

LEE COUNTY ORDINANCE NO. 01-05

AN ORDINANCE OF THE COUNTY OF LEE, FLORIDA, PROVIDING FOR AMENDMENT TO LEE COUNTY ORDINANCE NO. 89-05; PROVIDING FOR CONSTRUCTION, OPERATION, REGULATION AND CONTROL OF CABLE TELEVISION FRANCHISES IN UNINCORPORATED LEE COUNTY, FLORIDA; PROVIDING FOR DEFINITIONS; PROVIDING FOR FRANCHISE PROVISIONS; PROVIDING FOR RIGHTS; PROVIDING FOR INITIAL PERFORMANCE GUARANTEE; PROVIDING FOR RIGHTS TO USE STREETS NOT WARRANTED; PROVIDING FOR OTHER AGREEMENTS, PERMIT AND EASEMENT REQUIREMENTS; PROVIDING FOR NO PROPERTY RIGHTS CONVEYED; PROVIDING FOR JURISDICTION OF OTHER REGULATORY BODIES OR AGENCIES; PROVIDING FOR LIABILITY, INDEMNIFICATION; PROVIDING FOR INSURANCE; PROVIDING FOR BONDING REQUIREMENTS; PROVIDING FOR FCC LICENSES; PROVIDING FOR COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES; PROVIDING FOR MINIMUM FACILITIES AND SERVICES; PROVIDING FOR TECHNICAL STANDARDS; PROVIDING FOR ACCESS CHANNELS AND FACILITIES; PROVIDING FOR CUSTOMER SERVICE REQUIREMENTS; PROVIDING FOR SUBSCRIBER PRIVACY; PROVIDING FOR PROHIBITION OF DISCRIMINATION; PROVIDING FOR CABLE SYSTEM CONSTRUCTION; PROVIDING FOR USE OF STREETS; PROVIDING FOR REPORTS AND RECORDS; PROVIDING FOR ENFORCEMENT REMEDIES; PROVIDING FOR RENEWAL OF FRANCHISE; PROVIDING FOR TRANSFERS; PROVIDING FOR REVOCATION OR TERMINATION OF FRANCHISE; PROVIDING FOR MANDATORY CONTINUITY OF SERVICE; PROVIDING FOR RATES; PROVIDING FOR PERFORMANCE EVALUATION; PROVIDING FOR ADMINISTRATION; PROVIDING FOR FORCE MAJEURE; PROVIDING FOR APPLICABILITY; PROVIDING FOR MUNICIPAL CABLE SYSTEM OWNERSHIP AUTHORIZED; PROVIDING FOR RESERVATION OF RIGHTS; PROVIDING FOR SAVINGS; PROVIDING FOR SEVERABILITY; PROVIDING FOR APPLICABLE LAW; AND PROVIDING FOR AN EFFECTIVE DATE.

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WHEREAS, Lee County adopted Ordinance 89-05 establishing the procedures, requirements, regulations, conditions and provisions for cable television franchises; and

WHEREAS, Lee County desires to amend Ordinance 89-05 to comply with updates to applicable federal laws; and

WHEREAS, the Board of County Commissioners desires to provide reasonable and adequate protection and control over the use of County-owned easements and County rights-of-way by Cable Television Franchisees.

NOW, THEREFORE, BY IT ORDAINED AND ENACTED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, that:

This Ordinance is entitled the Lee County Cable Television Franchise Ordinance.

SECTION I - PURPOSE

A. Purpose. This Ordinance is enacted for the purpose of providing procedures, requirements, regulations, conditions and provisions which shall apply:

1. To the granting, issuance, modification, transfer and renewal of nonexclusive franchises for the installation, operation, use and maintenance of cable television systems within the unincorporated limits of Lee County, Florida; and
2. To provide reasonable and adequate protection and control over the use of County-owned easements and County rights-of-way by Cable Television Franchisees; all in the interest of the public health, safety and welfare of the citizens and inhabitants of Lee County, Florida.

SECTION II - DEFINITIONS

A. For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein unless the context clearly indicates that another meaning is intended. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural.

The words "shall" and "will" are mandatory, and "may" is permissive. Words not otherwise defined herein or in any Franchise Agreement that might be granted hereunder shall be given the meaning set forth in the Communications Act of 1934, 47 U.S.C. § 521 et seq., and the Telecommunications Act of 1996, and as those Acts may hereinafter be amended (collectively the "Communications Act"), and, if not defined therein, their common and ordinary meaning.

1. "Activated Channel" means those channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the Cable System, regardless of whether such services actually are provided, including any channel designated for educational or governmental use.
2. "Access Channel" means any channel on a cable system set aside without charge by the Franchisee for non-commercial educational and/or local governmental use.
3. "Affiliate" means any person who directly or indirectly owns or controls a Franchisee, any person who a Franchisee directly or indirectly owns or controls, or any person under common ownership or control with a Franchisee.

4. "Analog Channel" means bandwidth in the electromagnetic spectrum capable of carrying one (1) standard television signal that is delivered in an analog format.
5. "Applicant" means any person submitting an application within the meaning of this Ordinance.
6. "Application" means any proposal, submission or request to (1) construct and operate a cable system within the County; (2) transfer a franchise or control of the Franchisee; (3) renew a franchise; (4) modify a franchise; or (5) seek any other relief from the County pursuant to this Ordinance, a Franchise Agreement, the Communications Act, or other applicable law. An application includes an applicant's initial proposal, submission or request, as well as any and all subsequent amendments or supplements to the proposal and relevant correspondence. The Franchise Agreement will represent the entire agreement.
7. "Basic Cable Service" or "Basic Service" means any service tier which includes the retransmission of local television broadcast signals, and educational or governmental access channels.
8. "Board" means the Board of County Commissioners of Lee County, Florida, or its designee, or any successor to the powers of the board.
9. "Communications Act" means the Communications Act of 1934, 47 U.S.C. § 151 et seq., as that Act has been and may

hereinafter be amended.

10. "Cable Service" means the transmission of video or other programming services over a cable system to subscribers together with any subscriber interaction, if any, which is required for the selection or use of such video programming or other cable services. Unless otherwise preempted by applicable law, cable internet services, or other cable services, provided by a Franchisee, its parent, affiliate or subsidiary over the Cable System shall be deemed "cable services" as permitted under Title VI of the Communications Act of 1934, as amended.
11. "Cable System," or "System," means any facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming, and which is provided to multiple subscribers within the County. Such term does not include (a) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations; (b) a facility that serves subscribers without using any public right of way; (c) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 201 et seq., except that such facility will be considered a cable system to the extent it is used in the transmission of video programming directly to subscribers,

unless the extent of such use is solely to provide interactive on demand services; (d) an open video system that complies with Section 653 of the Telecommunications Act of 1996; or (e) any facilities of any electric utility used solely for operating its electric utility systems.

12. "County" means Lee County, Florida.
13. "County Administrator" means the County Administrator of Lee County, Florida, or his designee, or any successor to the powers of the County Administrator.
14. "Control of a Franchisee or Applicant" means possession of the ability to direct or cause the direction of the management or policies of a Franchisee, or applicant, or the operation of a Franchisee's system, either directly or indirectly, whether through ownership of voting securities, by contract or in any other manner.
15. "Fair Market Value" means the price that a willing buyer would pay to a willing seller for a going concern but with no value allocated to the franchise itself.
16. "FCC" means the Federal Communications Commission, or any successor governmental entity thereto.

17. "Franchise" means the right granted by the County to a Franchisee in a Franchise Agreement to construct, maintain and operate a cable system under, on, and over Streets, roads and any other public ways, rights-of-ways, or easements within the County. The term does not include any license or permit that may be required by this Code or other laws, ordinances or regulations of the County for the privilege of transacting and carrying on a business within the County or for disturbing or carrying out any work on any Street.
18. "Franchise Agreement" means a contract entered into in accordance with the provisions of this Code between the County and a Franchisee that sets forth the terms and conditions under which the franchise will be exercised.
19. "Franchise Area" means that territory within the unincorporated limits of the County, as those limits may change from time to time through annexation or contraction, over which the terms of a Franchise Agreement shall extend.
20. "Franchisee" means any person granted a franchise pursuant to this Code who has entered into a Franchise Agreement with the County.
21. "Gross Revenues" means all revenues derived by the Franchisee and, any Affiliates, subsidiaries or parent of the Franchisee from the operation of the Cable System to provide Cable Services in the County. Gross Revenues include, but are not limited to, fees charged Subscribers for Basic Service;

fees charged Subscribers for any optional, premium, per-channel or per-program service; fees charged Subscribers for any tier of service other than Basic Service; installation, disconnection, reconnection and change-in-service fees; late fees in excess of five dollars (\$5.00); leased access fees, payments or other consideration from programmers for carriage of programming on the system (excluding marketing support to the extent such funds are not considered revenue under GAAP); revenue from converter, remote, modem or any other equipment rentals; revenues from leases of cable or fiber optic lines and other transmission devices and equipment revenues from cable modem and internet products and services to the extent included under Subsection 10 above; advertising revenues allocable to the County based on a percentage of Subscriber Base in the unincorporated area of the County divided by the Subscriber Base of the system. Such percentage shall then be multiplied by the total advertising revenue of the system to determine the allocable gross revenue stemming from advertising; revenues from home shopping channels or other sources allocable to the County, provided that where certain home shopping channel or other such revenue is allocable to more than one franchise area due to common zip codes, the Franchisee shall allocate the percentage of revenue to the County which is equivalent to the percentage of the population of the unincorporated area of

the County divided by the total population for the allocable franchise areas in question. Gross Revenues shall be the basis for computing the franchise fee imposed pursuant to Section III (L)(1) hereof. Gross Revenues shall not include revenues directly generated by affiliated programmers for the provision of programming; any taxes on services furnished by the Franchisee which are imposed upon any Subscriber or user by the state, a city, County or other governmental unit and collected by the Franchisee on behalf of said governmental unit and which the Franchisee passes on in full to the applicable tax authority. In addition, gross revenues shall not include the first Five Dollars (\$5.00) of late fee payments; return check charges; returned equipment charges; or bad debt. However, it is hereby expressly provided that franchise fees shall be included in the calculation of Gross Revenues. Further, franchise fees shall not be paid on Subscriber deposits unless and until said deposits are applied to a customer account for services rendered. Revenue of an Affiliate, subsidiary or parent shall be Gross Revenue under this definition only to the extent such revenue is derived from the operation of the cable system to provide cable service by the Affiliate, subsidiary or parent acting in the capacity of a cable operator and not in the capacity of a television program provider.

22. "Institutional Network" means a dedicated closed network, or a functionally equivalent alternative acceptable to the County,

for use by the County to provide Cable Services and non-Cable Services, including but not limited to bi-directional data transmission for educational and governmental use within the County. The network shall be capable of providing one-way, two-way, interactive, and machine-to-machine transfer of audio, video, voice and data signals within the network as designated by the County.

23. "Interconnection" means the electronic connection of two or more franchised cable systems for the purpose of sharing EG programming.
24. "Law" means all duly enacted and applicable federal, state, and county laws, ordinances, codes, rules, regulations and orders.
25. "Leased Access Channel" means a channel designated in accordance with Section 612 of the Communications Act, 47 U.S.C. § 532, for commercial use by persons unaffiliated with the Franchisee.
26. "Open Video System" A facility consisting of a set of transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, provided that the FCC has certified that such a system complies with applicable FCC rules and regulations.
27. "Overbuild" means that portion of a cable system constructed

to serve subscribers already served by an existing cable system.

28. "Person" means any individual, corporation, partnership, association, joint venture, organization or legal entity of any kind, and any lawful trustee, successor, assignee, transferee or personal representative thereof, but shall not mean the County.
29. "Service Tier" means a category of multi-channel cable service provided by a Franchisee and for which a separate charge is made by the Franchisee.
30. "State-of-the-Art" means that level of cable system technical performance, capacity, equipment, components and service (without reference to the content of service) equal to that which has been developed and demonstrated to be generally acceptable and used in systems of comparable size, excluding Tests, and which is technically and commercially feasible on the Franchisee's system.
31. "Street or Streets" means the surface, the air space above the surface and the area below the surface of any public street, highway, road, boulevard, concourse, driveway, freeway, thoroughfare, parkway, sidewalk, bridge, tunnel, park, waterway, dock, bulkhead, wharf, pier, court, lane, path, alley, way, drive, circle, easement, or any other public right-of-way or public place, including public utility easements dedicated for compatible uses, or any other property in which the County

holds any kind of property interest or over which the County exercises any type of lawful control, and any temporary or permanent fixtures or improvements located thereon, as may be ordinarily necessary and pertinent to construct and operate a cable system. The term includes any Rights-of-Way granted to the public or to any governmental body by way of conveyance, dedication, restriction, or by easement and any area within an easement given for governmental purposes.

32. "Subscriber" means any person who lawfully receives cable service delivered over the Cable System.
33. "Subscriber Base" means the total number of residential and commercial subscribers within the County. For purposes of calculating subscribers under bulk or multi-user contracts, the Franchisee shall count each individual unit (e.g., in a multiple family dwelling, a unit will be defined as each subscriber unit within the structure) included within a contract for service as one subscriber. Franchisee may use reasonable equivalency measures provided it uses such measures uniformly for all franchise areas served by the System, and as provided for in a franchise agreement.
34. "System Malfunction" means any cable system equipment, facility or signal failure or malfunction that results in the loss of satisfactory service, as defined as compliance with the FCC standards and the requirements of the Ordinance, on one or more channels to one or more subscribers. A malfunction is

major if it affects fifty (50) or more subscribers.

35. "Transfer of a Franchise" means any transaction in which (1) any ownership or control of a Franchisee or its cable system is transferred from one person or group of persons to another person or group of persons so that control of a Franchisee is transferred; or (2) the rights and/or obligations held by a Franchisee under a Franchise Agreement are transferred or assigned to another person, group of persons or business entity. A transfer shall be considered "pro forma" when it involves a transfer to a person, group of persons or business entity affiliated with the Franchisee and will not result in a change in the control or ownership of the Franchisee.
36. "Two-way Capability" means the incorporation into a cable system of all appropriate design and engineering characteristics and features so that two-way transmission, including but not limited to addressability, over the system can be implemented and activated.
37. "Video Channel or Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel, including the associated audio signal.

SECTION III - FRANCHISING PROVISIONS

- A. Franchise Authority.
 1. The County may grant one or more non-exclusive franchises in accordance with this Ordinance.

B. Franchise Required.

1. Unless the County is otherwise preempted from exercising franchising authority by applicable law, no person may construct or operate a cable system over, on, or under public streets in the County without a franchise granted by the County and no person may be granted a franchise without having entered into a Franchise Agreement with the County pursuant to this Ordinance or other such Ordinance of the County as may be applicable. All provisions of this ordinance shall be incorporated in any franchise as a condition of said franchise, unless otherwise expressly agreed to by the parties in a franchise agreement.
2. Any franchise granted pursuant to this Ordinance shall be solely for the provision of cable service and shall not be construed to authorize the provision of telephone, non-cable video or other telecommunications service.
3. Nothing in this Code shall prevent a Franchisee from applying for a separate franchise or such other authorization as may lawfully be required by the County for the provision of telephone, non-cable video or other telecommunications service, pursuant to applicable law.
4. Any person desiring to install maintain or operate an Open Video System shall file and application with the Board to obtain a franchise consistent with this Ordinance.

C. Franchise Characteristics.

1. A franchise authorizes use of County streets for installing cables, wires, lines, optical fiber, underground conduit, ducts, conductors, amplifiers, vaults, and other facilities as necessary and pertinent to operate a cable system to serve subscribers within the County, but does not expressly or implicitly authorize the Franchisee to provide service to, or install cables, wires, lines, underground conduit, or any other equipment or facilities upon private property without owner consent (except for use of compatible easements pursuant to Section 621 of the Communications Act, 47 U.S.C. § 541(a)(2) or as otherwise may be provided by binding law), or to use publicly or privately owned conduits without a separate agreement with the owners.
2. A franchise is nonexclusive, and will not expressly or implicitly preclude the issuance of other franchises to operate cable systems within the County, or affect the County's right to authorize use of County streets to other persons to operate cable systems or for other purposes as it determines appropriate.
3. All privileges prescribed by a franchise shall be subordinate to any prior lawful occupancy of the Streets, and the County reserves the right to reasonably designate where a Franchisees' facilities are to be placed within the Streets. Such designation may include, but not be limited to, consideration of the availability of space in the rights of way.

4. A franchise shall be a privilege which is in the public trust. No transfer, excluding pro-forma transfers, as defined herein, mortgages and pledges of Franchisee's securities, of a franchise shall occur without the prior consent of the County and unless application is made by the Franchisee, and County approval is obtained, pursuant to Section XXV hereof and the Franchise Agreement.
5. A Franchise granted to an applicant pursuant to this Ordinance to construct, operate and maintain a cable system within the County, shall be deemed to constitute both a right and an obligation on the part of the Franchisee to provide the services and facilities of a cable system as required by the provisions of this Ordinance and the Franchise. The Franchise Agreement shall constitute all of the terms and conditions of the Franchise that are finally negotiated and agreed upon by the County and Franchisee. A Franchisee shall be bound by all documents or other portions of an Application which the County relies upon as material and an inducement to granting a Franchise, and which are integrated by the County and Franchisee as an exhibit to the Franchise. All oral representations made by an Applicant, or its representatives, before the County Board and on which the Board explicitly relies in the grant of a franchise, shall be part of the record and binding upon the Franchisee.
6. Notwithstanding anything to the contrary, in the event that Franchisee, its parent, affiliate or subsidiary elects to offer to

subscribers video programming services through any means or method not included within the definition of a Cable System, including but not limited to an "open video system", Franchisee shall remain subject to all terms and conditions of the cable Franchise granted pursuant to this Ordinance, with respect to its operation of the Cable System under the Franchise.

D. Franchise application procedure; information required.

All applications to construct, operate, or maintain Cable system in the unincorporated areas of the County or to traverse any portion of those areas for the transmitting or conveying of such service elsewhere, shall be filed with the Board or such office of the County as the Board shall designate. A written application shall be filed with the County for (a) grant of a new cable franchise or Open Video System; (b) renewal of a franchise in accordance with Section 626 of the Communications Act, 47 U.S.C. 546; (c) modification of a Franchise Agreement; (d) a transfer of a franchise; or (e) any other relief from the County pursuant to this Ordinance or a Franchise Agreement. To be acceptable for filing, a signed original of the application shall be submitted together with seven (7) copies, be accompanied by the required non-refundable application filing fee as set forth in Section III (E) hereof, conform to any applicable request for proposals, and contain all reasonably required information. Except in the case of an initial application, the County Administrator may waive submission of certain information required herein, upon request of the Franchisee. All applications shall include the names and addresses of persons authorized to act on behalf of the applicant with respect to the application.

1. All applications accepted for filing shall be made available by the County for public inspection consistent with applicable law.
2. An application for the grant of a new franchise may be filed

pursuant to a request for proposals issued by the County or on an unsolicited basis. The County, upon receipt of an unsolicited application, may issue a request for proposals. If the County elects to issue a request for proposals upon receipt of an unsolicited application, the applicant may submit an amended application in response to the request for proposals, or may inform the County that its unsolicited application should be considered in response to the request for proposals, or may withdraw its unsolicited application. An application, including an unsolicited application which applicant has subsequently designated as responsive, which does not conform to the reasonable requirements of a request for proposals may be considered non-responsive and denied on that basis.

3. An application for the grant, renewal or transfer of a franchise shall contain, at minimum, the following information:
 - a. Name and address of the applicant and identification of the ownership and control of the applicant, including: the names and addresses of all persons with five percent (5%) or more ownership interest in the applicant, including the names and addresses of parents or subsidiaries holding such ownership interests directly or indirectly; the persons who control the applicant; all officers and directors of the applicant; and any other Cable system ownership or other

- communication ownership interest of each named person;
- b. The names and addresses of any parent or affiliate, of the applicant and of any other business entity owning or controlling in whole or in part or owned or controlled in whole or in part by the applicant.
 - c. An indication of whether the applicant, or any person controlling the applicant, or any officer, or director or person with five percent (5%) or more ownership interest in the applicant, has been adjudged bankrupt, had a cable franchise or license revoked, or been found by any court or administrative agency to have violated a security or antitrust law, or to have committed a felony, or any crime involving moral turpitude; and, if so, identification of any such person and a full explanation of the circumstances;
 - d. A demonstration of the applicant's technical, legal and financial ability to construct and/or operate the proposed Cable System, including identification of key personnel;
 - e. A detailed and complete financial statement of the applicant, prepared by a certified public accountant, for the five (5) fiscal years

immediately preceding the date of the application hereunder, or a letter or other acceptable evidence in writing from a reasonable lending institution or funding source, addressed to both the applicant and the County, setting forth a clear statement of its intent as a lending institution or funding source to provide whatever capital shall be required by the applicant to construct and operate the proposed system in the County. If the corporate or business entity organization of the applicant has not been in existence for a full five (5) years, applicant shall submit a certified financial statement for the period of its existence.

- f. A description of the applicant's prior experience in Cable system ownership, construction and operation, and identification of communities in which the applicant or any person controlling the applicant or having more than a five percent (5%) ownership interest in applicant has, or has had, a cable franchise or license or any interest therein;
- g. A description of the services and physical facilities proposed, including channel capacity, performance characteristics, headend, and access facilities; upon request, the applicant

shall make information on technical design available for inspection;

- h. A description of the construction of the proposed system, including an estimate of plant mileage and its location, a detailed map, the proposed construction schedule, a description, where appropriate, of how services will be converted from existing facilities to new facilities, and information on the availability of space in conduits including, where appropriate, an estimate of the cost of any necessary rearrangement of existing facilities;
- i. For informational purposes, the proposed rate structure, including projected charges for each service tier, installation, converters, and other equipment or services, and the applicant's ownership interest in any proposed program services to be delivered over the Cable System;
- j. A demonstration of how the applicant's proposal will reasonably meet the future cable-related needs and interests of the community, including a description of how the proposal will meet the needs described in any recent community needs assessment conducted by or for the County and any surveys or other research conducted by

Franchisee.

- k. A description of the applicant's proposal to provide access channels, facilities, equipment, personnel and financing in support of the County's education and government related activities and a comparison to provisions in other communities within the State of Florida, served by Franchisee, its parent, affiliate or subsidiaries in the State of Florida.
- l. A description of any cable and non-cable telecommunications services offered or proposed to be offered by the applicant or its parent, affiliates or subsidiaries in the State of Florida and Franchisee's plan with respect to the availability of such services to subscribers in the County;
- m. Pro forma financial projections for the first five (5) years of the franchise term, including a statement of projected income, and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules;
- n. If an applicant proposes to provide cable service to an area already served by an existing Cable Franchisee, the identification of the area where

- the overbuild would occur, the potential subscriber density in the area which would encompass the overbuild, and the ability of the Streets to accommodate an additional system;
- o. If requested, a proposal to provide an I-Net to the County.
 - p. A description of the Applicant's proposal to transmit the County's access channels to neighboring communities or municipalities within the County, upon request of such community or municipality which receives services from the County.
 - q. Any other information as may be reasonably necessary to demonstrate compliance with the requirements of this Ordinance and information that the County may request of the applicant that is relevant to the County's consideration of the application; and
 - r. An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application and certifying that the proposal meets all federal and state law requirements.
4. An application for modification including, but not limited to expansion of service area, of a Franchise Agreement shall

include, at minimum, the following information:

- a. The specific modification requested;
 - b. The justification for the requested modification, including the impact of the requested modification on subscribers and others, and the financial impact on the applicant if the modification is approved or disapproved;
 - c. A statement whether the modification is sought pursuant to Section 625 of the Communications Act, 47 U.S.C. § 545, and, if so, a demonstration that the requested modification meets the standards set forth in 47 U.S.C. § 545.
 - d. Any other reasonable information necessary for the County to make an informed determination on the application for modification; and
 - e. An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, including those types of applications as defined in Section II hereof, and certifying that the application is consistent with all federal and state law requirements.
5. An application for renewal of a franchise shall comply with the requirements of Section XXIV hereof.
 6. An application for approval of a transfer of a franchise shall

comply with the requirements of Section XXV hereof.

E. Application Fee.

1. To be acceptable for filing, an application shall be accompanied by a non-refundable filing fee in the following amount, as appropriate:

- a. For a new or initial franchise: \$15,000.00
- b. For renewal of a franchise: \$10,000.00
- c. For a transfer of a franchise: \$ 5,000.00
- d. For modification of a Franchise \$ 2,500.00

Agreement pursuant to 47 U.S.C.

§ 545:

- e. For any other relief: \$ 2,500.00

The purpose of the filing fee is to defray a portion of the County's cost in processing an application. Such fee shall be credited against amounts due under Section (E)(2) below.

2. Franchisee shall reimburse the County for all costs and expenses incurred by the County in considering and processing the application, including but not limited to consulting and legal costs, less the amount of the filing fee set pursuant to Section (E)(1) above. Within five (5) calendar days prior to the planned date of the resolution approving or denying the Franchise Agreement or renewal or modification or transfer thereof by the Board, the County shall advise the Franchisee of the amount of the processing fee and its method of calculation. If the processing fee is not paid to the County within twenty (20) calendar days of the date of the Board

resolution approving or denying the Franchise Agreement or a modification or transfer thereof, any approval granted by such resolution will be null and void without further action by County.

F. Public Hearing on Applications.

1. Upon receipt of a completed application for a grant or modification of a franchise, including modifications, submitted under the provisions of this section and within one hundred twenty (120) days, or such extended period of time as the Board may approve upon request by the County Administrator, the County Administrator shall review the application for sufficiency and compliance with Sections (d) and (e), hereinabove. If the County Administrator finds that the application is incomplete, he shall return it to the applicant with a letter describing any and all insufficiencies found in the application. The applicant may then reapply for a franchise upon correcting the deficiencies noted by the County Administrator. Upon receipt of the revised and amended application, the County Administrator shall review the application within one hundred twenty (120) day period. Upon review and after a final finding that the application is complete and in compliance with this section, the County Administrator shall forward said application to the board for publication of a notice of public hearing in accordance with this Ordinance.
2. Upon receipt of an application for a franchise and after review by the County Administrator, the Board shall publish in a paper

of general circulation in the County a notice of consideration of a cable franchise. Said notice shall name the applicant, describe the proposed service area, invite objections to the establishment of a Cable System in the proposed service area from existing systems and the general public and set a time and date certain, at least fourteen (14) days prior to the scheduled meeting date, for the consideration of the application at public hearing.

3. The initial application and all subsequent applications received prior to the public hearing shall be a matter of public records.

G. Issuance of Franchise

1. The Board may issue one or more franchises from the applications filed and considered at a public hearing. The Board shall, prior to an issuance of a franchise, consider the information and criteria required by this Ordinance, and any other information it deems appropriate in making a determination to issue a franchise. During the public hearing the Board of County Commissioners shall also consider, investigate, receive input, and make findings regarding the following:

- a. The economic impact upon private property within the franchise area;
- b. The public need for such a franchise, if any;
- c. The capacity of public rights-of-way to accommodate the Cable System;
- d. The present and future use of the County rights-of-way to be used by the Cable System;
- e. The potential for disruption of future service by competition due to the presence of too many competing companies based on the number of potential subscribers in the proposed service area;
- f. The potential disruption to existing users of the County to be used by the Cable System and the resultant inconvenience which may occur;
- g. The financial ability of the franchise applicant to perform and to make the necessary investment to erect, operate and maintain the Cable System;
- h. The experience of the applicant in the erection, operation and maintenance of a Cable system including compliance with local government rules, regulations and orders;
- i. The location and type of permanent facilities proposed to be constructed for the Cable System;
- j. The technical quality and completeness of the proposed plan for operation of the Cable System; indirectly but not limited to products and services to be made available and the level of

customer service standards to be maintained;

k. The likelihood that the applicant's proposal will satisfy the future cable related needs and interests of the community;

l. The requisite legal, character, financial, technical and other qualifications necessary to construct, own and operate a cable television system; and

2. In considering the desirability of an additional or expanded cable franchise, the Board of County Commissioners shall balance the desirability to promote competition in the cable television industry, so as to promote a diversity of information and the provision of high-quality cable services against the use and unreasonable disruption of private and public property by multiple cable operations. Furthermore, if the County grants a franchise to an additional cable operator or expands a current operator's franchise, the County may impose such conditions as it deems necessary and proper at the time of the grant consistent with applicable federal and state law.

3. The Board of County Commissioners has the authority to retain an expert or consultant to conduct a study at any time, but no more frequently than annually, in order to assess the performance of the incumbent's operations. Any resulting fees or expenses of experts or consultants, incurred to conduct a performance evaluation, as a result of noncompliance with the Ordinance or Franchise Agreement are to be borne by the applicant. However, where the applicant is a current

franchisee, the applicant shall be required to pay said costs and fees only in the event of non-compliance with this Ordinance or the Franchise Agreement.

4. The Board shall vote whether to grant or deny any application and thereafter notify in writing all applicants of its decision within thirty (30) days from the date of said vote. Unless a Franchise Agreement states otherwise, all of the statements and declarations contained in the application shall be incorporated as conditions and material representations of any franchise that is issued by the Board, and the breach of any such conditions and representations shall constitute cause for commencement of termination proceedings of the franchise by the Board.

H. Term of Franchise.

No franchise shall be issued for a term not longer than fifteen (15) years. All current cable television-Franchise Agreements lawfully enforceable on the effective date hereof shall remain in effect until their respective date of expiration subject to the lawfully applicable provisions of this Ordinance. However, any Franchisee holding a current Franchise under any previous Ordinance or Franchise Agreement may file for a renewal of its Franchise pursuant to the terms of this Ordinance which shall require adequate notice to the public and opportunity to comment, and may have its franchise renewed for a period not to exceed fifteen (15) years on terms consistent with the provisions of this Ordinance and such other conditions as the Board determines are in the public interest at the time of the grant.

I. Effective Date of Franchise.

1. Any franchise granted pursuant to the provisions of this Ordinance shall become effective as provided herein.
2. Within thirty (30) calendar days after the passage of the Resolution awarding of a franchise, or within such extended period of time as the Board in its discretion may authorize, the Franchisee shall file with the Board its written acceptance of the franchise, together with the insurance policies and bonding documents required by Sections X and XI hereof, and its agreement to be bound by and to comply with all requirements pursuant to the provisions of this Ordinance and the franchise.

Such acceptance and agreement shall be acknowledged by the Franchisee before a notary public, and shall in form and content be satisfactory to and approved by the Board.

J. Business Authorization.

Any franchise granted pursuant to the provisions of this Ordinance shall authorize and permit the Franchisee to engage in the business of operating Cable System in the portion of the County for which application was made and described therein, and for that purpose and that purpose only, subject to the approval of County staff, to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any Public Rights-of-Way or street, such poles, wires, cable, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to the Cable System; and in addition, subject to the approval of the County Administrator or his designee, pursuant to generally applicable procedures and requirements, to use, operate, and provide similar facilities or properties rented or leased from other persons, including but not limited to any public utility or other franchisee

furnished or permitted to do business in the County.

K. Changes to Franchise Terms and Conditions.

No changes in the terms of any franchise may be made without the prior written approval of the Board, unless otherwise expressly provided by law or the Franchise Agreement.

L. Franchise Fee.

1. A Franchisee, as compensation for the privilege granted under a Franchise for the use of the County's streets to construct and operate a cable system, shall pay to the County a Franchise fee in an amount up to a maximum of either:
 - a. Five percent (5%) of the Franchisee's Gross Revenues derived directly or indirectly from the operation of its cable system within the County to provide cable services during the term of its franchise; or
 - b. In the event the Communications Act or other applicable law is amended to permit the County to assess a Franchise fee of a greater amount or on a broader revenue basis than that specified in subsection (1), above, the Franchisee agrees to pay to the County the new amount after a public hearing in which the public and Franchisee are given an opportunity to comment on the impact of the higher fee. In no event shall a Franchisee pay a Franchise fee greater than the maximum

permitted by applicable law.

2. Franchise fee payments are due on a quarterly basis. Payments shall be payable to the County within forty five (45) days after the close of each calendar quarter. Payments due hereunder shall be accompanied by a quarterly gross revenues audit report signed by a certified public accountant or a duly authorized officer of the Franchisee in a form acceptable to the County. All amounts which are not paid when due and payable hereunder shall bear interest at the legal rate, as defined in Florida Statutes, until paid and shall be subjected to a late fee in the amount of One Hundred (\$100.00) Dollars per day or part thereof that such violations continues.
3. Notwithstanding the requirements of subsection (L)(2) above, for delivery of an audit report by franchisee, the County shall have the right and authority to inspect the Franchisee's revenue records under the franchise and the right of audit and recomputation of any and all amounts payable under this section. All costs associated with any such audit shall be borne by Franchisee when said audit indicates an underpayment by the Franchisee by more than two percent (2%) of the amount due.
4. No acceptance of a payment of a franchise fee shall be construed as a release or as an accord and satisfaction of any claim the County may have for further sums payable under this Ordinance or for the performance of any other obligation

hereunder. Furthermore, unless prohibited by applicable law, the franchise fee to be paid to the County pursuant to this Ordinance shall not be deemed to be in the nature of a tax and shall be an addition to other taxes, fees or charges which a Franchisee may be required to pay to the County or to any state or federal agency.

M. Franchise Restrictions.

1. Any franchise granted under this Ordinance shall be non-exclusive.

2. No privilege or exemption shall be granted or conferred by any franchise granted under this Ordinance broader than those prescribed herein unless expressly mandated by applicable state or federal law.

3. Any privilege claimed under any such franchise by a franchisee in any street or other public property shall be subordinate to any prior lawful occupancy of the streets or other public property.

SECTION IV - RIGHTS IN ORDINANCE

A. The right is hereby reserved to the County to adopt, in addition to the provisions contained herein and in existing applicable agreements, such additional regulations as it shall find necessary in the exercise of its police power; provided that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the terms and conditions of the franchise and the rights herein granted.

B. The County shall have the right during the term of any Franchise granted under this Ordinance to install and maintain free of charge upon the poles of the Franchisee all wire and pole fixtures necessary for a police alarm system, or traffic control system on the conditions that such wire and pole fixtures do not interfere with the present and future cable operation of the Franchisee.

C. Upon reasonable notice, the County shall have the right to inspect at the Franchisee's business office the maps, plans, and other like materials of the franchises at any time during normal business hours where such maps, plans, and other materials are related to this ordinance or any franchise granted by the County.

D. Subject to applicable law, except as may be specifically provided by this Ordinance or under the terms of a Franchise Agreement and subject to the Communications Act, the failure of the County, upon one or more occasions, to exercise a right or to require compliance or performance under this ordinance or a Franchise Agreement shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance.

SECTION V - INITIAL PERFORMANCE GUARANTEE

A. Within twenty four months from the date of issuance of an initial franchise or the extension of a service area, the Franchisee shall accomplish construction of the proposed Cable System within said service area where the density is at least twenty-five 25 homes per required cable mile, so as to make available all services to all dwellings and business. Such period may be extended by the Board for good cause shown. Notwithstanding anything to the contrary, a franchisee shall be neither required to overbuild nor prohibited from overbuilding the facilities of another cable operator to comply with the requirements of this section.

B. A franchisee shall, at all times during the term of a franchise provide to the County as built maps of the Cable System. Upon request, of the County, said maps shall be provided in a format to be reasonably approved by the County staff.

SECTION VI - RIGHT TO USE STREETS NOT WARRANTED

It is understood that there may be from time to time within the County various streets which the County does not have the unqualified right to authorize Franchisee to use,

because of reservations in favor of previous dedications or because of other legal impediments; therefore, in granting a franchise under this Ordinance, the County does not warrant or represent as to any particular street or portion of a street that it has the right to authorize Franchisee to install or maintain portions of its system therein, and in each case the burden and responsibility for making such determination in advance of the installation shall be upon the Franchisee.

SECTION VII - OTHER AGREEMENTS, PERMIT AND EASEMENT REQUIREMENTS

The County shall not be required to assume any responsibility for the securing of any rights-of-way, easements, or other rights which may be required by the Franchisee for the installation of a Cable System, nor shall the County be responsible for securing any permits or agreements with other persons or utilities.

SECTION VIII - NO PROPERTY RIGHTS CONVEYED

Nothing in this Ordinance or in a Franchise shall grant to a franchisee any right of property in County owned property or public rights-of-way as described in Section VI of this Ordinance, nor shall the County be compelled to maintain any of its property or said public rights-of-way. any longer than, or in any fashion other than in the County's judgment, as its own business or needs may require. In addition, the franchise holder shall not be entitled to any compensation for damages from the County as a result of having to remove or relocate its property, lines and cables from said public property or public rights-of-way in the event the County determines that a necessity exists for such removal or relocation.

SECTION IX - LIABILITY, INDEMNIFICATION

A. Liability in case of emergency.

If, at any time in case of fire, disaster, or other emergency, it shall appear necessary in the judgment of the County to cut, move or otherwise interfere with any of the wires, cables, amplifiers, appliances or appurtenances thereto of the Franchisee, the

County shall not be liable for any injury or damage to such property and equipment of the Franchisee as a result of such cutting, moving or interference. However, County agrees that it will make a good faith effort to contact Franchisee prior to cutting, moving or otherwise interfering with any of Franchisees facilities.

B. Indemnification.

1. By acceptance of the franchise granted under this Ordinance, Franchisee agrees to indemnify, defend and hold harmless the County, its officers, boards, commissioners, agents and employees from any and all actions, claims, suits, penalties and judgments for damages at law or equity of any nature whatsoever arising out of or through:

a. The acts or omissions of the Franchisee, its servants, employees and agents; and/or

- b. The conduct of its business as a cable television communications service.

However, Franchisee's obligation pursuant to this Section shall not extend to claims arising from the negligence or willful misconduct of the County, its employees, officers, Board, Commissioners and agents.

2. The Franchisee shall defend in the name of the County, and pay all expenses incurred by the County in defending itself, with regard to all damages and penalties the County may legally be required to pay as a result of the franchise granted hereunder, excluding education and government channels required by a Franchise granted pursuant to this Ordinance, under the exclusive control of the County. Damages and penalties shall include but not be limited to damages arising out of copyright infringement and all other damages arising out of the construction, installation, operation and maintenance of its cable communications system, whether or not any such act or omission is authorized, allowed or prohibited by this ordinance or the franchise granted hereunder. Expenses shall include all incidental expenses and costs including, but not limited to attorney fees and the reasonable value of any service rendered by the office of the County attorney. In any action arising under this Section, Franchisee shall have the right to defend the action and choose the attorney or law firm to defend the action with the County Attorney having the right to approve the choice of counsel. Such approval shall be withheld only for

good cause shown.

SECTION X - INSURANCE

- A. Insurance Coverage Required.
1. Within thirty (30) days after the effective date of the franchise, the Franchisee shall provide proof of general liability insurance insuring against claims for liability and damages. The Franchisee shall maintain said insurance through out the term of the franchise and said insurance shall include, at a minimum, the following types of insurance coverage in amounts not less than shown:
 - a. Workers' Compensation: Coverage to apply to all employees for statutory limits in compliance with the applicable state and federal laws. The policy must include employers liability with a minimum limit of Five Hundred Thousand (\$500,000.00) Dollars each accident.
 - b. Comprehensive General Liability: Shall have minimum limits of One Million (\$1,000,000.00) Dollars per occurrence combined single limit for bodily injury liability and property damage liability. This shall include premises and/or operations, independent contractors and subcontractors, and/or completed operations, broad form property damage, Excavation, Collapse and Underground Insurance (XCU)

coverage, and a contractual liability endorsement.

c. Business Auto Policy: Shall have minimum limits of One Million (\$1,000,000.00) Dollars per occurrence combined single limit for bodily injury liability and property damage liability. This shall include owned vehicles, hired and non-owned vehicles and employee non-ownership.

2. The insurance coverage obtained by the Franchisee in compliance with this section shall be on file with and approved by the Risk Management office during the term of the Franchise.

3. The insurance coverage and policy requirements may be changed and increased from time to time at the discretion of the Board to reflect changing liability exposure and limits.

4. Nothing herein is intended as a limitation to the extent of any legal liability of the Franchisee.

B. Insurance Policy Provisions.

1. Resident company and agent: All insurance policies and bonds as are required of a franchisee in this Ordinance shall be written by a company or companies authorized and qualified to do business in the State of Florida, and have a minimum rating of "A" in Best's Rating Guide.

2. Certificates and renewals: Certificates and renewals of all coverage required shall be promptly filed by the Franchisee with the director. Each policy shall require notice and the

Franchisee shall notify the County within thirty (30) days of any cancellation or modification of any insurance coverage required by this ordinance, which notice shall be sent by registered mail to the director. Renewal certificates shall be filed with the director no less than thirty (30) days prior to the policy expiration date.

3. Additional insured: The Lee County Board of County Commissioners shall be included as an additional insured on the comprehensive general liability.
4. Premium payment: Companies issuing the insurance policies shall have no recourse against the County for payment of any premiums or assessments, and same shall be the sole responsibility of the Franchisee.
5. No franchise granted under this Ordinance shall be effective unless or until each of the foregoing policies' certificates of insurance as required in this section have been delivered to the County and approved by the Risk Management Office.
6. Neither the provisions of this section, nor the acceptance of any bonds by the County pursuant to this ordinance, nor any damages received by the County thereunder, shall be construed to excuse performance by a franchisee or limit the liability of a franchisee for damages to the full amount of the bonds or otherwise.

SECTION XI - BONDING REQUIREMENTS

- A. Construction Bond.

1. The Franchisee shall, within thirty (30) days after the effective date of an initial franchise granted under this ordinance, post with the County a construction bond or letter of credit equal to the lesser of One Hundred Thousand (\$100,000.00) Dollars or one hundred percent (100%) of the projected cost of construction and installation of the system. Said bond or letter of credit may be returned at the end of twelve (12) months after the system has been completed and approved by the County, provided that the Franchisee has complied with all terms and conditions of the Franchise Agreement and all provisions of this ordinance as well as the rules and regulations herein required and permitted.
2. If the Franchisee shall fail to perform the obligations heretofore set out in this section, the Franchisee shall forfeit in total to the County the hereinabove referenced construction bond or letter of credit.
3. Said construction bond or letter of credit shall not be in lieu of any other guarantee or indemnification required by this Ordinance and shall be in addition to the performance bond or irrevocable letter of credit required in Section XI (B).

B. Permanent performance and payment bond.

1. The Franchisee shall within thirty (30) days of the effective date of franchise granted under this ordinance or within thirty (30) days of the granting of a renewal or the transfer of a franchise existing prior to the effective date of this ordinance, furnish to

the County a cash deposit, performance bond or an irrevocable letter of credit issued by a Florida bank or a federally insured lending institution in the amount of Two Hundred Thousand (\$200,000.00) Dollars. The deposit performance bond or letter of credit shall be used to guarantee the compliance with performance requirements and payment of all sums which may become due to the County under this ordinance and/or any Franchise Agreement entered into by the County and Franchisee. The deposit, performance bond or letter of credit shall be maintained in the full amount specified herein throughout the term of the franchise and for one year after the franchise expires or is terminated, without reduction or allowances for any amounts which are withdrawn or paid pursuant to this order the form of the security, whether cash, bond or guarantee, shall be determined by the County Administrator due expressly described in a Franchise Agreement.

2. The rights reserved to the County with respect to the bond or the letter of credit are in addition to all other rights of the County.

SECTION XII - FCC LICENSES

Failure of the Franchisee to obtain the necessary permits and licenses shall cause the franchise to become subject to revocation, consistent with the procedures set forth herein, unless the Franchisee petitions and the Board grants a request for an extension of time for good cause shown.

SECTION XIII - COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

The Franchisee shall at all times during the life of this ordinance be subject to all lawful exercise of the police power by the County and to such lawful rules and regulations by the County as the County shall hereafter provide. The Franchisee shall comply with all laws, statutes, codes, ordinances, rules, or regulations applicable to its business, subject to Franchisee's lawful rights in its franchise.

SECTION XIV - MINIMUM FACILITIES AND SERVICES

A. Notwithstanding anything herein to the contrary, when reasonably practicable but no later than twelve (12) months after notice from the County, a franchisee shall make such technically and commercially feasible improvements to its System as may be necessary to bring the System to the State-of-the-Art, as defined in Section II (A)(30). The availability of a specific level of Cable System technical performance, capacity, equipment, components and service (without reference to the content of service) on any Cable System owned or operated by the Franchisee, its parents, affiliates or subsidiaries serving a community in the State of Florida shall create a presumption of technical and commercial feasibility, provided, however, the Franchisee may make a showing to the contrary which, if sufficient, may overcome the presumption. Such showing shall be made to the Board, which shall determine whether a showing of competent and substantial evidence sufficient to overcome the presumption has been made, subject to a challenge to such determination in an appropriate legal proceeding. The County may grant extensions of the time within which a Franchisee must comply with the obligations set forth herein, to accommodate the process to be afforded a franchisee hereunder, for good cause shown (including evidence that the Franchisee has commenced necessary measures to comply with the obligations herein), but in no event to exceed twelve (12) months.

1. Any Cable System that commences construction, including but

not limited to initial construction, rebuild, upgrade, or reconstruction or is granted a franchise or renewal after the effective date of this Ordinance shall have a minimum capacity of at least 750 MHz providing no less than seventy-eight (78) video channels available for immediate use. A Franchise Agreement may provide for a larger minimum channel capacity requirement.

2. The County and a Franchisee shall agree in a Franchise Agreement that a Franchisee provide access channels, facilities and other support for education and/or governmental use as determined by the County.
3. Upon request of the Board, cablecasting of Board meetings live to all Subscribers located within the County shall be carried by the Franchisee on a government access channel.
4. A Cable System shall provide leased access channels as required by federal law.

5. A Franchisee shall:
 - a. A Franchisee shall, upon request, provide at least one cable television service outlet and when technically feasible and available in the area from franchisee, or its affiliate, parent or subsidiary, serving subscribers within the area served by the system, at least one standard installation connection to a cable on-line service, including a minimum of at least one (1) cable modem, to each public elementary and secondary school within its franchise area that is passed by its cable system, and shall provide basic cable service and on-line cable internet service to those installations at no cost to the County or school involved, and shall charge no more than its time and material costs for any additional cable service outlets (including cable internet service) to such facilities.
 - b. A Franchisee shall, upon request, provide at least one standard installation for basic cable television service to each and every County government building within its franchise area that is passed by its cable system and shall provide basic cable service to those installations at no cost to the County and shall charge no more

than its costs for any additional basic cable service outlets to such facilities.

6. A Franchisee shall design its system to allow the County or other appropriate government body, to interrupt cable service in an emergency to deliver necessary information to subscribers, at minimum consistent with FCC regulations.
7. A Franchisee shall make available to its subscribers information regarding equipment capable of decoding closed circuit captioning information for the hearing impaired.
8. Standard installation shall consist of a drop, not exceeding one hundred twenty five (125) feet from the cable plant to the nearest part of a Subscriber's residence; or, if a commercial subscriber, the nearest part of Subscriber's place of business.
9. Any and all rights which the County may have, now or in the future, to regulate a franchisee's provision of or placement of facilities used for the provisions of cable Internet services are hereby reserved by the County and may be exercised at any time throughout the term of the Franchise, unless otherwise prohibited by applicable law.
10. A Franchisee shall, at all times during the term of a Franchise, maintain a State-of-the-Art Cable System within the Franchise Area, as that term is defined in this Ordinance, and consistent with the provisions of Subsection A hereof and the Franchise Agreement.

B. A Franchisee shall make cable service available to every dwelling within the

Franchise Area as defined in a Franchise Agreement unless prohibited by a private property owner from doing so; provided that such dwelling is in an area of density of at least twenty-five 25 dwelling units per required cable mile. Density per cable mile shall be computed by dividing the number of dwelling units in the area by the length, in miles or fractions thereof, of the total amount of aerial or underground cable necessary to make service available to the dwelling units in such area in accordance with the Franchisee's system design parameters.

SECTION XV - TECHNICAL STANDARDS

A. Any Cable System within the County shall at minimum meet the technical standards of the FCC or other applicable federal or state technical standards, including any such standards as hereinafter may be amended or adopted including but not limited to digital transmission, HDTV or other advanced technologies. All television signals transmitted on a Cable System shall include any closed circuit captioning information for the hearing impaired received by the Franchisee's Cable System. Antennas, supporting structures, and outside plant used in the system shall be designed to comply with all generally accepted industry practices and standards and with all federal, state, County, County and/or utility laws, ordinances, rules and regulations.

B. All construction, installation and maintenance shall comply with the National Electrical Safety Code, the National Electric Code, all applicable building codes, and all laws as hereinafter may be amended or changed.

C. As required by FCC rules, the Franchisee shall perform at its expense proof of performance tests designed to demonstrate compliance with FCC requirements. The Franchisee shall provide, upon written request, the proof of performance test results to the County within thirty (30) days after completion. At any time during the term of a Franchise, the County shall have the right to inspect the Cable System facilities in the streets during

and after their construction to ensure compliance with the requirements of the Franchise Agreement, this Ordinance, and FCC standards.

D. The Franchisee shall notify the County within ten (10) days of Franchisee's failure of proof of performance or other test required in subsection C above.

E. Inspection.

1. Upon request, the Franchisee shall furnish the County Administrator with a written report of the results of Franchisees' annual system proof of performance tests, as required by the FCC. The County may require additional tests as proof of performance should it have reasonable cause to believe that a franchisee's system is not providing quality service transmission to its subscribers. Where the reports indicate noncompliance, Franchisee shall pay the costs incurred by the County for any technical assistance deemed necessary by the County for obtaining independent verification of technical compliance with all standards.

F. A Franchisee shall not design, install or operate its facilities in a manner that will interfere with the signals of any broadcast station, the preexisting facilities of any public utility, the preexisting Cable System of another Franchisee, or individual or master antennas used for receiving television or other broadcast signals.

G. Franchisee shall provide access channels, facilities, and financial support, in accordance with the terms of a Franchise.

SECTION XVI - ACCESS CHANNELS AND FACILITIES

A. Applications for an initial grant or renewal of a franchise shall include proposals for the provision of education and government access channels and equipment, facilities and support relating to such channels sufficient to meet community needs as determined by the County. Any Franchisee granted an initial or renewal Franchise on or after the effective date hereof, shall, at minimum, provide the County for its exclusive use with two (2) activated education/government access channels for educational and/or governmental use, as determined by the County.

B. At minimum, said applications shall include proposals to provide the following:

1. The live cablecasting of all Board meetings and certain other events.
2. Studio facilities with adequate space, lighting, audio and video equipment and personnel necessary for on-site videotaping, recording and transmission over the Cable System of educational and governmental programs.
3. Equipment, facilities and support in order to facilitate the County's operation of educational and government access channels, as determined by the County.
4. Trained personnel to assist the County in production of live and video-taped municipal programs at locations, including but not limited to, the County's studio, or Franchisee's studio as the case may be, or such location as may be designated by the County.

B. A Franchisee shall provide to the County access to the system for transmission of emergency messages and alerts in compliance with FCC rules and state law, and shall provide for character generated "crawl" information to be superimposed on all video channels for the hearing impaired. In the case of any emergency or disaster, as determined by the County, a franchisee shall, upon request of the County, make the override capacity available to the County without charge for use during emergency or disaster period.

C. Applications for an initial grant, renewal or transfer of a franchise shall include proposal for the interconnection of Franchisee to any or all other franchised Cable Systems operating within the County or in areas adjacent to the County for the purpose of transmitting educational and government programming provided that interconnection is technically feasible and Franchisee and any other affected operator agree upon reasonable interconnection arrangements, including an allocation of the costs of interconnection between Franchisee and such other operator, that is reasonable in light of the relative benefits and burdens, including consideration of support provided for educational and governmental access purposes.

D. Consistent with Section 611(b) and (e) of the Communications Act any franchisee granted an initial franchise or renewal after the effective date hereof may be required to provide to the County an Institutional Network (I-NET) or equivalent thereto providing bi-directional transmission of data among all government facilities located within the franchise area, as set forth in a franchise agreement. At such time as more than one franchise is granted for any specific area within the County, the County shall allow the financial obligation of the cost of the I-NET to be satisfied on a shared basis with obligations imposed in proportion to the number of subscribers served by each franchisee.

E. A Franchise Agreement may provide for a financial grant in lieu of some or

all of the facilities, equipment, and services provided pursuant to Section XVI hereof. However any such grant shall be considered a capital grant for use in support of education and government cable and commission needs pursuant to Section 622(g)(2)(c) of the Communications Act and shall not be included in or otherwise credited against any franchise fee or tax.

SECTION XVII - CUSTOMER SERVICE REQUIREMENTS

A. A Franchisee shall at a minimum maintain all parts of its system in good condition and in accordance with FCC standards or such more stringent standards provided in this Ordinance or a Franchise Agreement. Sufficient employees shall be retained to provide safe, adequate and prompt service for all of its customers and facilities, as set forth in this Ordinance and a Franchise Agreement. The customer service requirements set forth herein are applicable to all services subject to the Ordinance. Franchisee's failure to comply with this subsection may result in a fine in the amount of Two Hundred Fifty (\$250.00) Dollars, per violation, per day or part thereof that the violation continues.

B. A Franchisee shall maintain at least one (1) conveniently located business office and service center within the County limits, to which Subscribers may telephone without incurring added message units or toll charges. This business office shall be open at minimum during normal business hours, Monday through Friday, and some weekend and/or evening hours. Further, Franchisee shall locate, construct, design, staff, operate and maintain said office(s) so as to provide all Subscribers, including but not limited to those Subscribers who may be elderly, disabled or otherwise impaired, with access to its office, in accordance with applicable law. The office shall make available for all customers sufficient covered waiting areas and adequate seating capacity in an air conditioned space. Such office must have adequate counter personnel to keep wait time to a reasonable length. Franchisee's material failure to comply with this subsection may result in a fine in

the amount of Two Hundred Fifty (\$250.00) Dollars per violation, per day or part thereof that the violation continues.

C. Franchisee shall maintain a listed local, toll-free telephone number under the name by which Franchisee is doing business in the County, and employ a sufficient number of telephone lines, personnel and answering equipment or service to allow reasonable access by Subscribers and members of the public to contact the Franchisee on a full-time basis, twenty-four (24) hours per day, seven (7) days per week including holidays. Knowledgeable, qualified Franchisee representatives shall be available to respond to customer telephone inquiries, at a minimum, fifty-five (55) hours per week, including from 9:00 a.m. to 5:00 p.m., Monday through Friday, plus a minimum of eight (8) hours in the course of Saturday and Sunday. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Two Hundred (\$200.00), per violation, per day or part thereof that the violation continues.

D. Franchisee shall answer all customer service and repair telephone calls made under normal operating conditions within thirty (30) seconds, including wait time and within an additional thirty (30) seconds to transfer the call. Customers shall receive a busy signal less than three percent (3%) of the time. These standards shall be met no less than ninety percent (90%) of the time under normal operating conditions, measured on a quarterly basis. Franchisee shall maintain performance data necessary to confirm compliance with the standards set forth herein, and such records shall be made available for review and inspection by the County or its designee pursuant to Section XXII of this Ordinance. Such records shall be maintained at the franchise level, or for all the franchise areas in the same system. Franchisee's material failure to comply with this subsection may result in a fine in the amount Two Hundred Fifty (\$250.00) Dollars per violation, per day or part thereof that the violation continues.

E. A Franchisee shall employ and maintain sufficient qualified personnel and/or equipment to be available (1) to accept payments during normal business hours; (2) to exchange or accept converters or other equipment during normal business hours; (3) to receive Subscriber complaints or requests for service or repairs on a full-time basis, twenty-four (24) hours per day, seven (7) days per week; (4) to undertake normal repairs, by the next business day; (5) to enable a service technician to respond to service calls between 6:00 a.m. and midnight, under normal operating conditions, seven (7) days a week including holidays, when more than five (5) Subscribers served from the same nearest active electronic device, such as an amplifier or node, call with the same technical complaint. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Two Hundred (\$200.00) Dollars per violation, per day or part thereof that the violation continues.

F. Franchisee must meet each of the following standards no less than ninety-five (95) percent of the time under normal operating conditions as measured on a quarterly basis:

1. Standard installation work shall be performed within seven (7) business days after an order has been placed except in those instances where a Subscriber specifically requests an installation date beyond the seven (7) business day period. "Standard" installations are up to one hundred and twenty-five (125) feet from the existing distribution system. If scheduled installation is neither started nor completed as scheduled, the Subscriber shall be telephoned by an employee of the Franchisee the same day;
2. Franchisee shall respond to service interruptions promptly and

in no event later than twenty-four (24) hours after the interruption becomes known to Franchisee. Other service problems shall be responded to promptly and in no event later than the next business day after the problem becomes known to the Franchisee;

3. The appointment window alternatives made available for installations, service calls, repairs, and other installation activities shall be either a specific time, a four-hour time block during normal business hours, or at the election and discretion of the Subscriber, "all day." These options shall be clearly explained to the customer at the time of scheduling;
4. Franchisee may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment;
5. If at any time an installer or technician is running late for a scheduled appointment, an attempt to contact the customer shall be made and the appointment rescheduled as necessary at a time which is convenient for the customer.
6. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Two Hundred (\$200.00) Dollars, per violation, per day or part thereof that the violation continues.

G. Franchisee shall institute and maintain a program providing a reasonable subscriber credit for missed appointments. The County's determination that Franchisee's program is unreasonable and/or Franchisee's material failure to comply with this subsection

may result in a fine in the amount of One Hundred (\$100.00) Dollars per violation, per day or part thereof that the violation continues.

H. Disconnection.

1. Voluntary Disconnection.

- a. A Subscriber may terminate service at any time.
- b. A Franchisee shall promptly disconnect any Subscriber who so requests from the Cable System of the Franchisee. No period of notice prior to voluntary termination of service may be required of Subscribers by any Franchisee. No charge may be imposed by any Franchisee for such voluntary disconnection, or for any Cable Services delivered after the date of the requested disconnection.
- c. A Franchisee may hold a Subscriber responsible for the return of equipment of the Franchisee which has been provided for Subscribers use. The Franchisee may request the Subscribers to return the equipment to Franchisee's office but, if the Subscriber requests, Franchisee shall pick up the equipment at the Subscriber's premises, subject to (b) above.
- d. Any security deposit and/or other funds due the Subscriber shall be refunded on disconnected accounts after any customer premises

equipment including all converters but excluding wiring have been recovered by the Franchisee. The refund process shall take a maximum of forty-five (45) days from the date equipment is returned to Franchisee to the date the customer receives the refund.

2. Involuntary Disconnection. If a Subscriber fails to pay a monthly subscription or other fee or charge, the Franchisee may disconnect the service outlet of the Subscriber; however, such disconnection shall not be effected until twenty-five (25) days after the due date of the monthly Subscriber fee or other charge, and ten (10) days advance written notice of intent to disconnect to the Subscriber in question. If the Subscriber pays within twenty-five (25) days of the due date and after notice of disconnection has been given, the Franchisee shall not disconnect. After disconnection, upon payment by the Subscriber in full of all proper fees or charges, including the payment of the reconnection charge, if any, the Franchisee shall promptly reinstate service. Franchisee reserves the right to deny service to any customer who has been repeatedly disconnected for non-payment of services to the extent such rights are consistent with applicable state and federal Law.
3. With respect to any disconnection, whether requested or involuntary, a Franchisee shall comply with the rules and regulations of the FCC and applicable Law with respect to

ownership, sale, removal and abandonment of home wiring. Failure to comply with such rules including, but not limited to providing applicable notice to Subscribers and property owners shall be considered a violation of this Ordinance.

4. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Two Hundred (\$200.00) Dollars per violation, per day or part thereof that the violation continues.

- I. Franchisee shall intentionally interrupt service only for good cause and for the shortest time possible and shall use its best efforts to minimize the number of service interruptions between 6:00 p.m. and 11:00 p.m. Franchisee shall maintain a written log for all intentional service interruptions. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Two Hundred Fifty (\$250.00) Dollars per violation, per day or part thereof that the violation continues.

J. Franchisee shall provide the County Administrator or designee telephone number(s) and/or pager number(s) to enable the County Administrator or designee to contact at any time a person responsible for the operation of the Cable System serving all parts of unincorporated Lee County. Franchisee's material failure to comply with this subsection shall make Franchisee subject to a fine as provided herein. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Two Hundred (\$200.00) per violation, per day or part thereof that the violation continues.

K. Franchisee shall cause all of its field employees to wear a picture identification badge indicating employment by Franchisee. This badge shall be clearly visible to the public. All company vehicles shall display the company name and logo, if any, in a manner clearly visible to the public. Contractor vehicles shall display the contractor name, telephone number, and contractor license number, as required by applicable law. Employees of contractors working for Franchisee shall wear a picture identification badge. Franchisee's material failure to comply with this subsection may result in a fine in the amount of One Hundred (\$100.00) Dollars per violation, per day or part thereof that the violation continues.

L. A Franchisee shall develop written procedures for the investigation and resolution of all Subscriber or County resident complaints, including, but not limited to, those regarding the quality of service and equipment malfunction, which procedures shall be provided upon request to the County Administrator. The good faith or lack thereof of the Franchisee in attempting to resolve Subscriber and resident complaints in a fair and equitable manner shall be considered in connection with the renewal application of the Franchisee, to the extent consistent with applicable law. Franchisee shall maintain a complete list of all complaints received during the prior twelve (12) months, requiring a service call not resolved within seven (7) days of receipt and the measures taken to resolve

those complaints. This list shall be provided to the County upon request. Franchisee shall also maintain a list of all written complaints received, which list shall be available to the County upon request. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Two Hundred Fifty (\$250.00) Dollars per violation, per day or part thereof that the violation continues.

M. Upon reasonable request by the County, Franchisee shall permit the County Administrator or his/her designee to inspect and test the technical equipment and facilities upon reasonable notice not to be less than two (2) business days, and accompanied by an employee of the Franchisee. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Three Hundred Fifty (\$350.00) Dollars per violation, per day or part thereof that the violation continues.

N. Franchisee shall abide by the following requirements governing communications with customers, bills and refunds:

1. Each Franchisee shall provide to Subscribers written information in each of the following areas at the time of installation, at least once annually, and at any future time upon request by the Subscriber:
 - a. How to use the cable service;
 - b. Installation and service maintenance policies;
 - c. All products and services offered;
 - d. Prices and service options;
 - e. Channel positions of programming carried on the system;
 - f. The Franchisee's procedures for the receipt and resolution of customer complaints, the address of

the Franchisee and telephone number to which complaints may be reported, and the hours of operation;

- g. The availability and costs of a "lock-out" device and/or other parental control mechanisms, if any;
 - h. Collection policies of the Franchisee;
 - i. Privacy policies of the Franchisee, pursuant to federal law.
 - j. Franchisee's material failure to comply with this subsection may result in a fine in the amount of One Hundred (\$100.00) Dollars per violation, per day or part thereof that the violation continues.
2. To the extent a Franchisee's billing schedule allows, each Franchisee shall provide written notice in or on its monthly billing, at the request of the County, of any County meeting regarding requests or applications by the Franchisee for renewal, transfer or modification of its Franchise. The County shall make such a request in writing, with reasonable notice prior to the mailing of any billing by Franchisee, such that Franchisee's regular billing cycle shall not be interrupted. Said notices shall be made at Franchisee's expense and said expense shall not be considered part of the Franchise fee assessed pursuant to this Ordinance and shall not be considered part of the Franchise fee, as defined in Section 622 of the Communications Act, 47 U.S.C. § 542. Franchisee's

material failure to comply with this subsection may result in a fine in the amount of Three Hundred Fifty (\$350.00) Dollars per violation, per day or part thereof that the violation continues. In addition, Franchisee shall, consistent with applicable law, provide written notice in or on its monthly billing of any change in service, rates or charges to subscribers unless such written notification takes place by separate mailing or other means.

3. Franchisee bills shall be clear, concise and understandable to Subscribers. Franchisee's material failure to comply with this subsection may result in a fine in the amount of One Hundred (\$100.00) Dollars per violation, per day or part thereof that the violation continues.
4. Credits for service or refunds shall be issued no later than thirty (30) days of the next billing cycle of the customer following the determination that a credit or refund is warranted. Franchisee's material failure to comply with this subsection may result in a fine in the amount of One Hundred (\$100.00) Dollars per violation, per day or part thereof that the violation continues.
5. A Franchisee shall provide Subscribers, the Board, and the County Administrator with at least thirty (30) days advance written notice of any changes in rates, charges, channel lineup, or initiations or discontinuations or changes of service or services offered over the Cable System whenever practicable. Franchisee's material failure to comply with this subsection

may result in a fine in the amount of One Hundred (\$100.00) Dollars per violation, per day or part thereof that the violation continues.

O. Except in the case of a system malfunction, upon a Subscriber's request, a Franchisee shall provide a refund or credit to the account of the Subscriber, prorated on a daily basis, for any period of four (4) hours or more within a twenty-four (24) hour period during which a Subscriber experienced an interruption of service or substantial impairment of service, whether due to a System Malfunction or other cause. No refunds shall be due for service interruptions directly related to a rebuild, upgrade or routine maintenance of the Cable System which is planned, noticed properly to Subscribers, and occurs during a time other than between 6:00 p.m. and 11:00 p.m. and lasts for four (4) hours or less. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Two Hundred (\$200.00) Dollars per violation, per day or part thereof that the violation continues.

P. Billing.

1. The first billing statement of the Franchisee after a new installation or service change shall be pro-rated as appropriate and shall reflect any security deposit.
2. The billing statement of the Franchisee must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Statements shall also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
3. Any balance not received within ten (10) days after the due date may be assessed an administrative charge. However, in

no event shall administrative charges for an overdue balance accumulated against any individual subscriber exceed Twenty Five (\$25.00) Dollars. The charge shall appear on the billing statement for the following month. Any administrative charge applied to unpaid bills shall be subject to regulation by the County consistent with applicable law. Subscribers shall not be charged an administrative fee, a late fee or otherwise penalized for any failure by the Franchisee, its employees, or contractors, including failure to timely or correctly bill the Subscriber, or failure to properly credit the Subscriber for a payment timely made.

4. The Franchisee must notify the Subscriber that payment can be remitted in Person at the office of the Franchisee in the County and inform the Subscriber of the address of that office where payment can be made.
5. Franchisee's material failure to comply with this subsection may result in a fine in the amount of One Hundred (\$100.00) Dollars per violation, per day or part thereof that the violation continues.

Q. No charge may be made for any service or product which the Subscriber has not affirmatively requested by name. Subscriber's failure to refuse a cable operator's proposal to provide such service or equipment is not an affirmative request for service or equipment. A Subscriber's affirmative request for service or equipment may be made orally or in writing. Franchisee's material failure to comply with this subsection may result in a fine in the amount of One Hundred (\$100.00) Dollars per violation, per day or part thereof

that the violation continues.

R. The Franchisee shall, upon request, certify in writing to the County, based upon internal due diligence by the Franchisee, that to the best of Franchisee's knowledge it is in substantial compliance with the standards set forth in this Section. At the request of the County, the Franchisee shall submit such documentation as may be required to demonstrate compliance with this Section. This documentation shall be submitted within forty five (45) days of the receipt by the Franchisee of the County's request.

S. Responsibility for the administration of this Ordinance, and any Franchise granted pursuant to this Ordinance, and for the resolution of all complaints referred to the County against a Franchisee regarding the quality of service, equipment malfunctions, and related matters, is hereby delegated to the County Administrator (who can in turn designate to a County employee), who is empowered, among other things, to settle, or compromise any controversy arising from operations of the Franchisee, on behalf of the County, in accordance with the best interests of the public. In cases where requests for service have been ignored or in cases where the service provided is unsatisfactory for whatever reason, the County Administrator or designee, hereafter referred to jointly as County Administrator, shall have the power to require the Franchisee to provide service consistent with the terms of the Franchise, if in the opinion of the County Administrator or designee such request for service is reasonable. Any Person aggrieved by a decision of the County Administrator, including the Franchisee, may appeal the matter to the Board for hearing and determination. The Board may accept, reject or modify the decision of the County Administrator. No adjustment, settlement, or compromise, whether instituted by the County Administrator or by the Board shall be contrary to the provisions of this Ordinance or any Franchise Agreement issued pursuant to this Ordinance, and neither the County Administrator nor the Board, in the adjustment, settlement, or compromise of any

controversy shall have the right or authority to add to, modify or delete any provision of this Ordinance or of the Franchise, or to interfere with any rights of Subscribers or any Franchisee under applicable federal, or state Law or private contract.

- T. 1. The fines to which the Franchisee is subject as set forth in this Section are to be assessed by the Board on a per violation basis, with each day of a continuing violation constituting a separate violation. Where a credit required by this Section is not possible because service has been terminated, Franchisee shall issue a refund to the former Subscriber for the appropriate amount.
2. Prior to the Board's assessment of a fine pursuant to this Ordinance, the County Administrator, or his designee, shall mail to the Franchisee a written notice, by hand delivery or certified or registered mail, of the proposed fine, specifying the violation at issue. The Franchisee shall have thirty (30) days from the date of receipt of the written notice to file a written response to the notice of the County Administrator or his/her designee as to whether the violation has been cured. The written response of the Franchisee shall be signed by management level personnel of Franchisee and all statements contained therein shall be regarded as material representations of the Franchisee to the County.
3. The County shall consider any justification or mitigating factor advanced in the written response of the Franchisee, including but not limited to rebates or credits to the Subscriber or a cure

of the violation. The County may not assess any fine if the Franchisee has reasonably resolved the complaint or cured the violation within a reasonable time frame. However, said Subscriber may be entitled to a credit or refund as provided herein.

4. Subsequent to the notice of proposed fine to Franchisee, and consideration of the response of the Franchisee, if any, the County may, after a public hearing at which Franchisee shall have an opportunity to be heard, issue an assessment of fine. The fine shall be paid within thirty (30) days of written notice to the Franchisee or, if Franchisee challenges the assessment in a court of competent jurisdiction, within thirty (30) days of a final non-appealable decision that the assessment is valid. If said refund, credit or fine is not paid by Franchisee within such thirty (30) day period, as the case may be, the County may, at its discretion, withdraw immediately the amount thereof from the Security Fund. Upon such withdrawal, the County shall notify Franchisee of the withdrawal amount, after which Franchisee shall have ten (10) days from the date of such notice to deposit in the Security Fund an amount sufficient to restore the Security Fund to the amount specified in the Franchise Agreement. This fine shall constitute liquidated damages to the County for the violation and the County may

enforce payment of the fine in any court having jurisdiction. It is the intent of the County to determine fines as a reasonable estimate of the damages suffered by the County and/or its Subscribers, whether actual or potential, and may include without limitation, increased costs of administration and other damages difficult to measure.

5. Franchisee may appeal any decision of the County Administrator or his/her designee directly to the Board within thirty (30) days of notice of the decision to the Franchisee.
6. Intentional material misrepresentation by a franchisee in any response to a notice of proposed credit, refund and/or fine, whether oral or written, shall be considered a material breach of the Franchise Agreement, subject to a penalty of no less than Five Thousand (\$5,000.00) Dollars in liquidated damages to the County, and shall be grounds for Franchise revocation.
7. In addition to complying with the customer service standards set forth in this Ordinance or in any Franchise issued pursuant to this Ordinance, a Franchisee shall, at minimum, comply with all customer service standards of the FCC applicable to Cable Systems and any other applicable federal or state Law concerning customer service standards, consumer protection, and unfair or deceptive trade practices.
8. The County expressly reserves the right to consider violations

of the customer service requirements in evaluating any renewal, modification or transfers of any Franchise, to the extent consistent with applicable law.

- U. The County hereby acknowledges that the standards incorporated in this Section XVII (A-T) are not applicable to cable modem service. However, the County hereby reserves the right to adopt customer service standards applicable to cable modem service and to impose such standards on a Franchisee, upon ninety (90) days notice.

SECTION XVIII - SUBSCRIBER PRIVACY

A. A Franchisee shall at all times protect the privacy of all subscribers to the full extent required by Section 631 of the Communications Act, 47 U.S.C. § 551 and state law. A Franchisee shall not condition subscriber or other service on the subscriber's grant of permission to disclose information which, pursuant to federal or state law, cannot be disclosed without the subscriber's explicit consent. No penalties or extra charges may be invoked by the Franchisee for a subscriber's failure to grant consent.

B. Unless otherwise permitted by federal or state law, neither the Franchisee nor its agents or employees shall, without the prior and specific written authorization of the subscriber involved, sell, or otherwise make available for commercial purposes the names, addresses or telephone numbers of any subscriber or subscribers, or any information which identifies the individual viewing habits of any subscriber or subscribers.

SECTION XIX - DISCRIMINATION PROHIBITED

A. No Franchisee may in its rates or charges, or in the availability of the services or facilities of its system, or in any other respect, make or grant any illegal undue

preferences or advantages to any subscriber, potential subscriber, or group of subscribers or potential subscribers, nor subject any such persons or group of persons to any illegal undue prejudice or any disadvantage. A Franchisee shall not deny, delay, or otherwise burden service or discriminate against subscribers or users on the basis of age, race, creed, religion, color, sex, handicap, national origin or marital status, except for discounts for senior citizens, the economically disadvantaged or handicapped that are applied in a uniform and consistent manner. A Franchisee may also offer bulk discounts to multiple dwelling buildings to the extent such discounts are otherwise permissible by law.

B. A Franchisee shall not deny cable service to any potential subscriber because of the income of the residents of the area in which the subscriber resides.

C. A Franchisee shall not refuse to employ, nor discharge from employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment because of age, race, creed, religion, color, sex, disability, national origin, or marital status. The Franchisee shall comply with federal, state and local laws and regulations governing equal employment opportunities, as the same may be from time to time amended.

SECTION XX - CABLE SYSTEM CONSTRUCTION

A. Construction map and schedule. Where applicable, Franchisee shall submit a construction plan or reconstruction plan which shall be incorporated by reference and made a part of the Franchise Agreement. The plan shall include Cable System design details, equipment specifications, and design performance criteria. The plan shall also include a map of the entire franchise area and shall clearly delineate the following:

1. Areas within the franchise area where the Cable System will be

initially available to subscribers including a schedule of construction for six month that construction or reconstruction is proposed; and

2. Areas within the franchise area where extension the Cable System cannot reasonably be done due to lack of present or planned development or other similar reasons, with the areas and the reasons for not serving them clearly identified on the map.
3. A Franchisee shall provide to the County, a detailed explanation, with proper notice including a detailed explanation of any delay of greater than twenty one (21) days.

B. Early construction and extension. Nothing in this section shall prevent the Franchisee from constructing or reconstructing the Cable System earlier than planned. However, any delay in the Cable System construction beyond the times specified in the plan report timetable shall require application to and consent by the Board.

C. Delay in construction timetable. Any delay beyond the terms of construction or reconstruction timetable, unless approved by, the board, will be considered a violation of this Ordinance for which the provisions of Section XXIII shall apply as determined by the Board.

D. Commencement of construction or reconstruction. Construction or reconstruction in accordance with the plan submitted by Franchisee shall commence as soon after the grant. and acceptance of a franchise as is reasonably possible. Failure to proceed expeditiously shall be grounds for revocation of a franchise. Failure to proceed

expeditiously shall be presumed in the event construction or reconstruction is not commenced within twelve (12) months of the grant and acceptance of a franchise.

E. Additional mandatory extension. Extension of a Cable System into any area not specifically treated in the plan shall nonetheless be required if the terms, of any of the following conditions of Section XIV (B) are satisfied. In areas not meeting the requirements for mandatory extension of cable service, pursuant to Section XIV (B), Franchisee shall provide, upon the request of five (5) or more potential subscribers desiring cable service, an estimate of the costs required to extend cable service to said subscribers. Franchisee shall then extend cable service upon request and agreement of said potential subscribers to pay the cost of extension.

F. Prior approval by County. Except for individual service drops, the Franchisee shall not erect any pole, run any line, make any attachment, nor shall any construction of any kind be commenced without the prior approval of the County. Prior to the issuance of such approval, the Franchisee shall submit to the County, upon request:

1. Strand maps of the system authorized by the proposed franchise showing plant routing, utility company poles to which the system facilities are to be attached; and
2. True copies of all pole attachment agreements made by the Franchisee with United Telephone Company or its successors and Florida Power and Light Company and any other utility or company to which an attachment is to be made.

G. County's right to inspect and correct defects. The County shall have and maintain the right to inspect the installation, construction, operation and maintenance of the

system by the Franchisee to insure the proper performance of the terms of this ordinance, provided said inspection does not interfere with the operations of the system. The County shall also have the right to correct any defects after notice to the Franchisee and its failure to correct such defects after seven (7) days.

H. Joint or common use of poles.

1. To enhance the public convenience and to minimize the placement of poles and wire holding structures within public ways, the Franchisee shall enter into agreements for the joint or common use of poles or other wire holding structures where poles or other wire holding structures already exist for the use in serving the County or serving the public convenience. Where reasonable terms and conditions cannot be negotiated with the owners of such poles and wire holding structures, the Franchisee shall demonstrate the unreasonableness of the negotiations and terms, to the County Administrator's satisfaction, and request waiver of this provision. However, no location of any pole or wire holding structure of the Franchisee shall be a vested interest, and such pole or structure shall be removed or modified by the Franchisee at its own expense whenever the County Administrator or his designee determines it to be necessary.
2. The County shall be permitted to make use of the poles or other wire holding structures of the Franchisee, without charge

or remuneration to the Franchisee, if the director determines that the use would enhance the public convenience and would not unduly damage, hamper or interfere with the Franchisee's present and future operations and provided that the use by the County is not to offer a service directly competitive to a Franchisee's cable service.

I. Permits, easements and agreements. The County shall not be required to assume any responsibility for the securing of any rights-of-way or easements, nor shall the County be responsible for securing any permits or agreements with other persons or utilities. A Franchisee is required to obtain all such permits or easements prior to construction.

J. Location/relocation of facilities/use of streets.

1. Franchisee's system may be installed above ground in areas where existing power or telephone facilities are above ground, and shall be installed underground in areas where existing power and telephone facilities are installed underground. Where reasonable terms and conditions cannot be negotiated with the owners of such areas, the Franchisee shall demonstrate the unreasonableness of the negotiations and terms, to the County Administrator's satisfaction, and request waiver of this provision. The Franchisee shall endeavor to enter into agreements for the purpose of sharing poles with any person, firm or corporation now or hereafter authorized by

license, franchise or otherwise to erect and maintain overhead or underground wires and cables, it being the intent hereof that all above ground installations of Cable Systems shall be accomplished on existing utility poles and easements where feasible, and installed only parallel to existing facilities. Where new poles are installed, prior approval of the County Administrator as to location must be received.

2. Franchisee shall not place any fixtures or equipment where the same will interfere with any gas, electric, cable, telephone, sewer, drainage or water lines, fixtures or equipment, and the location by Franchisees of their lines and equipment shall be in such a manner as not to interfere with the usual travel on or the proper use of said streets, the use of the same for the installation or operation of gas, electric, telephone, water, drainage, or sewer lines equipment, or, the rights or reasonable convenience of owners of property which abuts any street.
3. Franchisees shall relocate any above ground portion of their systems underground in any County easement or Rights-of-Way area where existing power and telephone facilities are hereafter so relocated unless Franchisee elects to purchase said poles owned by utility company or is permitted to remain on said poles pursuant to contractual pole attach-

ment agreements. Any such relocation shall be at their expense, and such relocation shall be accomplished concurrently with relocation of any such power and telephone facilities.

4. The Franchisee, upon notice to the County of not less than seven (7) business days, emergency situations excepted, shall have the authority to trim trees upon or overhanging streets, alleys, sidewalks and public ways and places of the County so as to prevent the branches of such trees from coming in contact with the wires and cables of the Franchisee, in a manner approved by and acceptable to the County. At the option of the County, such trimming may be done by the County or under its supervision and direction at the expense of the Franchisee, if prior notification has been given to the Franchisee and Franchisee thereafter failed to respond.
5. Franchisees shall promptly, upon the County's request and at their own expense, modify or relocate when necessary, any part of their systems to accommodate the abandonment of any street.
6. The location of any underground or above-ground facility or structure of any Franchisee shall not result in a vested interest, and such poles or structures shall be removed or modified by a franchisee at its own expense whenever the County determines that public convenience would be enhanced thereby.

SECTION XXI - USE OF STREETS

A. Any pavements, sidewalks, curbing or other paved area taken up or any excavations made by a Franchisee shall be done in compliance with County requirements under permits issued for work by the proper officials of the County, and shall be done in such manner as to give the least inconvenience to the inhabitants of the County. Nothing herein shall be construed to exempt a Franchisee from compliance with the provisions of Ordinances 88-11, as amended by 88-17, as amended by 90-42, as amended by 92-29, as amended by 96-24 and any subsequent amendments thereto and administrative code 11-12, and any subsequent amendments thereto, and the payment of the appropriate fees established pursuant to said Ordinance.

B. A Franchisee shall, at its own cost and expense, and in a manner approved by the County, 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 prepare, maintain and provide to the County Engineer full and complete plats, maps and records showing the exact locations of its facilities located within the public Streets, ways, and easements of the County. These maps shall be available to the County Engineer.

C. Except to the extent required by law, a Franchisee shall, at its expense, protect, support, temporarily disconnect, relocate, or remove, any of its property when required by the County by reason of traffic conditions, public safety, Street construction, Street resurfacing or widening, change of Street grade, installation or sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of municipal or public utility improvements; provided, however, that the Franchisee shall, in all such cases, have the

privilege of abandoning any property in place. Franchisee shall do so at its expense to the extent other users of the rights-of-way are so responsible, consistent with applicable law.

D. A Franchisee shall, on the request of any person holding a building moving permit issued by the County, 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 Franchisee shall have the authority to require such payment in advance, except in the case where the requesting person is the County, in which case no such payment shall be required. The Franchisee shall be given not less than seven (7) business days advance notice to arrange for such temporary wire changes.

E. A Franchisee shall use, with the owner's permission, existing underground conduits (if applicable) or overhead utility facilities whenever feasible and if available on reasonable terms and conditions. Upon request, copies of agreements between a Franchisee and third party for use of conduits or other facilities shall be filed with the County, provided that the Franchisee shall have the right to redact proprietary and confidential information in such agreements as it pertains to financial arrangements between the parties, consistent with state law.

F. All wires, cable lines, and other transmission lines, equipment and structures shall be installed and located to cause minimum interference with the rights and convenience of property owners. The County may issue such generally applicable rules and regulations concerning the installation and maintenance of a Cable System installed in, on, or over the Streets, as may be consistent with this Ordinance and the franchise agreement.

G. Safety.

1. Franchisee's work, performance, equipment and job sites shall be in compliance with all applicable state and federal requirements. A Franchisee's work, while in progress, shall be properly protected at all times with suitable barricades, flags, lights, flares, or other devices as are required by the Manual on Uniform Traffic Control Devices (FDOT) to protect all members of the public having occasion to use the portion of the streets involved or adjacent property.
2. Franchisee shall at all times employ due care and shall install, maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage; injuries or nuisances to the public. All structures, lines, equipment and connections in, over, under and upon streets of the County wherever situated or located shall at all times be kept and maintained in a safe, suitable, condition, and in good order and repair. Franchisee shall install and maintain its wires, cables, fixtures and other equipment in accordance with the requirements of the National Electrical Safety Code promulgated by the National Bureau of Standards, the National Electrical Code of the American Insurance Association.

SECTION XXII - REPORTS AND RECORDS

A. Within six (6) months of the close of its fiscal year, a Franchisee shall provide the County an annual report that, at minimum, includes the following information:

1. Upon request, a summary of the previous year's activities in development of the State-of-the-Art of Cable Systems and the system serving the County including but not limited to, services and products initiated or discontinued, new technologies, number of subscribers, homes passed, and miles of cable distribution plant in service. The summary shall also include a comparison of any construction, including system upgrades, during the year with any projections previously provided to the County, as well as rate and charge increases and/or decreases for the previous fiscal year. It is the obligation of the Franchisee to include within this report any and all information necessary to evaluate Franchisee's system as compared to the definition of "State-of-the-Art" as defined in Section II (A) (30).
2. To verify franchise fee payments, a financial statement, including a statement of sources of revenues for the Franchise Area. The statement shall be audited if Franchisee has audited statements performed in its normal course of business. If not, the statement shall be certified by the Franchisee's chief financial officer or other duly authorized financial officer of the Franchisee. The statement shall include notes that specify all significant accounting policies and practices upon which it is based.
3. To the extent there have been changes from maps already

filed by Franchisee, a copy of updated maps depicting the location of all cable plant, showing areas served and locations of all trunk lines and feeder lines in the County. Upon request by the County, such maps shall be provided in digitized form at Franchisee's expense.

4. Upon a request, a summary of subscriber or resident written complaints and/or complaints requiring a service call, identifying the number and nature of complaints and their disposition. Where complaints involve recurrent system problems, the nature of each problem and the corrective measures taken shall be identified. More detailed information concerning complaints shall be submitted upon written request of the County.
5. Upon written request, a summary of the number of outages exceeding one (1) hour, including number of planned outages, number of outages during prime viewing hours (8:00 p.m. to 11:00 p.m. daily), and number of outages by duration including number of subscribers affected.
6. Upon any change, if the Franchisee is a corporation, a list of officers and members of the board of directors; the officers and members of the board of directors of any parent corporation; and if the Franchisee or its parent corporation's stock or ownership interests are publicly traded, a copy of its most

recent annual report.

7. Upon any change, if the Franchisee is a partnership, a list of the partners, including any limited partners, and their addresses; and if the general partner is a corporation, a list of officers and members of the board of directors or the corporate general partner, and the officers and directors of any parent corporation; and where the general partner or its parent corporation's ownership interests are publicly traded, a copy of its most recent annual report.
8. Upon any change, a list of all persons holding five percent (5%) or more ownership or otherwise cognizable interest in the Franchisee pursuant to 47 C.F.R. 76.501.
9. Upon request, a copy of the Franchisee's rules and regulations applicable to Subscribers of the Cable System.
10. Upon request, a report on the number of senior citizen, economically disadvantaged or handicapped subscribers receiving any rate discounts, if any, and the amount of any such discounts for specific services if Franchisee offers separate rates or discounts for those categories of subscribers.
11. A full schedule and description of all products, services, and equipment offer to cable subscribers, service hours and location of the Franchisee's customer service office or offices available to subscribers, and a schedule of all rates, fees and

charges for all product, services and equipment provided over the Cable System.

12. A report on the number of total subscribers served by the Franchisee in the Cable System.

B. Upon written request by the County, a Franchisee shall provide, on an annual basis, the following documents to the County as received or filed, without regard to whether the documents are filed by the Franchisee or an affiliate:

1. Annual report of the Franchisee or its parent or any affiliate of Franchisee which controls Franchisee and issues an annual report;
2. Copyright filings reflecting the operation of the system;
3. Applicable FCC Forms and filings
4. Any and all pleadings, petitions, applications, communications, reports and documents (collectively referred to as "filings") submitted by or on behalf of the Franchisee to the FCC, SEC or any state or federal agency, court or regulatory commission which filings may impact the Franchisee's operation of the Franchisee's Cable System in the County or that may impact the County's rights or obligations under this Ordinance or the Franchise Agreement issued pursuant to this Ordinance and any and all responses, if any, to the above mentioned filings.
5. Any and all notices of deficiency, forfeiture, or documents instituting any investigation, civil or criminal proceeding issued

by any state or federal agency regarding the system, Franchisee, or any Affiliate of Franchisee, provided, however, that any such notice or documents relating to an Affiliate of Franchisee need be provided only to the extent the same may concern Franchisee's operations in the County. For example, a notice that an Affiliate which has a management contract for the County's system was not in compliance with FCC EEO requirements with respect to its activities in the County would be deemed to affect or bear on operations in the County.

6. Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy.
7. Notwithstanding anything to the contrary, the Franchisee agrees to provide the County, within thirty (30) days of filing or receipt of such, any document filed with or received from a governmental agency that may adversely impact Franchisee's obligations under its Franchise with respect to the construction, operation or maintenance of the Franchisee's Cable System or the County's rights with respect thereto.

C. Upon reasonable notice and during normal business hours, a Franchisee shall make a complete set of books and records available for inspection and audit by the County in the Southwest Florida Area, for purposes of ascertaining compliance with requirements of this Ordinance and the franchise agreement.

D. Any materials requested by the County which are deemed proprietary and

confidential under applicable law shall be made available to the County for review and inspection (but not copying or removal), but shall not be required to be filed with the County unless such filing is required by applicable law. To the extent consistent with applicable law, the County shall maintain the confidentiality of information provided by Franchisee, when designated as proprietary and confidential by Franchisee.

SECTION XXIII - ENFORCEMENT REMEDIES

A. In addition to any other remedies available at law or equity or provided herein, the County may apply any one or combination of the following remedies in the event a Franchisee violates this Ordinance, its franchise agreement, applicable state or federal law, or applicable local law or order:

1. Impose liquidated damages in such amount, whether on a per-diem, per-incident, or other measure of violation, as provided in this Ordinance or in a Franchise Agreement. Payment of liquidated damages by the Franchisee will not relieve the Franchisee of its obligation to comply with the franchise agreement and the requirements of this Ordinance.
2. Impose as liquidated damages a fine in an amount not less than One Thousand (\$1,000.00) Dollars per day for failure to obtain a Franchise Agreement from the County pursuant to this Ordinance.
3. Impose as liquidated damages a fine in the amount of Three Hundred Fifty (\$350.00) Dollars per day per violation for material failure to comply with any provision of this Ordinance,

except as otherwise provided for herein or as otherwise provided for in a Franchise Agreement.

4. In the event of a material failure to comply with the provision of this Ordinance, revoke the franchise pursuant to the procedures specified in Section XXVI hereof.
5. In addition to or instead of any other remedy, the County may seek legal or equitable relief from any court of competent jurisdiction.

B. In determining which remedy or remedies are appropriate, the County shall take into consideration the nature of the violation, the person or persons bearing the impact of the violation, the nature of the remedy required in order to prevent further violations, and such other matters as the County determines are appropriate to the public interest.

C. Notwithstanding anything to the contrary, Franchisee's failure to comply with Sections XIV, XV and XVI hereof, may result in the assessment of liquidated damages in the amount of Seven Hundred Fifty (\$750.00) Dollars per day for each day such violation continues.

D. Failure of the County to enforce any requirements of a franchise agreement or this Ordinance shall not constitute a waiver of the County's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

E. In any proceeding wherein there exists an issue with respect to a Franchisee's performance of its obligations pursuant to this Ordinance, the Franchisee shall provide such information as it may have concerning its compliance with the terms of the Ordinance. The Board may find a Franchisee is not in compliance with the terms and

conditions of this Ordinance and apply any one or combination of the remedies otherwise authorized by this Ordinance or applicable law.

F. Notwithstanding anything to the contrary, and notwithstanding being subjected to a fine or refund requirement, Franchisee shall be obligated to cure, or take all reasonably practicable steps to cure, any violation of this Ordinance or of any Franchise Agreement granted hereto within thirty (30) business days after receipt of notice from the County of the alleged violation. If the alleged violation is not cured or Franchisee has not taken all reasonable and practicable steps to commence to cure within such period, the County may exercise all rights and remedies available pursuant to this Ordinance, or applicable law, or the Franchise Agreement.

SECTION XXIV - RENEWAL OF FRANCHISE

Renewal shall be conducted in a manner consistent with Section 626 of the Communications Act, 47 U.S.C. § 546. To the extent such additional requirements are consistent with applicable law, the following requirements shall apply.

A. Upon completion of the review and evaluation process set forth in Section 626(a)(1)(2) of the Communications Act, 47 U.S.C. § 546, should that process be invoked, the County may notify the Franchisee, by certified or registered mail that it may file a renewal application in the form of a renewal proposal. The notice shall specify the information to be included in the renewal proposal and the deadline for filing the application, which shall be no earlier than thirty (30) calendar days following the date of the notice.

1. The application shall comply with the requirements of Section III hereof, to the extent applicable to franchise renewals and provide the specific information requested in the notice. If the Franchisee does not submit a renewal application by the date specified in the County's notice to the Franchisee given pursuant to this subsection, the County may take such action as appropriate under law.

2. Upon receipt of the renewal application, the County shall publish notice of its receipt and make copies available to the public. The County, following prior public notice, shall hold one or more public hearings on the renewal application.

B. After the public hearing(s) on the renewal application is held, the Board may either:

1. Pass a resolution approving the proposed Franchise Agreement and thereby renew the Franchise; or
2. Only after a public hearing properly noticed, pass a resolution that makes a preliminary assessment that the franchise should not be renewed.

C. If a preliminary assessment is made that a franchise should not be renewed, at the request of the Franchisee or on its own initiative, the County will commence a proceeding in accordance with Section 626(c) of the Communications Act, 47 U.S.C. § 546(c) to address the issues set forth in Section 626(c)(1)(A)-(D) of the Communications Act, 47 U.S.C. § 546(c)(1)(A)-(D). Any denial of a proposal for renewal that has been submitted in compliance with subsection (b) of § 546 shall be based on one or more adverse findings made with respect to the factors described in § 546(c)(1)(A)-(D), pursuant to the record of proceedings under § 546(c). The County shall not base a denial of renewal on a failure to substantially comply with the material terms of the franchise under § 546(c)(1)(A) or on events considered under § 546(c)(1)(B) unless the County has provided the Franchisee with notice and opportunity to cure, or in any case in which it is documented that the County has waived its right to object, or the Franchisee gives written notice of a failure or inability to cure and the County fails to object within a reasonable time after receipt of such notice.

D. Any request to initiate a renewal process or proposal for renewal not submitted within the time period set forth in Section 626(a) of the Communications Act, 47 U.S.C. § 546(a), shall be deemed an informal proposal for renewal and shall be governed in accordance with Section 626(h) of the Communications Act, 47 U.S.C. § 546(h). The County may hold one or more public hearings or implement other procedures under which comments from the public on an informal proposal for renewal may be received. Following such public hearings or other procedures, the Board shall determine whether the franchise should be renewed and the terms and conditions of any renewal.

E. If the Board grants a renewal application, the County and the Franchisee shall agree on the terms of a franchise agreement, pursuant to the procedures specified in this Ordinance, before such renewal becomes effective.

F. If renewal of a franchise is lawfully denied, the County may acquire ownership of the Cable System or effect a transfer of ownership of the system or effect a transfer to another person upon approval of the County Commission. Any such acquisition or transfer shall be at fair market value, determined on the basis of the Cable System valued as a going concern but with no value allocated to the franchise itself. The County may not acquire ownership of the system while an appeal of a denial for renewal is pending in any court pursuant to 47 U.S.C § 546(e).

G. If renewal of a franchise is lawfully denied and no appeal to a court is pending, and the County does not purchase the Cable System or approve or effect a transfer of the Cable System to another person, the County may require the former Franchisee to remove its facilities and equipment at the former Franchisee's expense. If the former Franchisee fails to do so within a reasonable period of time, the County may

have the removal done at the former Franchisee's and/or surety's expense.

SECTION XXV - TRANSFERS

A. No transfer of a franchise shall occur without prior approval of the County, which shall not be unreasonably withheld.

B. An application for a transfer of a franchise shall meet the requirements of Section III hereof, and provide complete information on the proposed transaction, including details on the legal, financial, technical and other qualifications of the transferee, and on the potential impact of the transfer on subscriber rates and service. The application shall provide, at a minimum, the information required in Section III with respect to the proposed transferee. The information required in Section III shall also be provided whenever the proposed transferee expects material changes to occur in those areas.

C. In making a determination on whether to grant an application for a transfer of a franchise, the County Commission shall consider the legal, financial, and technical capacity of the transferee to operate the system; whether the incumbent cable operator is in substantial compliance with the material terms of its franchise agreement and this Ordinance and, if not, the proposed transferee's commitment to cure such noncompliance; and whether operation by the transferee would adversely affect cable services to subscribers.

D. No application for a transfer of a franchise shall be granted unless the transferee agrees in writing, in the form of an affidavit signed by a duly authorized officer of the transferee, that it will abide by and accept all terms of this Ordinance and the franchise agreement, and that it will assume the obligations and liabilities of the previous Franchisee to the County under this Ordinance and the franchise agreement.

E. Approval by the County of a transfer of a franchise does not constitute a waiver or release of any of the rights of the County under this Ordinance or the franchise agreement, whether arising before or after the date of the transfer.

F. The application process shall not include any pro-forma transfers, as defined herein, mortgages and pledges of Franchisee's securities, but shall require proper notice to the County, pursuant to the terms of the Ordinance or the franchise agreement.

SECTION XXVI - REVOCATION OR TERMINATION OF FRANCHISE

A. A franchise may be revoked by the Board for a Franchisee's material failure to construct, operate or maintain the Cable System as required by this Ordinance or the franchise agreement, or for any other material violation of this Ordinance or material breach of the franchise agreement. To invoke the provisions of this subsection (A), the County shall give the Franchisee written notice, by certified mail at the last known address, that Franchisee is in material violation of this Ordinance or in material breach of the franchise agreement and describing the nature of the alleged violation or breach with specificity. If within thirty (30) calendar days following receipt of such written notice from the County to the Franchisee, the Franchisee has not cured such violation or breach, or has not commenced corrective action and such corrective action is not being actively and expeditiously pursued, the County may give written notice to the Franchisee of its intent to revoke the franchise, stating its reasons.

B. Prior to revoking a franchise under subsection (A) hereof, the Board shall hold a public hearing, upon thirty (30) calendar days notice, at which time the Franchisee and the public shall be given an opportunity to be heard. Following the public hearing the Board may determine whether to revoke the franchise based on the evidence presented at the hearing, and other evidence of record. If the Board determines to revoke a franchise, it shall issue a written decision setting forth the reasons for its decision. A copy of such decision shall be transmitted to the Franchisee.

C. Notwithstanding subsections (A) and (B) hereof, any franchise may, at the option of the County following a public hearing before the Board, be revoked one hundred twenty (120) calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the Franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding, unless within that one hundred twenty (120) day period:

1. Such assignment, receivership or trusteeship has been vacated; or
2. Such assignee, receiver or trustee has fully complied with the terms and conditions of this Ordinance and the franchise agreement and has executed an agreement, approved by a court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of this Ordinance and the franchise agreement.

D. In the event of foreclosure or other judicial sale of a significant part of the facilities, equipment or property of a Franchisee's system in the Public Rights-of-Way, the County may revoke the franchise, consistent with the procedures of subsections A and B hereof, including a public hearing before the Board, by serving notice upon the Franchisee and the successful bidder at the sale, in which event the franchise and all rights and privileges of the Franchisee will be revoked and will terminate thirty (30) calendar days after serving such notice, unless:

1. The County has approved the transfer of the franchise to the successful bidder; and
2. The successful bidder has covenanted and agreed with the County to assume and be bound by the terms and conditions of the Franchise Agreement and this Ordinance .

E. If the County revokes a Franchise, or if for any other reason a Franchisee abandons, terminates or fails to operate or maintain service to its subscribers for a period of six (6) months, the following procedures and rights are effective:

1. The County may require the former Franchisee to remove its facilities and equipment at the former Franchisee's expense. If the former Franchisee fails to do so within a reasonable period of time, the County may have the removal done at the former Franchisee's and/or surety's expense.
2. The County, by resolution of the Board, may acquire ownership, or effect a transfer, of the Cable System at an equitable price, consistent with applicable law.

3. If a Cable System is abandoned by a Franchisee, the County may sell, assign or transfer all or part of the assets of the system.

F. The County shall hold one or more public hearings on the transfer application and after said hearing(s) shall pass a resolution to grant or deny the application to transfer the Franchise.

G. Where the County has issued a franchise specifically conditioned in the franchise agreement upon the completion of construction, system upgrade or other specific obligation by a specified date, failure of the Franchisee to complete such construction or upgrade, will result in the automatic forfeiture of the franchise without further action by the County where it is so provided in the franchise agreement, unless the County, at its discretion and for good cause demonstrated by the Franchisee, grants an extension of time.

H. Except as provided in Subsection F, no adverse action against a Franchisee may be taken by the County pursuant to this section except as consistent with the procedures set forth in Subsections A and B hereof.

SECTION XXVII - CONTINUITY OF SERVICE MANDATORY

A. It is the right of all subscribers to receive all available services requested from the Franchisee as long as their financial and other obligations to the Franchisee are satisfied.

B. In the event of a termination or transfer of a franchise for whatever reason, the Franchisee shall ensure that all subscribers receive continuous, uninterrupted service. The Franchisee shall cooperate with the County to operate the system for a temporary

period following termination or transfer as necessary to maintain continuity of service to all subscribers. The temporary period will not exceed six (6) months without the Franchisee's written consent. During such period the Cable System shall be operated under such terms and conditions as the County and the Franchisee may agree, or such other terms and conditions that will continue, to the extent possible, the same level of service to subscribers and that will provide reasonable compensation to the cable operator.

C. In the event a Franchisee fails to operate the system for seven (7) consecutive days without prior approval of the County or without just cause, the County may, at its option, operate the system or designate an operator until such time as the Franchisee restores service under conditions consistent with the terms of the Franchise or until a permanent operator is selected. If the County is required to fulfill this obligation for the Franchisee, the Franchisee shall reimburse the County for all costs or damages resulting from the Franchisee's failure to perform that are in excess of the revenues from the system received by the County. Additionally, the Franchisee will cooperate with the County to allow County employees and/or County agents free access to the Franchisees' facilities and premises for purposes of continuing system operation.

SECTION XXVIII - RATES

A. Nothing in this Ordinance shall prohibit the County from regulating rates for cable services to the full extent permitted by law.

B. Any rate or charge established for cable service, equipment, repair and installation shall be reasonable to the public and in compliance with FCC guidelines. Compliance with applicable laws and regulations shall be considered reasonable. Upon written request from the County or its agent, Franchisee shall provide all requested data,

records and documentation to show the reasonableness of the rates as required by FCC regulations or other applicable law. Where such information is designated proprietary and confidential, it shall not be copied or removed or otherwise subject to public inspection, to the extent the County is permitted to protect such information from public inspection under applicable law.

C. The County's regulation of rates as permitted under applicable law, shall be consistent with Federal Communications Commission cable rate regulation standards or other applicable law in effect at the time. A Franchisee shall notify the County of any changes in rates or service no less than thirty (30) days prior to the effective date of such change. Unless otherwise prohibited by applicable law, the County may require the Franchisee to notify each subscriber, by placing an announcement of not less than one quarter page in a newspaper of general circulation and/or via the Cable System, or by written notice to the Subscriber, or such other reasonable means consistent with applicable law, of the proposed rate change. At any hearing conducted by the County in the exercise of any rate regulatory authority, the Franchisee and members of the public will be given an opportunity to present their respective views on the proposed rates. Upon conclusion of the public hearing, the Board shall decide the matter by majority vote and adopt a Resolution taking such action and providing such relief as is appropriate and authorized by Federal Communications Commission rate regulation standards or other applicable law. The resolution shall set forth complete findings of fact and conclusions regarding all of the basic elements considered in the Board's determination.

SECTION XXIX - PERFORMANCE EVALUATION

The County will conduct periodic performance evaluations of a Franchisee as the

County, in its sole discretion, determines is necessary. A Franchisee shall cooperate with these evaluations reasonably and in good faith. If the County implements a survey of cable subscribers in connection with a performance evaluation, the County and Franchisee may agree in a Franchise Agreement that Franchisee shall distribute the County's questionnaire to its subscribers at the Franchisee's expense.

SECTION XXX - ADMINISTRATION

A. The County Administrator, either directly or through a duly appointed designee, shall have the responsibility for overseeing the day-to-day administration of this Ordinance and franchise agreements on behalf of the County. The Manager shall be empowered to take all administrative actions on behalf of the County, except for those actions specified in this Ordinance that are reserved to the Board. The Manager may recommend that the Commission take certain actions with respect to the franchise. The Manager shall keep the Commission apprized of developments in cable and provide the Commission with assistance, advice and recommendations as appropriate.

B. Subject to federal and state law, the Board shall exercise the sole authority of the County to regulate rates for cable services, grant franchises, authorize the entering into of franchise agreements, modify franchise agreements, renew or deny renewal of franchises, revoke franchises, and authorize the transfer of a franchise.

SECTION XXXI - FORCE MAJEURE

In the event a Franchisee's performance of or compliance with any of the provisions of this Ordinance or the Franchisee's franchise agreement is prevented by a cause or event not within the Franchisee's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof, provided,

however, that Franchisee uses all practicable means to expeditiously cure or correct any such inability to perform or comply. For purposes of this Ordinance and any franchise agreement granted or renewed hereunder, causes or events not within a Franchisee's control shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court . Causes or events within Franchisee's control, and thus not falling within this Section, shall include, without limitation, Franchisee's financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of Franchisee's directors, officers, employees, contractors or agents.

SECTION XXXII - APPLICABILITY

This Ordinance shall be applicable to all cable franchises granted, transferred, modified, or renewed after its effective date, and shall apply to all cable franchises granted prior to the effective date of this Ordinance, to the full extent not inconsistent therewith.

SECTION XXXIII - MUNICIPAL CABLE SYSTEM OWNERSHIP AUTHORIZED

A. To the full extent permitted by law, the County may acquire, construct, own, and/or operate a Cable System.

B. Nothing in this Ordinance shall be construed to limit in any way the ability or authority, if any, of the County to acquire, construct, own, and/or operate a Cable System to the full extent permitted by law or consistent with the terms of a Franchise.

SECTION XXXIV - RESERVATION OF RIGHTS

A. The County reserves the right to amend this Ordinance as it shall find necessary in the lawful exercise of its police powers.

B. Any additional regulations adopted by the County shall be incorporated into this Ordinance and complied with by all Franchisees within thirty (30) days of the date of adoption of such additional regulations unless imposition of such regulations would be otherwise prohibited by applicable law, or inconsistent with an existing Franchise.

C. The County reserves the right to exercise the power of eminent domain to acquire the property of Franchisee's Cable System, consistent with applicable federal and state law. Notwithstanding anything to the contrary, this Section shall not enlarge or restrict the County's exercise of eminent domain except to the extent provided by applicable law.

D. The County shall at all times have the right, upon reasonable notice and during normal business hours, to examine records and to inspect a Franchisee's facilities to the extent needed to monitor a Franchisee's compliance with and performance under this Ordinance and the Franchisee's Franchise Agreement.

E. The County shall have the right, during the life of this Franchise, to install and maintain free of charge upon the poles of the Grantee any wire and pole fixtures necessary for any municipal purpose on the condition that such wire and pole fixtures do not interfere with the operations of the Grantee and are not used to offer any commercial cable service directly competitive with that offered by a Franchisee.

F. At the expiration, without right of renewal, of the term for which a Franchise is granted or upon its termination and cancellation, as provided for herein, or in any Franchise Agreement granted pursuant hereto, the County shall have the right to require the Franchisee to remove at its own expense all portions of its system from all public ways within the County.

G. At the expiration without right of renewal of the term for which this Franchise

is granted, including any renewal term, or upon its termination and cancellation, as provided for herein, the County, at its election, and upon payment of the fair market value to the Franchisee consistent with applicable law, shall have the right to purchase and take over the Franchisee's system in the County. The above price shall not include, and the Grantee shall not receive, anything for the valuation of any right or privilege appertaining to it under a Franchise. Upon the exercise of this option by the County and its service of an official notice of such action upon the Franchisee, the Franchisee shall immediately transfer to the County possession and title to all facilities and property, real and personal, of the system, free from any and all liens and encumbrances not agreed to be assumed by the County in lieu of some portion of the purchase price set forth above, and the Franchisee shall execute such warranty deeds or other instruments of conveyance to the County as shall be necessary for this purpose. The Franchisee shall do nothing during the term of this franchise or any extension thereof to or in any way prevent or hinder the County from purchasing the system under the option contained herein.

SECTION XXXV - SAVINGS

All rates, fees, charges and financial obligations previously accrued pursuant to the ordinances and resolutions repealed pursuant to Section 2 above shall continue to be due and owing until paid.

SECTION XXXVI - SEVERABILITY

If any part, section, subsection, or other portion of this Ordinance or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reason, such part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Ordinance, and all

applications thereof not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The County declares that no invalid or prescribed provision or application was an inducement to the enactment of this Ordinance, and that it would have enacted this Ordinance regardless of the invalid or prescribed provision or application.

SECTION XXXVII - APPLICABLE LAW

This Ordinance shall be construed in accordance with the law of the State of Florida and is subject to applicable local, state and federal law.

SECTION XXXVIII - EFFECTIVE DATE

This Ordinance shall take effect immediately upon receipt of the official acknowledgment from the office of the Secretary of State of Florida that this Ordinance has been filed with that office.

The foregoing Ordinance was offered by Commissioner Judah, who moved its adoption. The motion was seconded by Commissioner Coy and being put to a vote, the vote was as follows:

ROBERT JANES	Absent
DOUGLAS ST. CERNY	Aye
RAY JUDAH	Aye
ANDREW W. COY	Aye
JOHN E. ALBION	Aye

DULY PASSED AND ADOPTED this 27th day of March, 2001.

ATTEST: CHARLIE GREEN
CLERK OF THE COURT

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: Michelle S. Leisner
Deputy Clerk

By: [Signature]
Chairman

LEE COUNTY ATTORNEY'S OFFICE
APPROVED AS TO FORM:

By: [Signature]
Office of the County Attorney