clad cable and/or installed in conduit unless specifically exempted by the City Director of Public Works, on a case by case basis.

(L) Residential and institutional drop cables should be double shielded type and fitted with sealed hex crimp ring high integrity connectors.

(M) Polyethelene jacketed cable should be used in any and all areas of the plant where airborne heavy chemical particles can be expected.

(N) Grantee's corrective maintenance program shall render efficient corrective service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions shall be preceded by notice and shall occur during a period of minimum use of the system. A written log shall be maintained of all service interruptions. The log shall

reflect the date, time, duration, and reason for each service interruption. The record of the log shall be kept on file for a minimum of three years.

Section 7. Street Work, Permits and Construction.

7.1 PERMITS:

(A) Within thirty (30) days after acceptance of franchise, the Grantee shall proceed with due diligence to obtain all necessary permits and authorizations which are required in the conduct of its business, including, but not limited to, any utility joint use attachment agreements, encroachment permits, micro-wave carrier licenses, and any other permits, licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of cable television/communications systems, or associated micro-wave transmission facilities.

(B) In connection with Subsection 7.1(A) above, copies of all petitions, applications and communications submitted by the Grantee to the Federal Communications Commission, Securities and Exchanges Commission, or any other Federal or State regulatory commission or agency having jurisdiction in respect to any matters affecting Grantee's cable communications operations, shall also be submitted simultaneously to the City Administrator.

7.2 GENERAL CONSTRUCTION:

(A) Within sixty (60) days after obtaining all necessary permits, licenses, and authorizations, including right of access to conduits, Grantee shall commence construction and installation of the cable communications system.

(B) Within one hundred eighty (180) days after the commencement of construction and installation of the system, Grantee shall proceed to render service to subscribers, and the completion of the installation and construction shall be pursued with reasonable diligence thereafter, so that service to all of the areas designated and scheduled on the map and plan of construction made part of the franchise shall be provided as set forth therein.

(C) Failure on the part of the Grantee to commence and diligently pursue each of the foregoing requirements and to complete each of the matters set forth herein, shall be grounds for termination of such franchise. By Resolution and order, the Council, in its discretion, may extend the time for the commencement and completion of installation and construction for additional periods in the event the Grantee, acting in good faith, experiences delays by reason of circumstances beyond Grantee's control.

(D) The City shall have the right, free of charge, to make additional use, for any public or municipal purpose, whether governmental or proprietary, of any conduits, or other similar facilities erected, controlled, or maintained exclusively by or for Grantee in any street, provided such use by City does not interfere with the use by Grantee.

(E) Grantee shall utilize existing conduits, and other facilities whenever possible, and shall not construct or install any new, different, or additional conduits or other facilities whether on public property or on privately owned property unless and until first securing the written approval of the City Director of Public Works.

(F) The Grantee agrees to work in harmony with other public utility providers in order to accomplish the intent and meaning of this section particularly and of this ordinance generally.

7.3 UNDERGROUND FACILITIES:

(A) Unless otherwise authorized by the Council, in those areas and portions of the City where the transmission and/or distribution facilities of the public utility providing telephone service, and those of the utility providing electric service, are underground or hereafter may be placed underground, or are to be placed underground by a builder, developer or subdivider as part of a development or subdivision, then the Grantee shall likewise construct, operate and maintain all of its transmission and distribution facilities underground to the maximum extent that existing technology reasonably permits the Grantee to do so.

(B) In new developments or subdivisions the builder, developer or subdivider shall be responsible for the performance of all necessary trenching and backfilling of main line and service trenches, including furnishing of any imported backfill material required. The Grantee will be responsible for the conduct of the engineering and labor to put the cable conduit in the trench. All conduit so installed shall become the property of the City, and Grantee shall execute an instrument of conveyance to the City but the Grantee shall always be responsible for maintenance of the conduits and shall have right of access at all times for such purpose. Pre-wiring of new dwellings while under construction shall be mandatory. The Grantee will be responsible for pulling in the cable, and providing the plant electronics and drops to individual homes, after occupancy.

(C) In those areas and portions of the City heretofore designated by the City as local improvement districts and where utility service facilities are currently located underground, the Grantee shall be responsible for the undergrounding of cable facilities including the performance of all necessary trenching and backfilling of main line and service trenches, and the furnishing of any imported backfill material required.

(D) Previously installed aerial cable shall be underground in concert, and on a cost-sharing basis, with other utilities pursuant to the general ordinances of the City or applicable State law, or in the event such action shall be taken by all other utilities on a voluntary basis.

(E) Subject to approval by the Council, incidental appurtenances such as amplifier boxes and pedestal mounted terminal boxes may be placed above ground, but shall be of such size and design and shall be so located as not to be unsightly or hazardous to the public.

7.4 SYSTEM EXTENSION:

(A) Grantee shall extend residential and institutional (the latter as required by the City) service into every new subdivision and/or newly incorporated/annexed area. Those new areas having more dwelling units per strand mile of plant than the number stipulated in the franchise ordinance,

shall receive residential service for the normal installation fee. The capacity to provide cable communications service shall be available to newly constructed structures on the date of first occupancy. Actual installation of service may be delayed up to 60 days from first occupancy or until after final grading, whichever is first. In those areas where the number of dwelling units per strand mile is less than the number stipulated in the franchise ordinance Grantee will provide residential cable service on a pro-rata sharing of the installation costs with the potential subscriber(s). Grantee will bear its pro-rata share of the actual number of potential subscribers per mile divided by the number of dwellings per mile stipulated in the franchise ordinance.

(B) The remaining construction cost will be borne on a pro-rated basis by each applicant committing to service within the extension area. Mileage will be measured from the nearest point on the nearest trunk line. Example: If it requires one mile of plant extension at \$10,000 per mile of construction to serve twenty potential subscribers, and if the franchise stipulated dwellings per mile were 24, Grantee would pay $\$10,000 \times 20 \div 24$, or \$8,333, as its share of the extension cost. The remaining \$1,667 cost would be divided equally among the twenty potential subscribers or each would pay a \$84 installation fee assuming all twenty become subscribers. The above formula applies to individual installation distances, as stipulated in the franchise ordinance, or less. For distances in excess of the stipulated distance, there may be an additional charge for that distance in excess.

7.5 CONDITIONS ON STREET OCCUPANCY:

(A) Any pavements, sidewalks, curbing or other paved area taken up or any excavations made by a Grantee shall be done under permits issued for the work by the proper officials of the City, County or State, as the case may be, and under their supervision and direction, and shall be done in such manner as to give the least inconvenience to the inhabitants of the City. A Grantee shall, at its own cost and expense, and in a manner approved by the proper officials, replace and restore any such pavements, sidewalks, curbing or other paved areas in as good a condition as before the work involving such disturbance was done, and shall also make and keep full and complete plats, maps and records showing the exact locations of its facilities located within the public streets, ways and easements of the City. These maps shall be available for inspection at any time during business hours by City Officials and copies shall be furnished to the City at its request and without cost to the City.

(B) A Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than 48 hours advance notice to arrange for such temporary wire changes.

(C) A Grantee shall have authority to trim the trees upon and overhanging the public streets so as to prevent the branches of such trees from coming in

contact with the wires and cables of the Grantee, under the same rules and regulations applied to public utilities within the City, except that, at the option of the Council, such trimming may be done by it or under its supervision and direction at the expense of the Grantee.

7.6 STREET WORK:

(A) Upon any failure of the Grantee to commence, pursue or complete any work required by it by law or by the provisions of a franchise to be done in any street, the Council, at its option, may cause such work to be done and the Grantee shall pay to the City the cost thereof in the itemized amounts reported by the Council to the Grantee, within thirty (30) days after receipt of such itemized report.

(B) In the event that:

(1) any part of such system has been installed in any street or other area without complying with the requirements hereof and/or the franchise ordinance; or

(2) the use of any part of the system of Grantee is discontinued for any reason for a continuous period of thirty (30) days, without prior written notice to and approval by the City; or

(3) any franchise shall be terminated, cancelled or shall expire, then the Grantee shall, at the option of the City, and at the expense of Grantee and at no expense to the City, and upon demand of the City, promptly remove from any streets or other area all property of Grantee, and Grantee shall promptly restore the street or other area from which such property has been removed to such condition as the City Director of Public Works shall approve.

7.7 CHANGES REQUIRED BY PUBLIC IMPROVEMENT: The Grantee, at Grantee's expense, shall protect, support, temporarily disconnect, relocate, or remove any property of Grantee when required by the Council by reason of traffic conditions, public safety, street vacation, freeway or street construction; change or establishment of street grade, installation of sewers, drains, waterpipes, power line, signal line, transportation facilities, tracks, or any other types of structure or improvement by governmental agencies whether acting in a governmental or proprietary capacity, or any other structure of public improvement, including but not limited to movement of buildings, urban renewal and redevelopment, and any general program under which the City shall undertake to cause all such properties to be located beneath the surface of the ground; provided that Grantee shall in all cases have the privileges and be under the obligations as to the abandonment of franchise property in place which are provided in Section 7.8 hereof.

7.8 REMOVAL OR ABANDONMENT OF FRANCHISE PROPERTY:

(A) In the event the use of any franchise property is permanently discontinued, or no franchise has been obtained therefor, upon expiration of or within 12 months after any termination of a franchise, the Grantee

shall promptly remove from the streets all property involved, other than any the Council may, at its sole option, permit to be abandoned in place. The Grantee shall post a cash security deposit with the City to assure full and proper street restoration. The deposit shall be equal to the costs of the street restoration project as estimated by the City's Director of Public Works; and the amount of the deposit to be refunded to the Grantee upon completion of the work shall be determined by the City Council. The Council may, without liability, use all or any part of the deposit to complete or correct the street restoration work if the Grantee fails or neglects to do so.

(B) A permit to abandon in place must first be obtained from the City Director of Public Works. Nothing hereunder shall be deemed a taking of the property of Grantee, and Grantee shall be entitled to no surcharge by reason of anything hereunder.

(C) Franchise property to be abandoned in place shall be abandoned in such manner as the Council shall prescribe. Upon abandonment of any franchise property in place, the Grantee shall submit to the Council an instrument, satisfactory to the City Attorney, transferring to the City the ownership of such property.

Section 8. System Maintenance.

Throughout the life of a Grantee's franchise, and in addition to other service regulations adopted by the Council, and excepting circumstances beyond Grantee's control, such as Acts of God, riots and civil disturbances, and in providing the foregoing services, a Grantee shall:

(A) Maintain all parts of its system in good condition and in accordance with standards generally observed by the cable television industry. The system must serve individual residents, and also serve as a broad based communications source for City Government and other public facilities including hospitals, public libraries, schools and industrial and commercial business users.

(B) Retain sufficient employees to provide safe, adequate and prompt service for all such residential subscribers, institutional facilities and business users.

(C) Limit system failures to minimum time duration by locating and correcting malfunctioning as promptly as is reasonably possible, irrespective of holidays or other nonbusiness hours.

Section 9. Safety Requirements.

A Grantee shall, at all times:

(A) Install and maintain its wires, cables, fixtures and other equipment in accordance with the requirements of the State or Local Building Codes governing construction, and in such manner that they will not interfere with any installations of the City.

(B) Keep and maintain in a safe, suitable, substantial condition, and in good order and repair, all its structures, lines, equipment, and connections in, over, under, and upon the streets, sidewalks, alleys and public ways or places of the City wherever situated or located.

Section 10. Operations and Service.

10.1 SERVICE AREA: Grantee's system design and construction shall be such that service shall be made available to all residential units within the Grantee's service area, as defined in the franchise, for the normal installation fee, with the exception that in those locations where the dwelling units per strand mile of system plant are less than the dwellings per mile figure stipulated in the franchise ordinance, Grantee shall provide cable service on a pro-rata sharing of the installation costs with the potential subscribers. The pro-rata sharing of those costs will be in accordance with the formulation set forth in Section 7.4 hereof.

10.2 ESTABLISHMENT OF SERVICE: Subject to such regulations as may be adopted by the Council, the Grantee shall install cable television service to all persons making a timely and bona fide request for such service at any location within the service area.

After the Grantee shall have established service pursuant to a franchise in any area of the City, such service shall not be suspended or abandoned unless such suspension or abandonment be authorized or ordered by the Council.

10.3 BASIC SERVICE: A cable communications system, to be installed and operated pursuant to this Ordinance and a franchise granted hereunder shall:

- (A) Be operationally capable of relaying to subscriber terminals those television and radio broadcast signals for the carriage of what the Grantee is now or thereafter authorized by the Federal Communications Commission; and
- (B) Distribute color television signals which it received in color; and
- (C) Provide, as a minimum, channel capacity and basic equipment for program production in cablecasting for educational, public, and government access uses.
- (D) Have a minimum capacity of 54 downstream video channels.
- (E) Have two-way (bidirectional) activated capacity upon initial activation of system, or at such time as may be extended by the Council.

10.4 NON-BASIC SERVICE: The cable communications system permitted to be installed and operated pursuant to this Ordinance may also engage in the business of:

- (A) Transmitting original cablecast programming not received through television broadcast signals;
- (B) Transmitting any additional broadcast signals permitted by the Federal Communications Commission.

(C) Transmitting television pictures, film and video-tape programs, not received through broadcast television signals, whether or not encoded or processed to permit reception by only selected receivers or subscribers.

(D) Transmitting and receiving all other signals; digital, voice and audio-visual, etc.

(E) Transmitting on a non-discriminatory basis and for a reasonable rate, burglar, fire, or other non-broadcast services which customers request from persons supplying those services.

10.5 LOCAL ORIGINATION AND ACCESS

(A) Grantee shall provide and maintain at least one Local Origination and Access Studio within the service area. Location of the studio to be approved by the Council or its designated representative.

(B) Grantee shall provide, install and maintain a Local Origination and Access Audio/Video System at their Local Origination and Access Studio. The System shall contain a complement of compatible equipment as specified in the franchise ordinance, all of which will be of broadcast or top level industrial quality.

(C) The Grantee shall make studio and portable audio/video equipment available to residents in accordance with the Grantee developed and City approved studio and equipment operations/usage plan, and provisions set forth in the franchise ordinance.

(D) Grantee shall provide portapak equipment for remote public productions and locally-originated programming.

(E) Grantee shall provide community access channels for use by City residents, including channels for government and education access. Also, community access on a first-come, first-serve basis, and leased access. Until there is demand for full channel-time use, such may be combined on one or more channels. Additional access channels will be activated when any of the channels stipulated are in use during 80% of the weekdays (Monday through Friday) for 80% of the time during any consecutive three (3) hour period for six (6) consecutive weeks.

(F) Grantee will actively promote production assistance to facilitate use of these community access channels. Grantee shall maintain sufficient dedicated studio staff to fully support active local origination and access activities. The staff, upon reasonable notice, shall provide training and technical assistance in the use of the studio and portable equipment. This training and assistance shall, at a minimum, be available at the Local Origination and Access Studio and made available upon request at public schools.

(G) Grantee shall maintain all studio equipment, including portable equipment, in a fully operational status on a continuous basis, and to technical standards requisite for quality performance.

10.6 MUNICIPAL SERVICES:

(A) With respect to local government access, the Grantee shall provide, at the request of the Council, and upon City reimbursement of Grantee's actual production costs in excess of five (5) hours a week, averaged over a 30 day period, use of Grantee's studio, equipment and technical services for production of live and video-taped municipal programs, subject to scheduling requirements of the Grantee.

(B) With respect to the basic television service, the Grantee shall provide a drop and all basic subscriber services, without cost, when the system possesses such facilities and as designated by the Council, to:

- (1) public schools and county buildings within the City, and
- (2) buildings owned and/or controlled by the City, and used for public purposes and not for residential use.

10.7 PUBLIC BENEFIT SERVICES: At such time as the Council determines it to be in the public interest, the Grantee may be required, without increasing subscription rates, to provide:

- (a) Connection to municipal video production studios;
- (B) Connection to education facilities;
- (C) Connection to public health facilities;
- (D) Interconnection with other communications systems;
- (E) Program origination, including children and senior citizen programs.
- (F) Interconnection between municipal and/or educational facilities.

10.8 INTERCONNECTION: The Grantee will be required to provide interconnection to other nearby cable television systems at the time and to the extent and in the manner specified by the Council, after the Council has conducted public hearings on the manner to determine the need and viability of an interconnect system. Costs of said interconnections shall not be passed on to subscribers without permission of the council.

10.9 EMERGENCY SERVICE:

(A) The Grantee shall design and construct the system to provide for a restricted audio override of all audio channels during emergencies. If video override is also provided, the system shall include a character generator capability for delivery of emergency messages to the communicatively handi-capped. The audio override shall include a squeal alert tone to precede the verbal and video messages. The design of the Emergency Alert system is to be submitted to the City Administrator for approval prior to construction.

(B) Emergency power sources shall be provided by Grantee at the head-end, network distribution center, satellite earth station, processing hubs, and other system locations as may be necessary to guarantee that in the event of a power failure on any part of the system, service will be maintained on the rest of the system.

10.10 SUBSCRIBER SERVICE: It shall be the right of all subscribers to receive all available services insofar as their financial and other obligations to the Grantee are honored. Neither the City nor the Grantee shall, as to rates, charges, services, service facilities, rules, regulations, or in any other respect, make or grant any preference or advantage to any person, nor subject any person to prejudice or disadvantage. Subject to such regulations as may be adopted by the Council pursuant hereto, the Grantee shall:

(A) Maintain a high standard of courtesy in customer relations at all times.

(B) Maintain a log showing the date, approximate time and duration, type and probable cause of all head-end, trunk or distribution line service interruptions and/or failures due to causes other than routine testing or maintenance; such log shall be subject to review by the Council.

(C) Maintain a conveniently located business office and service center within the service area with toll free telephone numbers so that subscribers may report service outages or deficiencies at any time. The office shall maintain an adequate staff so that subscribers may transact all necessary business, including payment of bills, during regular business hours.

(D) Keep a written record of all complaints showing as a minimum the date, subscriber's name and address, nature of complaint, and action taken by the Grantee.

(E) Restore any interruption in service as expeditiously as possible, and in accordance with the Franchise Agreement. Corrective maintenance for institutional services will be in accord with the contract terms between Grantee and the subscriber.

(F) Before providing cable television service to any subscriber, the Grantee shall provide a written notice to the subscriber substantially as follows:

"Subscriber is hereby notified that in providing cable television/communications service the Grantee is making use of public rights-of-way within the City of Canby, and that the continued use of such rights-of-way is in no way guaranteed. In the event the continued use of such rights-of-way is denied to Grantee for any reason, Grantee will make every reasonable effort to provide service over alternate routes. By accepting cable television/communications service, subscriber agrees to make no claim nor undertake any action against the City, its officers, or its employees if the service to be provided hereunder, is interrupted or discontinued."

(G) There shall be no charges for service calls to subscribers' homes except as provided by the Agreement.

(H) In the event that the Grantee elects to rebuild, modify, or sell the system, or the City revokes or fails to renew the franchise, the Grantee shall do everything in its power to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances during the life-time of the franchise. In the event of a system purchase by the City, or change of Grantee, the current Grantee shall cooperate with the City to operate the system for a temporary period, in maintaining continuity of service to all subscribers.

(I) Upon termination of service to any subscriber, a Grantee shall promptly remove all its facilities and equipment from the premises of such subscriber upon the subscriber's request.

10.11 SUBSCRIBERS PRIVACY:

(A) The monitoring of any subscriber terminal without specific written authorization of the subscriber is prohibited. Grantee shall be responsible for the protection of subscriber privacy, prohibiting the tapping and/or monitoring of cable, line, signal input device, or subscriber outlet or receiver for any purpose whatsoever, except Grantee may conduct tests of the functioning of the system where necessary in order to ensure proper maintenance of the system and to collect performance data for agencies regulating the quality of signals. Where critical information requires private communication, electronic signals scrambling techniques must be used.

(B) Listings of subscribers' names and addresses may not be sold or otherwise released for any purpose, nor shall any list which identifies, by name, subscriber viewing habits be released, to any person, agency or entity, for any purpose whatsoever, without specific written authorization of the individual subscriber.

(C) The Grantee and the City shall maintain constant vigilance with regard to possible abuses of the right of privacy or other human rights of any subscriber, programmer, or general citizen resulting from any device or signal associated with the cable communications system. The Grantee shall not place in any private residence any equipment capable of two-way communications without the written consent of the residents, and will not utilize the two-way communications capability of the system for subscriber surveillance of any kind without the written consent of the subscriber.

(D) No cable, line, wire, amplifier, converter, or other piece of equipment owned by the Grantee shall be attached to any residence or other property by the Grantee without first securing the written permission of the owner or responsible occupant of any property involved. If such permission is later revoked whether by the original or a subsequent owner or responsible occupant, the Grantee shall remove forthwith all of its equipment and promptly restore the property to as near to its original condition as possible.

(E) No polls or other two-way responses of subscribers shall be conducted unless the program of which the poll is a part shall contain an explicit disclosure of the nature, purpose and prospective use of the results of the poll. No commercial or other use of information of subscriber viewing habits or patterns may be made and no release of such information shall be permitted without prior consent of the Council or pursuant to rules and regulations duly adopted by the City.

Section 11. Rates and Charges.

Except when and as preempted by FCC Regulations and State laws, the following procedures apply to the rates and charges associated with the providing of services under this Ordinance and any franchise issued hereunder.

(A) The Grantee shall charge its subscribers and users rates and charges approved by the Council, and no change in rates and charges may be made without the prior approval of the Council expressed by resolution.

(B) Should the Grantee desire to change its rates and charges, it shall file a petition with the Council at least ninety (90) days prior to the proposed date of change. The petition shall detail the proposed changes and set forth the reason changes are desired. The petition shall include system historical financial data (balanced sheets and detailed profit and loss statements) for the period since commencement of system operations or the previous five (5) years, whichever is the lesser.

(C) Council determination of proper rates and charges shall be based on factors considered important by Council, which shall include, but not limited to: The quality of signal delivered to subscribers, the quality of service provided to subscribers, channel capacity, number and quality of programming sources, and underlying economics of the system (system cash flow, Grantee's return on investment, etc.). In this regard, the City reserves the right to inspect all of the Grantee's property and records in adjudging the merits of a request for a change in rates and/or charges.

(D) In connection with any proposed increase in any rate or charge, the City may direct an authorized representative to conduct a hearing on the matter. If so directed, the representative shall set the day, hour, and place certain when and where any person having any interest therein may appear and be heard. This hearing should normally be conducted within sixty (60) days from date of receipt of petition. The notice of a public hearing on the matter should be published at least ten (10) days before the date of the hearing in a newspaper of general circulation within the City.

(E) At the time set for such hearing, or any adjournment thereof, the representative shall hear the matter. Following the close of such hearing, the representative shall prepare and file with the Council a report of the hearing, and his recommendations and the reasons therefor. After receipt of the representative's report, the Council shall determine whether to adopt the report or to hold a further hearing. If the Council elects to adopt the recommendations of the representative, it shall do so by Resolution. If it elects to conduct a hearing thereon it shall adopt a Resolution to do so, describing and stating the proposed change in rates or charges and fixing and setting a day, hour and place certain when and where any person having any interest herein may appear before the Council and be heard. Such resolution shall direct the City Administrator to publish notice of the resolution's adoption at least once within ten (10) days of the passage thereof in a newspaper of general circulation within the City.

The City Administrator also shall cause notice of intent of such resolution to be mailed to the Grantee at least ten (10) days prior to the date specified for hearing thereon. At the time set for such hearing, or at any adjournment thereof, the Council shall hear and decide the matter.

(F) No rate established shall afford any undue preference or advantage among subscribers, but separate rates may be established for separate classes of subscribers and installation charges may reflect the increased cost of providing service to isolated or sparsely populated areas.

(G) The Council may set rates and charges hereunder upon a determination that rates and charges levied by grantee are unreasonable or inequitable.

Section 12. Compensations and Guarantee to the City.

12.1 FRANCHISE FEE:

(A) In consideration of the granting and exercise of a franchise to construct and operate a cable communications system in the City, the Grantee shall pay to the City during the life of the franchise, a franchise fee equivalent to a percentage, as stipulated in the franchise ordinance, of the Grantee's gross revenues including, but not limited to, Basic Service Revenues, Non-Basic Revenues, Advertising Revenues, Lease Revenues, and Data Transfer Revenues, for the purpose of defraying administrative expenses associated with the conduct and performance of the City's authority, responsibilities, and police power in the promotion of safety, convenience, comfort, prosperity, and general welfare of the Citizens of the City, and in consideration of the City's granting and Grantee's exercising a franchise to use the streets, as defined in Section 2 herein.

(B) The percentage payments shall be made in the manner, amounts and at times directed in the franchise ordinance.

(C) Each payment shall be accompanied by a statement, in duplicate, verified by the Grantee or by a general officer or other duly authorized representative of the Grantee, showing in such form and details as the Council may require from time to time the facts material to a determination of the amount due.

(D) The City or its representative shall have the right to inspect the Grantee's records to determine if proper payments have been made to the City. The cost of such audits shall be borne by Grantee if the same results in increasing, by more than 2%, the Grantee's annual payment to the City.

(E) No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable under this Ordinance, or the Franchise Ordinance or associated Resolution or Ordinance for the performance of any other obligation thereunder.

(F) The payment made to the City by the Grantee pursuant to this section for any calendar year shall be in lieu of any fee or business tax, prescribed by the City for the same period, excepting however, the City's annual business license fee which shall also be charged to and paid by the Grantee.

(G) At the discretion of the Council, a percentage or portion of the fee payments may be ear-marked to assist in the funding of certain non-basic services, e.g., public and educational access, etc.

12.2 PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE:

Grantee shall at all times maintain in full force and effect a policy of insurance in such form as the City may require, executed by an insurance company authorized to write the required insurance and approved by the Insurance Commissioner of the State of Oregon, insuring the payment of any sums which the Grantee or City, its officers, boards, commissioners, agents and employees may become obligated to pay by reason of any liability imposed upon them by law for damages because of bodily injury or death, or injury to or destruction of property that may result to any person or property arising out of the construction, operation or maintenance of any facilities pursuant to a franchise. The sums, payment of which shall be so insured, shall not be less than \$2,000,000 combined single limits including bodily injury liability and property damage liability. Such policy of insurance shall be filed with the Council, in duplicate, and approved by the Council.

12.3 WORKMAN'S COMPENSATION INSURANCE:

Upon being granted a franchise, and upon the filing of the acceptance required under Section 5.3 hereof, the Grantee shall file with the City Recorder and shall thereafter, during the entire term of such franchise, maintain in full force and effect Workers Compensation Insurance coverage in at least the minimum amounts required by law. If a Grantee fails to obtain or maintain such required insurance coverage, the City, may without notice to Grantee, obtain, at Grantee's sole expense, such coverage, or forthwith terminate, without prior notice, the franchise as granted.

12.4 FAITHFUL PERFORMANCE BOND:

(A) The Grantee shall, at Grantee's sole expense and at the time of acceptance of a franchise, file with the City, and at all times thereafter maintain in full force and effect, an acceptable corporate surety bond, in the amount of \$300,000, effective for the entire term of a franchise, and conditioned that in the event the Grantee shall fail to comply with any one or more of the provisions of a franchise, then there shall be recoverable jointly and severally from the principal and surety of such bond, any damages suffered by the City as a result thereof, including the full amount of any compensation, indemnification, or cost of removal or abandonment of property as prescribed by any Sections hereof which may be in default, up to the full amount of the bond; said condition to be a continuing obligation for the duration of a franchise and thereafter until the Grantee has liquidated all of its obligations with the City that may have arisen from the acceptance of a franchise by the Grantee or from its exercise of any privilege herein granted.

(B) Neither the provisions of this Section, any bond accepted by the City pursuant thereto, nor any damages recovered by the City thereunder shall be construed to excuse faithful performance by the Grantee or to limit the liability of the Grantee under a franchise or for damages, either to the full amount of the bond or otherwise.

(C) If, at any time during the term of a franchise, the condition of the corporate surety shall change in such a manner as to render the bond unsatisfactory to the City, the Grantee shall replace such Bond by a Bond of like amount and similarly conditioned, issued by a corporate surety satisfactory to the City. In the event the Grantee's obligations under a franchise shall so warrant, the Council, from time to time, may authorize or require appropriate adjustments in the amount of the Bond.

12.5 SECURITY FUND:

(A) Within thirty (30) days after the effective date of a franchise, the Grantee shall deposit into an insured account, established by the City, and maintain or deposit throughout the term of the franchise, the sum of Ten Thousand Dollars (\$10,000) as security for the faithful performance by it of all the provisions of the franchise, and compliance with all orders, permits and directions of any agency of the City having jurisdiction over its acts or defaults under the franchise, and the payment by the Grantee of any claims, liens, payments and taxes due the City which arise by reason of the construction, operation or maintenance of the system. The Grantee shall have the right to earn interest on funds deposited in the Security Fund.

(B) Within thirty (30) days after notice to it that any amount has been withdrawn by the City from the security fund pursuant to Subsection (A) of this section, the Grantee shall deposit a sum of money sufficient to restore such security fund to the original amount.

(C) If the Grantee fails, after ten (10) days notice to pay the City any taxes or payments due and unpaid; or, fails to repay to the City, within such ten (10) days, any damages, costs or expenses which the City shall be compelled to pay by reason of any act or default of the Grantee in connection with the franchise; or fails after thirty (30) days notice of such failure by the City to comply with any provision of the franchise which the City reasonably determines can be remedied by an expenditure of the security, the City may immediately withdraw the amount thereof with interest and any penalties, from the security fund. Upon such withdrawal, the City shall notify the Grantee of the amount and date thereof.

(D) The security fund deposited pursuant to this Section shall become the property of the City in the event that a franchise is cancelled by reason of the default of the Grantee or revoked for cause. The Grantee, however, shall be entitled to the return of such security fund, or portion thereof, as remains on deposit at the expiration of the term of the franchise, or upon termination of the franchise at an earlier date, provided that, there is then no outstanding default on the part of the Grantee.

(E) The City may, at its sole discretion, upon Grantee's successful completion of system construction, reduce the security fund to a lesser required amount as set forth in the Franchise Agreement, and refund the difference to Grantee.

(F) The rights reserved to the City with respect to the security fund are in addition to all other rights of the City whether reserved by a franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such security fund shall affect any other right the City may have.

12.6 INDEMNIFICATION TO CITY:

(A) By accepting a franchise, each Grantee shall be deemed to have agreed to indemnify and hold harmless the City, its officers, boards, commissions, agents, consultants, and/or employees against and from any and all claims, demands, causes of actions, actions, suits, proceedings, damages (including but not limited to, damages to City property and damages arising out of copyright infringements, and damages arising out of any failure by Grantee to secure consents from the owners, authorized distributors or licensees of programs to be delivered by Grantee's cable communications system), costs or liabilities (including costs of the City with respect to its employees), of every kind and nature whatsoever, including but not limited to damages for injury or death or damage to person or property, and regardless of the merit of any of the same, and against all liability to others, and against any loss, cost, and expense resulting or arising out of any of the same, including any attorney fees, accountant fees, expert witness or consultant fees, court costs, per diem expense, traveling and transportation expense, or other costs or expenses arising out of or pertaining to the exercise or the enjoyment of any franchise hereunder by Grantee, or the granting thereof by the City, irrespective of the amount of the bond designated in Section 12.4 hereof.

(B) The Grantee shall at the sole risk and expense of Grantee, upon demand of the City, made by and through the City Attorney, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative, or otherwise brought or instituted or had by third persons or duly constituted authorities, against or affecting the City, its officers, commissions, agents, consultants, or employees, and arising out of or pertaining to the exercise or the enjoyment of such franchise, or the granting thereof by the City.

(1) alternatively, in the discretion of the Council, the City may, on behalf of itself, and/or any of its officers, agents, consultants, or employees, appear and defend such actions.

(2) the Grantee shall pay and satisfy and shall cause to be paid and satisfied any judgment, decree, order, directive, or demand rendered, made or issued against Grantee, the City, its officers, boards, commissions, agents, consultants, or employees in any of these premises; and such indemnity shall exist and continue without reference to or limitation by the amount of any bond, policy of insurance, security deposit, undertaking or other assurance required hereunder,

or otherwise; provided, that neither Grantee nor City shall make or enter into any compromise or settlement of any claim, demand, cause of action, action, suit or other proceedings, without first obtaining the written consent of the other.

Section 13. Equal Opportunity Employment and Affirmative Action Plan.

(A) In the carrying out of the construction, maintenance and operation of the cable television system, the Grantee shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, or national origin.

(B) The Grantee shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex, or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion or transfer, recruitment or recruitment advertising, payoff or termination, rate of pay or other form of compensation, and selection for training, including apprenticeship.

(C) The Grantee shall post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discriminating clause.

(D) The Grantee shall, in all solicitations or advertisements for employees placed by or on behalf of the Grantee state that all qualified applicants will receive compensation for employment without regard to race, creed, color, sex, or national origin.

(E) The Grantee shall incorporate the foregoing requirements in all of its contracts for work relative to construction, maintenance and operation of the cable television system, other than contracts for standard commercial supplies or raw materials, and shall require all of its contractors for such work to incorporate such requirements in all subcontracts for such work.

Section 14. Adoption of Rules and Regulations.

(A) At any time, the Council may adopt reasonable rule, regulations and standards governing the operation of cable communications systems in the City, consistent with the provisions of this Ordinance, and the Franchise Ordinance. Such rules, regulations and standards shall apply to and shall govern the operations of the Grantee of any cable communications franchise and are expressly declared to be a part of any such franchise.

(B) Prior to adopting any such rule, regulation, or standard, the Council shall conduct a duly noticed hearing thereon. At the time set for such hearing, or at any adjournment thereof, the Council shall proceed to hear any relevant evidence relating to the matter. Thereafter, the Council by Resolution, may adopt, amend or modify such rules and regulations.

(C) The standards adopted may govern the engineering, construction, installation, service, and maintenance of all cable communications systems in the City, including but not limited to standards governing carrier levels, signal-to-noise ratios, hum modulation, distortion levels, channel interactions and interactions, and composite beat levels.

Section 15. Amendment to This Ordinance and the Franchise Ordinance.

The Council shall amend this Ordinance and any franchise issued thereunder, upon its own motion or the application of a Grantee whenever amendment is necessary to enable a Grantee to utilize new developments in television or radio signal transmission which would improve and update cable communications service in the City, or to comply with any modifications in the Rules of the FCC. Amendments to Section 76.31 of the FCC Rules will be incorporated into this Ordinance within one year of their adoption or at the time of franchise renewal, whichever comes first. No amendment shall be adopted except after full, open public hearing affording due process, and no amendment substantially amending the existing rights and obligations of the Grantee shall be adopted without Grantee's consent.

Section 16. Violations.

(A) It shall be unlawful for any person, firm or corporation to construct, install or maintain within any public right-of-way in the City, or within any other public property of the City, or within any privately owned area within the City which has not yet become a public right-of-way but is designated or delineated as a proposed public right-of-way on any tentative subdivision map approved by the City, any equipment or facilities for distributing any television signals or radio signals through a cable communications system, unless a franchise authorizing such use of such street or property or area has first been obtained pursuant to the provisions of this Ordinance, and unless such franchise is in full force and effect.

(B) It shall be unlawful for any person, firm or corporation to make or use any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise with any part of any cable communications system within this City for the purpose of enabling himself or others to receive or use any television signal, radio signal, picture, program, sound, information, or other system service without payment to the owner of said system.

(C) It shall be unlawful for any person, without the consent of the Grantee, to willfully tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, programs, sound, information, data, or other system service.

Section 17. Fines and Penalties. The City may levy fines and other penalties for failure to comply with the provisions of this Ordinance and the Franchise Agreement, not to exceed those limits set forth in the Franchise Agreement. Furthermore, the City may obtain injunctive relief by suit or action in a court of proper jurisdiction to enforce compliance by the Grantee or others with this Ordinance, or the franchise ordinance or agreement, or any order, rule, or resolution of the

Council which is made, adopted or promulgated pursuant to such ordinances; or to enjoin violations or threatened violations of such ordinances, orders, rules or resolutions, or any portion or portions thereof. In case of suit or action the City shall be entitled to recover, in addition to the judgment or relief ordered or awarded by the court, the City's costs and disbursements incurred in such suit or action and reasonable attorney fees as may be allowed by the trial court and by an appellate court on appeal.

Section 18. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held illegal, invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion hereof. The Council hereby declares that it would have approved this Ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases may be declared illegal, invalid or unconstitutional. The invalidity of any portion of this Ordinance shall not abate, reduce or otherwise affect any consideration or other obligation required of the Grantee of any franchise granted hereunder.


Section 19. Notices. Every direction, notice, or order to be served upon a Grantee shall be sent to the office address described in the Grantee's franchise application. Every notice to be served upon the City shall be delivered or sent by certified mail, to the City Administrator, City Hall, City of Canby. The delivery of such shall be deemed to have been made at the time of receipt by the City.

Section 20. Effective Date. This ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

Submitted to the Council and read the first time at a regular meeting thereof on the 18th day of August, 1982, and scheduled for second reading and action of the Canby City Council at a regular meeting thereof to be held on September 15, 1982, commencing at the hour of 7:30 o'clock P.M., at the Council meeting chambers at the Canby City Hall in Canby, Oregon.


Marilyn K. Perkett, City Recorder Pro Tem

ENACTED by the Canby City Council at a regular meeting thereof on Sept. 15, 1982, by the following vote: YEAS 4 NAYS 0


Robert A. Swayze, Mayor

ATTEST:


Marilyn K. Perkett, City Recorder Pro Tem