

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984)
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

MB Docket No. 05-311

COMMENTS OF CITY OF SALEM, OREGON

These Comments are filed by the City of Salem, Oregon, in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, Salem believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

At the City of Salem, a cable "franchise" is termed a cable franchise. The Federal Cable Act refers to this as a "franchise" so we will use that term in these comments. Also, Salem has a cable ordinance, Salem Revised Code, (SRC) Chapter 43 "Cable Communication and Television Systems," which operates in conjunction with the franchise agreement, the terms of which are often negotiated with the cable company in conjunction with the franchise agreement.

Cable Franchising in Our Community

Community Information

The City of Salem is the capital city of Oregon and has a population of approximately 147,000. Our franchised cable provider is Comcast, now operating under the franchise previously held by Viacom, TCI, and AT&T. Our community has negotiated cable franchises since 1967. Since then, Salem staff has managed two (2) renewals, four (4) transfers, three (3) extensions and two (2) interim reviews.

Our Current Franchise

Our current franchise began in July, 1994 and expires on January 26, 2010. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window

beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider, but will begin that process next year.

Our franchise requires the cable operator to pay a franchise fee to the City of Salem in the amount of five percent (5%) of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act. Of the five percent (5%) collected, three percent (3%) goes to the City's general fund and two percent (2%) is forwarded to the Mid-Willamette Valley Cable Regulatory Commission to fund Capital Community Television (CCTV), Salem's Public, Educational, and Governmental Access Center.

Through the franchise agreement, we require the cable operator to provide capacity for PEG access channels on the cable system. We currently have three (3) channels devoted to public, educational and government access. In addition, we have a fourth (4th) channel managed by Chemeketa Community College for the purpose of televising college courses. The franchise has a formula for additional channel space based on the number of hours provided on each channel and the amount of new unduplicated local video programming provided per month.

Because Salem is in the shadow of Portland media, PEG Access provides the only local television in Salem, though a low-power UHF station has just started serving the region. In order to build a system to meet community needs, Comcast collects a one and one-half percent (1½%) of gross revenues assessment for PEG access capital funds. In addition they provide four strands of fiber to deliver CCTV's signal to the head end and four strands that run through the City's data center to link five external sites to CCTV to enable live coverage from those sites. CCTV in turn provides Salem with coverage of local school events, music and sports; government meetings that are shown live, replayed, streamed on the internet and then archived for later viewing; community events, like the Festival of Lights Parade and Tuba Christmas; emergency notices and programming; and, thousands of hours of volunteer produced programming featuring the arts, politics, social concerns and health issues among a myriad of other topics.

Our franchise contains the following institutional network ("I-Net") requirements: As part of the rebuild, the cable company, then Viacom, agreed to provide interactive links between its fiber optic nodes and a list of public buildings, including schools and public event sites, developed by the City of Salem, Marion County and Viacom. An interactive connection was defined as the capability to transmit and receive broadband video, data and voice communications between two (2) or more public buildings. The public agencies are responsible for the installation, operation and maintenance of terminal and interface equipment within the public buildings. Comcast installs, operates and maintains all cable system and network components outside the public buildings necessary to provide the activated path between the transmitting and receiving locations. The system cannot be used to serve nonpublic entities without the consent of Comcast.

We use our I-Net facilities in the following ways: The fiber provided by the franchise agreement is used to connect all of the City's departments to allow for the rapid movement of email and data throughout the system. City Hall and all of our outlying facilities, like fire

stations and the shops complex, are connected through our data center, the hub of our communications system. The data center then uses the fiber to connect the City to the State of Oregon communications system, which provides our connection to the world wide internet. Marion County and Salem-Keizer Schools use their fiber in similar ways. CCTV uses the fiber to enable live coverage of the Salem City Council meetings, Marion County Commission meetings and School Board meetings by running the signal over the fiber back to CCTV and then over the fiber to Comcast. The fiber is also used to stream the meetings live over the internet and to provide access to archived meetings. The I-Net has been so successful that we have greatly expanded it over the years by purchasing additional capacity and connections from Comcast.

Our franchise contains the following requirements regarding emergency alerts in Section 4.4 Emergency Alert Capability: *Within six months of the effective date of the agreement, the Grantee shall provide the system capability to transmit an emergency alert signal to all participating subscribers, in the form of an audio override capability to permit the Grantor to interrupt and cable cast an audio message on all channels simultaneously in the event of disaster or public emergency. This capability shall continue to be operational during and subsequent to the system rebuild required by Section 4.1. The Grantor and Grantee shall cooperate in tests of the emergency alert capability at least once annually. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency.* The Salem fire Department and Comcast have developed the emergency alert plan to the mutual satisfaction of both entities. In addition, Salem uses CCTV to provide more detailed emergency information when needed, such as during the 1996 flooding.

Our franchise contains customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise. SRC 43.303 outlines the minimum consumer protection and service standards. The cable provider is required to maintain a local office and to provide the necessary facilities, equipment and personnel to comply with the standards. They are required to render efficient service and to make repairs promptly with as little service interruption as possible (see Attachment, "Consumer Protection").

At the beginning of this franchise in 1994, the Cable Operator, then Viacom, had thirty-six (36) months to rebuild the existing cable system to provide a capacity of at least seventy-eight (78) analog video channels, on a 550 Megahertz system. They could activate portions of the rebuilt plant and offer upgraded services in phases that they determined. Completion of the re-build was defined as the ability to provide up to seventy-eight (78) channels of video programming, without digital compression, to all residential subscribers within the City, as well as satisfactory completion of any permit-specified requirements and the requested public building connections.

The rebuild was to use a "fiber optics to the service area" design in which optical fiber delivers signals from a central hub to nodes serving approximately 1,000 residences. The nodes were to interface the optical fibers with the coaxial cables that distribute signals to cable subscribers, and also serve as input-output points for interconnection to public buildings and businesses. In actuality, the rebuild exceeded the requirements of the franchise, in terms of both

speed of construction and level of services provided, because the cable company chose to do so as a long-term business investment.

Salem's franchise requires that the cable operator provide service to the following areas of our community. These are included in Article 3. "Service Area and Line Extension Policy" of the franchise agreement, as follows:

3.1 Franchise and Service Area

The Grantees franchise and service areas shall be the entire City of Salem, including any and all territory as it is annexed thereto, during the term of this Agreement. The Grantee shall offer the full range of residential cable services to all residents of the City, in accordance with the provisions of Section 3.2 below.

3.2 Line Extension Policy

(a) The Grantee shall provide residential cable services at standard installation charges, provided that any of the following conditions exists:

- (1) A dwelling unit is within one hundred fifty (150) feet, for aerial installation, and seventy five (75) feet, for underground installation, from the nearest distribution cable of the Grantee's system;*
- (2) The area to be served comprises at least 25 dwelling units on a single lot or at least 25 dwelling units in the aggregate on two or more adjacent lots; or*
- (3) The area to be served otherwise meets the terms of the development plan as described in Exhibit D, regardless of the number of adjacent dwelling units (Exhibit D was a memorandum of intent between both parties to develop a pilot project in the downtown core area).*

(b) In the event a request is made for service by a resident in an area not meeting such criteria, the Grantee shall make such installation available to the requesting subscriber on a time and material basis.

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements: See "4.3 Future System Modifications" immediately below.

Our franchise contains a "most-favored-nations" provision that is included in the following section of the franchise agreement:

4.3 Future System Modifications

(a) To assure that the Grantee's cable system continues to reflect the general cable industry state-of-the-art throughout the term of the franchise, the Grantor and the Grantee agree to utilize cable systems in the following communities as a basis for comparison. The comparison communities (also referred to as the "comparison group") shall be:

- (1) Beaverton, OR*
- (2) Vancouver, WA*
- (3) Stockton, CA*
- (4) Downey, CA*

- (5) Spokane, WA
- (6) Portland, OR
- (7) Olympia, WA
- (8) Marin County, CA

- (b) *The Grantor and the Grantee agree that if a second five (5) year term is granted, subsequent to the expiration of this Agreement, at any time during that subsequent term the Grantor may elect to survey the comparison communities. If the survey indicates that four (4) or more of the cable systems in the comparison group (also referred to as the "comparison subgroup") offer video programming services which exceed the services provided on the Grantee's system by ten (10) services or more, the Grantor may require the Grantee to provide additional video programming services to meet or exceed the average provided by the comparison subgroup. The Grantee shall complete the modification within six (6) months of receipt of the Grantor request, subject to the availability of system channel capacity.*
- (c) *The Grantor and Grantee further agree if a second five (5) year term is granted, subsequent to the expiration of this Agreement, at any time during that subsequent term, the Grantor may elect to survey the comparison communities. If the survey indicates that four (4) or more of the cable systems in the comparison group have activated upstream communications capacity and are offering interactive residential services, which may include but are not limited to telephone and data communications, the Grantor may require the Grantee to activate the upstream capacity of the Grantee's system. The Grantee shall complete this activation within twelve (12) months of receipt of the Grantor request.*

Salem recently completed the second Interim Review required to grant the franchise for the third five (5) year period of the fifteen (15) year franchise agreement. The comparison cities were surveyed and it was found that they all had similar levels of program services and system development.

Our franchise contains the following insurance and bonding requirements in section 2.8 Security Fund, of the Cable Television Franchise Agreement, which are based on requirements contained in SRC, 43.160 "Security Fund":

- (a) *In accordance with SRC 43.160, within thirty (30) days of the Resolution adopting this agreement, the Grantee shall establish and provide to the Grantor a security fund, as security for the faithful performance by the Grantee of all material provision of this Agreement. The security fund shall consist of two (2) parts. The first part shall be a bond, which may be a corporate guarantee and which shall be in the amount of Five Hundred Thousand Dollars (\$500,000), and in a form acceptable to the Grantor's City Attorney. The second part shall be in the amount of at least Fifty Thousand Dollars (\$50,000) and shall either be in the form of an irrevocable letter of credit, or a cash deposit established in a local bank in an interest-bearing account payable to the order of the Grantor as trustee for the Grantee, with all interest distributed to the Grantee.*

- (b) *The bond shall be maintained at the Five Hundred Thousand Dollar (\$500,000) level until the system rebuild provided for in Section 4.1 and Exhibit "C" Grantee Commitment to PEG Access Channels, Facilities and Equipment, herein is completed at which time the bond shall be released, provided there are then no outstanding material violations of this Agreement. (Note: the bond was not drawn upon during the rebuild and was returned to the cable company at the completion of the rebuild.) The cash or letter of credit portion of the security fund shall be maintained at the Fifty Thousand Dollar (\$50,000) level throughout the term of this Agreement, provided that at intervals no more often than each three (3) years, the Grantor shall have the right to require that this amount be increased to reflect changes in the Portland, Oregon, Metropolitan Area Consumer Price Index during the prior three (3) year period. (Note: the security fund has not been increased as allowed, because there has not been a need to access it. The Cable Company, through all of its various ownerships, has quickly responded to remedy consumer complaints and correct inspection issues.)*
- (c) *The security fund may be assessed by the Grantor for those purposes specified in SRC Chapter 43 and the Franchise Agreement, in accordance with the procedures of SRC 43.350, provided that the Grantee has received written notice and a period of at least thirty (30) days after receipt of notice to cure any material violation prior to any assessment, and has not cured the violation. As long as the Grantor follows the procedures specified herein and in SRC Chapter 43 for assessing and withdrawing funds from said security fund, the Grantee shall not initiate litigation or non-City administrative action to prevent or impair the Grantor from accessing those funds. The Grantee's recourse, in the event the Grantee believes any taking of security funds is improper, shall be through legal action after the security has been drawn upon. If the Grantor's action or taking is found to be improper by any court or agency of competent jurisdiction, the Grantee shall be entitled to a refund of the funds plus interest and any other award which such court or agency shall make.*
- (d) *Nothing herein shall be deemed a waiver of the normal permit and bonding requirements made of all contractors working within the City's rights-of-way.*

The cable franchise grants the cable operator access to the public rights-of-way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the Public Works Department, as well, before it may access the public rights-of-way. Franchise Utilities Construction permits are \$384.00 per project. Franchise Utilities Maintenance permits are \$64.00 per inspection. These can be purchased in bulk and are then self-issued by notifying Public Works of maintenance activity, thus eliminating the need to come to the Permit Application Center each time the company initiates a maintenance project.

Both SRC Chapter 43 and the Franchise agreement provide for inspection of construction projects, facilities and records. They also include enforcement mechanisms by which we are

able to ensure that the cable operator is abiding by its agreement. Section 2.9 "Procedure for Remedying Franchise Violations" includes the following provisions:

- (a) *The procedure for remedying franchise violations shall be set forth in SRC 43.350.*
- (b) *If the violation is reasonably curable within thirty (30) days of receipt of the Grantor's written notice, and if the Grantee has not commenced appropriate corrective action within that thirty (30) day period, or provided a plan to correct the violation in accordance with subsection (c) below, then the Grantor may proceed to assess from the security fund damages for the Grantee's individual or repeated willful violations of a material franchise requirement of up to One Thousand Dollars (\$1,000) per day, or per incident, for unexcused violations of the system rebuild completion schedule provided in Section 4.1 herein, and up to Two Hundred Dollars (\$200) per day, or per incident, for all other violations, provided that all such violations of similar nature occurring at the same time shall be deemed one incident.*
- (c) *In the event any stated violation is not reasonably cured within within thirty (30) days, the franchise shall not be terminated or revoked or damages assessed if the Grantee has provided, within said thirty (30) days, a plan, satisfactory to the Grantor, to remedy the violation and continues to demonstrate good faith in seeking to correct said violation.*
- (d) *In determining whether violations are material, the Grantor shall take into consideration the reliability of the evidence of the violation, the nature of the violation, whether the violation was chronic, the person or persons bearing the impact of the violation, the nature of the remedy required in order to prevent further such violations and such other matters as the Grantor may deem appropriate.*

Section 2.5 "Payment to the Grantor," states that no acceptance of any payment shall be construed as an accord that the amount is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the Grantor may have for further or additional sums payable under the provision of this Agreement. All amounts shall be subject to audit, as authorized by SRC 43.370. Such audit shall not occur prior to the last two (2) years of the franchise term. For any underpayment by Grantee, the total amount of such underpayment for any period covered by the applicable statute of limitations shall be due upon Grantor demand.

The Franchising Process

The cable system serving our community also serves the City of Keizer and parts of Marion and Polk Counties. In 1993-94, Salem took the lead in negotiating the cable renewal with Viacom (now Comcast) and Marion County joined Salem at the negotiation table. Polk

County agreed to adopt the franchise terms the negotiating team agreed on and the City of Keizer used our Salem's agreement as the base for their franchise. This allowed the company to quickly obtain four (4) franchises to serve the entire area, while also allowing for individual provisions in each of the specific franchises in order to tailor them to meet local needs.

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties, the provisions in the franchise agreement function as contractual obligations upon both parties. The provisions of Salem's current franchise are based on extensive survey and comment received from the public during the last renewal process. Those provisions have served our community well, even over a franchise life that will be more than sixteen (16) years at its completion.

Salem's current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: *In the event that the State or Federal Government discontinues preemption in any area of cable system operations or regulation over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, the Grantor may, if it so elects, adopt rules and regulations in these areas, to the extent permitted in the then applicable law. Grantee shall comply with such adopted rules, regulations and ordinances. If such preemption has a material impact upon the term of this Agreement, Grantor and Grantee agree to negotiate in good faith to attempt to restore the mutual considerations provided in this Agreement.*

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and places consequent additional obligations on the local government. SRC Chapter 43 "Cable Communication and Television System" establishes the following procedure to grant a franchise:

43.60 Grant Procedure

- (a) *Upon receipt of any application for an initial franchise, the City Manager shall prepare a report and make recommendations respecting such application to the Common Council.*
- (b) *A public hearing shall be set prior to any initial franchise grant, at a time and date approved by Council. Within thirty (30) days after the close of the hearing, the Council shall make a decision based upon the evidence received at the hearing as to whether or not the franchise(s) should be granted, and, if granted, subject to what conditions. The Council may grant one (1) or more franchises, or may decline to grant any franchise.*

- (c) *Any grant of a franchise shall become effective through the execution by the Grantor and a Grantee of a franchise agreement subject to the terms and conditions of this chapter.*

Competitive Cable Systems

In early 2000, Wide Open World (WOW) contacted the City of Salem and asked to schedule a meeting to discuss obtaining a franchise to provide cable services in the City of Salem. Salem has a franchise team with representatives from the City Manager's Office, Finance, Legal and Public Works Departments who meet with companies requesting a franchise to use our right of way. This team approach was developed a few years after the passage of the 1996 Telecommunications Act to expedite the many requests for franchises to provide telephone services. The team works together to negotiate the franchise and move it through the approval process as quickly as possible (within a month, in one case). The team met with WOW representatives for several hours explaining our process and requirements, including a requirement for PEG access support. At the completion of the review of our requirements, they assured us that they were eager to come to Salem and would apply for a franchise in Salem after they entered the Portland market. Unfortunately, due to financial difficulties WOW eventually decided not to come to the Portland area or to Salem.

While we have not actively sought out competitive companies, we would welcome any such providers and are prepared to offer the same or a comparable franchise to a competitor upon request. It should also be noted here, that as part of the transfers and interim reviews, the Cable Company has agreed to request a telephone service franchise, either as a separate franchise or an amendment to the existing franchise, at the point it decides to add voice transmission service to its system.

Conclusions

The local cable franchising process functions well in Salem. As the above information indicates, we are experienced at working with cable providers to see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights-of-way in a fair and evenhanded manner, that other users of the rights-of-way are not unduly inconvenienced, and that uses of the rights-of-way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with

applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of Salem therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,
on behalf of the

City of Salem, Oregon

By: Robert G. Wells, City Manager
bwells@cityofsalem.net

Linda Berman, Cable Officer
lberman@cityofsalem.net

Salem City Hall
555 Liberty St. SE
Salem, Oregon 97301

503.588-6255

cc: NATOA, info@natoa.org
John Norton, John.Norton@fcc.gov
Andrew Long, Andrew.Long@fcc.gov

ATTACHMENT

43.295. UNIFORM AND VEHICLE IDENTIFICATION. Every field employee of the Grantee shall be clearly identified with the name of Grantee visible to the public as a representative of the Grantee. Every field vehicle, except for field sales representatives' vehicles of the Grantee, shall be clearly marked. Grantee field employees and agents shall also wear an identification badge with the agent's name and photograph. (Ord No. 38-87)

CONSUMER PROTECTION

43.300. REQUESTS FOR CABLE SERVICE AND REPAIRS. (a) The Grantee shall maintain an office in the local area which shall be open during all usual business hours, have a publicly listed toll-free telephone, and be so operated to receive requests for repairs on a twenty-four (24) hour a day basis.

(b) The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during period of minimum use of the system. A written log or an equivalent stored in computer memory and capable of access and reproduction, shall be maintained for all service interruptions and requests for cable repair service as required by SRC 43.390(b).

(c) The Grantee shall maintain a repair force of technicians normally capable of responding to subscriber requests for repair service within twenty-four (24) hours or subject to subscriber availability for access to premises as follows:

(1) System outage: Within two (2) hours of receiving subscriber calls which by number identify a system outage of sound or picture of one (1) or more channels, affecting all the subscribers of the system or a considerable number thereof.

(2) Isolated outage: Within twenty-four (24) hours of receiving a request for service identifying an isolated outage of sound or picture for one (1) or more channels.

(3) Inferior reception quality: Within forty-eight (48) hours of receiving a request for service identifying a problem concerning picture or sound quality.

Grantee shall be deemed to have responded to a request for service under the provisions of this section when a technician arrives at the service location, and in the case of Subsection (1), (2) and (3) of this Section, leaves written notification of such arrival.

No charge shall be made to the subscriber for this service unless the service request can be demonstrated to be of non-cable system origin. (Ord No. 38-87)

43.303. MINIMUM CONSUMER PROTECTION AND SERVICE STANDARDS. (a) Except as otherwise provided in the franchise agreement, Grantee shall maintain a local office or offices and provide the necessary facilities, equipment and personnel to comply with the following consumer protection and service standards under normal conditions of operations:

(1) Sufficient toll-free telephone line capacity during normal business hours to assure that a minimum of ninety-five percent (95%) of all calls will be answered before the fourth (4th) ring and ninety percent (90%) of all callers for service will not be required to wait more than thirty (30) seconds before being connected to a service representative.

(2) Emergency telephone line capacity on a twenty-four (24) hour basis, including weekends and holidays.

(3) A local business and service office open during normal business hours at least eight (8) hours daily, and at least four (4) hours weekly on evenings or weekends, and adequately staffed to accept subscriber payments and respond to service requests and complaints.

(4) An emergency system maintenance and repair staff, capable of responding to and repairing major system malfunction on a twenty-four (24) hour per day basis.

(5) An installation staff, capable of installing service to any subscriber within seven (7) days after receipt of a request, in all areas where trunk and feeder cable have been activated.

(6) At the subscriber's request, Grantee shall schedule, within a specified four (4) hour time period, all appointments with subscribers for installation of service.

(b) Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions, insofar as possible and safe, shall be preceded by notice and shall occur during a period of minimum use of the cable system, preferably between midnight and six A.M. (6:00 A.M.).

(c) The Grantee shall maintain a repair force of technicians normally capable of responding to subscriber requests for service within the following time frames:

(1) For a system outage: Within two (2) hours, including weekends, of receiving subscriber calls or requests for service which by number identify a system outage of sound or picture of one (1) or more channels, affecting at least ten percent (10%) of the subscribers of the system.

(2) For an isolated outage: Within twenty-four (24) hours, including weekends, of receiving requests for service identifying an isolated outage of sound or picture for one (1) or more channels that affects three (3) or more subscribers. On weekends, an outage affecting fewer than three (3) subscribers shall result in a service call no later than the following Monday morning.

(3) For inferior signal quality: Within forty-eight (48) hours, including weekends, of receiving a request for service identifying a problem concerning picture or sound quality.

Grantee shall be deemed to have responded to a request for service under the provisions of this Section when a technician arrives at the service location and begins work on the problem. In the case of a subscriber not being home when the technician arrives, the technician shall leave written notification of arrival. Three (3) successive subscriber failures to be present at an appointed time shall excuse Grantee of duty to respond.

Grantee shall not charge for the repair or replacement of defective equipment provided by Grantee to subscribers. In the event Grantee determines that the customer has damaged the equipment, Grantee shall be entitled to charge the hourly service rate permitted by the FCC.

(d) Unless excused, Grantee shall determine the nature of the problem within forty-eight (48) hours of beginning work and resolve all cable system related problems within five (5) business days unless technically infeasible.

(e) Upon request from affected subscribers, Grantee shall provide appropriate rebates to subscribers whose service has been interrupted for four (4) or more hours.

(f) Upon five (5) days notice, Grantee shall establish its compliance with any or all of the standards required above. Grantee shall provide sufficient documentation to permit Grantor to verify the compliance.

(g) A repeated and verifiable pattern of non-compliance with the consumer protection standards of (a) through (e) above, after Grantee's receipt of due notice and an opportunity to cure, is a material breach of the franchise.

(h) Grantee shall establish written procedures, reviewed by the Grantor, for receiving, acting upon and resolving subscriber complaints without intervention by the Grantor. The written procedures shall prescribe the manner in which a subscriber may submit a complaint either orally or

in writing specifying the subscriber's grounds for dissatisfaction. Grantee shall file a copy of these procedures with Grantor.

(i) Grantor shall have the right to review Grantee's response to subscriber complaints in order to determine Grantee's compliance with the franchise requirements, subject to the subscriber's right to privacy.

(j) It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to rebuild, modify, or sell the system, or the Grantor gives notice of intent to terminate or not to renew the franchise, the Grantee shall act so as to ensure that all subscribers receive service so long as the franchise remains in force.

In the event of a change of control of Grantee, or in the event a new operator acquires the system, the original Grantee shall cooperate with the Grantor, new Grantee or operator in maintaining continuity of service to all subscribers. During such period, Grantee shall be entitled to the revenues for any period during which it operates the system.

(k) Additional service standards and standards governing consumer protection and response by Grantee to subscriber complaints not otherwise provided for in this chapter may be established in the franchise agreement, and Grantee shall comply with such standards in the operations of the cable television system. A verified and continuing pattern of noncompliance is a material breach of the franchise, provided that Grantee shall receive due process, including written notification and an opportunity to cure, prior to any sanction being imposed. (Ord No. 63-94)

43.305. COMPLAINT PROCEDURE. (a) Complaints to Grantee. Grantee shall establish written procedures for receiving, acting upon and resolving subscriber complaints without intervention by the Grantor. The Grantee shall also notify the subscriber of the subscriber's right to file a complaint with the Grantor in the event the subscriber is dissatisfied with the Grantee's decision. Grantee's procedures shall be filed with the Grantor.

(b) Complaints to Grantor. A subscriber who is dissatisfied with the Grantee's proposed decision or who was not sent a written decision within the thirty (30) day period shall be entitled to have the complaint reviewed by Grantor. The subscriber shall initiate the review by filing a written complaint together with the Grantee's written decision, if any, with the Grantor and by notifying the Grantee of the filing. The subscriber shall make such filing and notification within ten (10) days of receipt of Grantee's decision or within ten (10) days of the expiration of the thirty (30) day period, whichever is earlier. (Ord No. 38-87)

43.310. REVIEW BY GRANTOR. The Grantor shall determine, solely upon a review of a subscriber complaint and the Grantee's decision, if any, whether further action is warranted. In the event the Grantor does not initiate further proceedings within fifteen (15) days of the filing of the complaint, the Grantee's proposed action or resolution shall be final. If the Grantor decides to initiate further investigation, Grantor shall require the Grantee and the subscriber to submit, within ten (10) days of notice thereof, a written statement of the facts and arguments in support of their respective positions. The Grantee or the subscriber may request in such statement that a hearing be conducted by the Grantor. A hearing if requested shall be conducted by the Grantor following notice in writing specifying the time and place for such hearing. The hearing shall be conducted informally, and the parties may offer any evidence pertinent to the dispute. The parties shall produce any additional evidence, including testing reports from the Grantee, which the Grantor may deem necessary to an understanding and determination of the dispute. The Grantor

shall issue a written decision within fifteen (15) days of receipt of the written statements or, if a hearing is requested, within fifteen (15) days of the conclusion of the hearing, setting forth the basis of his decision. The Grantor's decision shall be final unless appealed by the Grantee to arbitration. (Ord No. 38-87)

43.315. COMPLAINT NOTIFICATION. Grantee shall provide written notice to each subscriber describing the procedure established by Grantee for resolving subscriber complaints and of the subscriber's right to have Grantee's response to a subscriber complaint reviewed by the Grantor in accordance with the provisions of this chapter. The notice shall include the name, business address, and business telephone numbers of Grantee's office and of the Grantor office designated to receive complaints. The form of the notice shall be subject to the approval of the Grantor. (Ord No. 38-87)

43.320. COMPLAINT LOG. Grantee shall maintain a file of all subscriber complaints requiring a service call as required by Section 43.390(a) herein. (Ord No. 38-87)

43.325. REMEDIES FOR VIOLATIONS. The Grantor may, as apart of a subscriber complaint decision issued under the provisions of this chapter, impose damages on the Grantee as specified in the franchise agreement. Damages may be imposed only if the Grantor finds that the Grantee has arbitrarily refused or failed without justification to comply with the provisions of this chapter. (Ord No. 38-87)