

Chapter 6.48 – COMMUNITY ANTENNA TELEVISION FRANCHISE (CATV)

6.48.010 – Authority.

The county of San Luis Obispo pursuant to applicable federal and state law, is authorized to grant one or more nonexclusive franchises to construct, operate, maintain and reconstruct cable systems within the unincorporated areas of the county.

(Ord. 3052 (part), 2004)

6.48.020 – Findings.

The board of supervisors finds that the development of cable systems has the potential of having great benefit and impact upon the residents of the county. Because of the complex and rapidly changing technology associated with cable systems, the board of supervisors further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the county or such persons as the county may designate. It is the intent of this chapter to establish regulatory provisions that permit the county to regulate cable system franchises to the extent permitted by federal and state law, including but not limited to the Federal Cable Communications Policy Act of 1984, the Federal Cable Television Consumer Protection and Competition Act of 1992, the Federal Telecommunications Act of 1996, applicable Federal Communications Commission regulations and applicable California law.

(Ord. 3052 (part), 2004)

6.48.030 – Short title.

This chapter shall constitute the "Cable System Regulatory Ordinance" of the county of San Luis Obispo and may be referred to as such.

(Ord. 3052 (part), 2004)

6.48.040 – Definitions generally.

For the purposes of this chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. 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 number. Words not defined herein shall have the same meaning as in Title VI of Title 47 of the United States Code, as in effect on the effective date of the ordinance codified in this chapter, and if not defined therein be given their common and ordinary meaning.

(Ord. 3052 (part), 2004)

6.48.050 – Basic cable service.

The "basic service tier" means that tier that, at a minimum, includes all signals of domestic television broadcast stations provided to any subscriber (except a signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal is ultimately received by the cable system) any public educational, and governmental programming required by the franchise to be carried on the basic tier, and any additional video programming signals a service added to the basic tier by the cable operator.

(Ord. 3052 (part), 2004)

6.48.060 – Board.

"Board" means the board of supervisors of the county of San Luis Obispo.

(Ord. 3052 (part), 2004)

6.48.070 – Cable operator.

"Cable operator" means any person or group of persons who:

(a)

Provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system; or

(b)

Otherwise controls or is responsible for, through any arrangement, the management and operation of such cable system.

(Ord. 3052 (part), 2004)

6.48.080 – Cable service.

"Cable service" means:

(a)

The one-way transmission to subscribers of:

(1)

Video programming; or

(2)

Other programming service; and

(b)

Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(Ord. 3052 (part), 2004)

6.48.090 – Cable system or system.

~~"Cable system" or "system" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:~~

~~(a)~~

~~A facility that serves only to retransmit television signals of one or more television broadcast stations;~~

~~(b)~~

~~A facility that serves subscribers without using any public rights of way;~~

~~(c)~~

~~A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such facility shall be considered a cable system (other than for the purposes of 47 U.S.C. 541) to the extent such facility is used in the transmission of video programming directly to subscribers; unless the extent of such use is solely to provide interactive on-demand services;~~

~~(d)~~

~~An open video system that complies with 47 U.S.C. 573 (Section 653 of the Communications Act of 1934); or~~

~~(e)~~

~~Any facilities of any electric utility used solely for operating its electric utility system.~~

~~(Ord. 3052 (part), 2004)~~

~~6.48.100 – Channel or cable channel.~~

~~"Channel" or "cable 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 as defined by the Federal Communications Commission.~~

~~(Ord. 3052 (part), 2004)~~

~~6.48.110 – County.~~

~~"County" means the county of San Luis Obispo, a political subdivision of the state of California.~~

~~(Ord. 3052 (part), 2004)~~

~~6.48.120 – Franchise.~~

~~"Franchise" means an initial authorization issued by the board, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system.~~

~~Any such authorization, in whatever form granted, shall not supersede the requirement to obtain any other license or permit required for the privilege of transacting business within the county as required by the other ordinances and laws of the county.~~

~~(Ord. 3052 (part), 2004)~~

~~6.48.130 – Franchise agreement.~~

~~"Franchise agreement" means a franchise grant ordinance or a contractual agreement, containing the specific provisions of the franchise granted, including references, specifications, requirements and other related matters.~~

~~(Ord. 3052 (part), 2004)~~

~~6.48.140 – Franchise fee.~~

~~"Franchise fee" means any fee or assessment of any kind imposed by the county on a grantee as compensation for the grantee's use of the public rights-of-way for the provision of cable service. The term "franchise fee" does not include:~~

~~(a)~~

~~Any tax, fee or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services, but not including a tax, fee or assessment which is unduly discriminatory against cable operators or cable subscribers);~~

~~(b)~~

~~Capital costs which are required by the franchise to be incurred by grantee for public, educational, or governmental access facilities;~~

~~(c)~~

~~Requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or~~

~~(d)~~

~~Any fee imposed under Title 17, United States Code.~~

~~(Ord. 3052 (part), 2004)~~

~~6.48.150 – Grantee.~~

~~"Grantee" means any "person" receiving a franchise pursuant to this chapter and under the granting franchise ordinance or agreement, and its lawful successor, transferee or assignee.~~

~~(Ord. 3052 (part), 2004)~~

~~6.48.160 – Not used.~~

(Ord. 3052 (part), 2004)

6.48.170 – Gross annual cable service revenues.

"Gross annual cable service revenues" means the annual gross revenues received by a grantee from the operations of the cable system within the unincorporated areas of the county to provide cable service utilizing the public rights-of-way for which a franchise is required, excluding refundable deposits, rebates or credits, unrecovered bad debt and any sales, excise or other taxes or charges imposed externally to the franchise, and collected for direct pass-through to local, state or federal government. Gross annual cable service revenues means all revenues, or the value of any other economic advantage as such is defined by generally accepted accounting principles (GAAP), derived by the franchisee, its affiliates, subsidiaries, parent, and any person or entity in which the franchisee has a financial interest, from operating a cable system within the county pursuant to a franchise granted under this chapter.

(Ord. 3052 (part), 2004)

6.48.180 – Installation.

"Installation" means the connection of the system to subscribers' terminals, and the provision of service.

(Ord. 3052 (part), 2004)

6.48.190 – Person.

"Person" as used in this code or in any ordinance or code adopted hereby, includes any person, firm, association, organization, partnership, business trust, company or corporation, and any municipal, political or governmental corporation, district, body or agency, other than the county of San Luis Obispo.

(Ord. 3052 (part), 2004)

6.48.200 – Public, educational or government access facilities or PEG access facilities.

"Public, educational or government access facilities" or "PEG access facilities" means the total of the following:

(a)

Channel capacity designated for noncommercial public, educational, or government use; and

(b)

Facilities and equipment for the use of such channel capacity.

(Ord. 3052 (part), 2004)

6.48.210 – Section.

"Section" means any section, subsection or provision of this chapter.

(Ord. 3052 (part), 2004)

6.48.220 – Service area or franchise area.

"Service area" or "franchise area" means the entire unincorporated geographic area within the boundaries of the county as it is now constituted or may in the future be constituted, unless otherwise specified in the franchise.

(Ord. 3052 (part), 2004)

6.48.230 – Service tier.

"Service tier" means a category of cable service or other services provided by a cable operator and for which a separate rate is charged.

(Ord. 3052 (part), 2004)

6.48.240 – State.

"State" means the state of California.

(Ord. 3052 (part), 2004)

6.48.250 – Not used.

(Ord. 3052 (part), 2004)

6.48.260 – Public way or public rights-of-way.

"Public way" or "public rights-of-way" means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the service area: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public property.

(Ord. 3052 (part), 2004)

6.48.270 – Subscriber or customer or consumer.

"Subscriber" or "customer" or "consumer" means any person who or which elects to subscribe to, for any purpose, cable service provided by the grantee by means of or in connection with the cable system, and who pays the charges therefor.

(Ord. 3052 (part), 2004)

6.48.280 – Franchise purposes.

A franchise granted by the county under the provisions of this chapter shall encompass the following purposes:

(a)

To permit the grantee to engage in the business of providing cable service to subscribers within the designated service area.

(b)

To permit the grantee to erect, install, construct, repair, rebuild, reconstruct, replace, maintain, and retain, cable lines, related electronic equipment, supporting structures, appurtenances, and other property in connection with the operation of the cable system in, on, over, under, upon, along and across public rights of way within the designated service area for the purpose of providing cable service.

(c)

To permit the grantee to maintain and operate said franchise properties for the origination, reception, transmission, amplification, and distribution of television and radio signals and for the delivery of cable services, and such other services as may be permitted by law.

(Ord. 3052 (part), 2004)

6.48.290 – Franchise required.

After the effective date of the ordinance codified in this chapter, it shall be unlawful for any person to construct, install or operate a cable system in the unincorporated areas of the county within any public way without a properly granted franchise awarded pursuant to the provisions of this chapter.

(Ord. 3052 (part), 2004)

6.48.300 – Term of the franchise.

A franchise granted hereunder shall be for a term established in the franchise agreement, commencing on the county's adoption of an ordinance or resolution authorizing the franchise.

(Ord. 3052 (part), 2004)

6.48.310 – Not used.

(Ord. 3052 (part), 2004)

6.48.320 – Federal or state jurisdiction.

This chapter shall be construed in a manner consistent with all applicable federal and state laws, and shall apply to all franchises granted after the effective date of the ordinance codified in this chapter to the extent permitted by applicable law.

(Ord. 3052 (part), 2004)

6.48.330 – Franchise nontransferable.

(a)

~~Grantee shall not sell, transfer, lease, assign or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation or otherwise, the franchise or any of the rights or privileges therein granted, without the prior consent of the board, which consent shall not be unreasonably denied, withheld or delayed; provided, however, that the prior consent of the board shall not be required for an intracorporate or intracompany transfer from one wholly owned subsidiary to another wholly owned subsidiary. Any attempt to sell, transfer, lease, assign or otherwise dispose of the franchise without the consent of the board shall be null and void. The granting of a security interest in any grantee assets, or any mortgage or other hypothecation or by assignment of any right, title or interest in the cable system in order to secure indebtedness, shall not be considered a transfer for the purposes of this section.~~

(b)

~~The requirements of subsection (a) shall apply to any change in control of grantee. The word "control" as used herein includes majority ownership, or actual working control in whatever manner exercised. In the event that grantee is a corporation, prior consent of the board shall be required where ownership or control of more than twenty percent of the voting stock of the grantee is acquired by a person or group of persons acting in concert, none of whom own or control the voting stock of the grantee as of the effective date of the franchise, singularly or collectively.~~

(c)

~~Grantee shall notify county in writing of any foreclosure or any other judicial sale of all or a substantial part of the franchise property of the grantee located within the county. Such notification shall be considered by county as notice that a change in control of ownership of the franchise has taken place and the provisions under this section governing the consent of county to such change in control of ownership shall apply.~~

(d)

~~For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, county may inquire into the qualifications of the prospective transferee or controlling party, and grantee shall assist county in such inquiry. In seeking county's consent to any change of ownership or control, grantee shall have the responsibility of insuring that the grantee and/or the proposed transferee complete an application in accordance with Federal Communications Commission Form 394 or equivalent. County may require grantee to submit such additional information as the county may reasonably need to make the findings required in this section. Said county requests shall be made within thirty business days of receipt of the FCC Form 394 or equivalent. An application shall be submitted to county not less than one hundred twenty days prior to the proposed date of transfer. County shall~~

~~consider the legal, financial and technical qualifications of the prospective transferee or controlling party; any potential impact of the transfer on subscriber rates or services; whether the incumbent cable operator is in material compliance with its franchise, and if not any commitments to cure such noncompliance; whether the transfer or change of control may eliminate or reduce competition in the delivery of cable service in the county; and whether approval of the transfer or change of control would otherwise materially adversely affect subscribers, the public, or the county's interest under this chapter, the franchise agreement, or other applicable law. Upon receipt of a complete FCC Form 394 or equivalent, including any additional information necessary for the county to make finding on each of these considerations, the county shall act on the grantee's request for transfer in accordance with applicable federal law. The consent of the county to such transfer shall not be unreasonably denied or delayed. County does not waive any legal authority it may have to impose conditions on the transfer.~~

~~(e)~~

~~Any financial institution having a pledge of the grantee or its assets for the advancement of money for the construction and/or operation of the franchise shall have the right to notify the county that it or its designee satisfactory to the county shall take control of and operate the cable system, in the event of a grantee default of its financial obligations. Further, said financial institution shall also agree in writing to continue cable service and comply with all franchise requirements during the term the financial institution exercises control over the system.~~

~~(Ord. 3052 (part), 2004)~~

6.48.340 – Geographical coverage.

~~(a)~~

~~After service has been established by activating trunk and/or distribution cables for any area, grantee shall provide service to any requesting subscriber within that area subject to the following line extension requirements within thirty days from the date of request, provided that the grantee is able to secure all rights of way necessary to extend service to such subscriber within such thirty day period on reasonable terms and conditions.~~

~~(b)~~

~~In those portions of the franchise area, outside of any existing served area, where there are now or in the future, at least twenty residences per linear strand mile of cable, who are requesting service, as measured from grantee's closest trunk line or distribution cable that is actively delivering cable service as of the date of such request for service, then franchisee shall, at its expense, extend its said cable system and make cable service available to potential subscribers at franchisee's usual and customary rates for installation, equipment and service. Such extension shall occur within one year of the attaining of twenty, or more, dwelling units per mile.~~

(c)

Franchisee shall extend the facilities and equipment of its cable system and make cable service available to any potential subscriber situated outside the existing served area who requests cable service for no more than franchisee's usual and customary installation, equipment and service rates, if the connection to the premises of the potential subscriber would require no more than two hundred foot aerial cable service line.

(d)

Early Extension. In areas of the franchise area not meeting the requirements for mandatory extension of service, franchisee shall provide, upon the request of any person desiring cable service, an estimate of the costs required to extend such cable service to said person. Franchisee may require advance payment or assurance of payment satisfactory to franchisee prior to actually extending such cable service. The amount paid by any person for early extension of cable service shall be nonrefundable, and in the event the area subsequently reaches the density required for mandatory extension of cable service, such payments shall be treated as consideration for early extension.

(e)

At any time, residents outside of an existing service area, that do not meet the density requirements for a required extension, may bring a proposal before the board of supervisors to have the board consider an extension to other areas that may include incentives for the grantee to perform such extension.

(Ord. 3052 (part), 2004)

6.48.350 – Nonexclusive franchise.

Any franchise granted pursuant to this chapter shall be nonexclusive. The county specifically reserves the right to grant, at any time, such additional franchises for a cable system, as it deems appropriate, subject to applicable state and federal law. If county choose to grant an additional franchise, county shall comply with the provisions of California Government Code Section 53066.3(d), as may be amended.

(Ord. 3052 (part), 2004)

6.48.360 – Multiple franchises.

(a)

County may grant any number of franchises subject to applicable state or federal law. County may limit the number of franchises granted, based upon, but not necessarily limited to, the requirements of applicable law, including California Government Code Section 53066.3, and specific local considerations.

(b)

~~County may require that any new entrant, nonincumbent grantee be responsible for its own underground trenching and the costs associated therewith, if, in county's opinion, the public rights-of-way in any particular area cannot feasibly and reasonably accommodate additional cables.~~

~~(Ord. 3052 (part), 2004)~~

~~6.48.370 – Franchise modification.~~

~~The grantee shall be required to pay any costs incurred by the county in processing a grantee request for franchise modification. Such costs shall exclude consultant and attorney fees, except to the extent grantee and county mutually agree to the contrary. Such costs shall be paid by the grantee prior to final consideration of the request by the county.~~

~~(Ord. 3052 (part), 2004)~~

~~6.48.380 – Filing of applications.~~

~~Any person desiring an initial franchise for a cable system shall file an application with the county. A reasonable nonrefundable initial application fee established by the county shall accompany the initial franchise application to cover all validly documented reasonable costs associated with processing and reviewing the application, including without limitation costs of administrative review, financial, legal and technical evaluation of the applicant, consultants (including technical and legal experts and all costs incurred by such experts), notice and publication requirements with respect to the consideration of the application and document preparation expenses. In the event such validly documented reasonable costs exceed the application fee, the selected applicant(s) shall pay the difference to the county within thirty days following receipt of an itemized statement of such costs.~~

~~(Ord. 3052 (part), 2004)~~

~~6.48.390 – Applications—Contents.~~

~~An application for an initial franchise for a cable system shall contain, where applicable:~~

- ~~(a) A statement as to the proposed franchise and service area;~~
- ~~(b) A resume of prior history of the applicant, including the expertise of applicant in the cable system field;~~
- ~~(c) A list of the partners, general and limited, of the applicant, if a partnership, or the percentage of stock owned or controlled by each stockholder, if a corporation;~~
- ~~(d)~~

~~A list of officers, directors and managing employees of the applicant, together with a description of the background of each such person;~~

~~(e)~~

~~The names and addresses of any parent or subsidiary of the applicant or any other business entity owning or controlling the applicant in whole or in part, or owned or controlled in whole or in part by the applicant;~~

~~(f)~~

~~A current financial statement of the applicant verified by a certified public accountant audit or otherwise certified to be true, complete and correct to the reasonable satisfaction of the county;~~

~~(g)~~

~~A proposed construction and service schedule;~~

~~(h)~~

~~Any reasonable relevant additional information that the county deems applicable.~~

~~(Ord. 3052 (part), 2004)~~

~~6.48.400 – Consideration of initial applications.~~

~~(a)~~

~~Upon receipt of any application for an initial franchise, the public works director or a delegate shall prepare a report and make recommendations respecting such application to the board.~~

~~(b)~~

~~A public hearing shall be set prior to any initial franchise grant, at a time and date approved by the board. Within sixty days after the close of the hearing, the board shall make a decision based upon the evidence received at the hearing as to whether or not the initial franchise(s) should be granted, and, if granted, subject to what conditions. The board may grant one or more franchises, or may decline to grant any franchise.~~

~~(Ord. 3052 (part), 2004)~~

~~6.48.410 – Franchise renewal.~~

~~Franchise renewals shall be in accordance with applicable law. County and grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the franchise.~~

~~6.48.420 – Operational standards.~~

~~Except as otherwise provided in the franchise agreement, grantee shall maintain the necessary facilities, equipment and personnel to comply with all state and federal laws and regulations regarding consumer protection and service standards.~~

(Ord. 3052 (part), 2004)

6.48.430 – Service standards.

Grantee shall comply with all state and federal laws and regulations regarding service standards.

(Ord. 3052 (part), 2004)

6.48.440 – Billing and information standards.

(a)

Subscriber bills shall be clear, concise and understandable, and in accordance with all state and federal laws and regulations. Bills shall be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills shall also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(b)

In case of a billing dispute, the grantee shall respond to a written complaint from a subscriber within thirty days.

(c)

Upon request, grantee shall provide credits or refunds to subscribers whose service has been interrupted for forty eight or more hours for interruption(s) beyond the reasonable control of the grantee credits or refunds shall be provided by grantee on a pro rata basis to any subscriber(s), upon their request, affected by interruption(s) of service for more than twenty four hours due to actions or outages under the control of the grantee, exclusive of scheduled repairs or maintenance that grantee has provided advance notice to subscribers. In cases where notice has been given to subscribers and the service interruption exceeds the period detailed in said notice, the provisions of this section shall apply.

(d)

In the event grantee has improperly or inadvertently disconnected cable services to a subscriber, grantee shall provide for restoration without charge to subscriber within twenty four hours of discovery of disconnection. Grantee shall credit or provide refunds to any subscriber improperly or inadvertently disconnected from receiving cable services for the period of time the customer is without service.

(e)

All credits or refunds for service shall be issued no later than the customer's next billing cycle following the determination that a credit is warranted. For subscribers terminating service, refunds shall be issued promptly, but no later than thirty days after the return of any grantee supplied equipment.

(Ord. 3052 (part), 2004)

6.48.450 – Verification of compliance with standards.

(a)

~~Upon ninety calendar days prior written notice, no more than once annually. Grantee shall respond to a request for information made by county regarding grantee's compliance with any or all of the consumer protection standards contained herein. Grantee shall provide sufficient documentation to permit county to verify grantee's compliance for the previous twenty four month period. Grantee may request, and county shall not unreasonably deny, a request for a reasonable extension of time in which to produce such documentation.~~

(b)

~~A repeated and verifiable pattern of noncompliance with the consumer protection standards above, after grantee's receipt of due notice and a reasonable opportunity to cure, may be deemed a material breach of the franchise agreement.~~

~~(Ord. 3052 (part), 2004)~~

~~6.48.460 – Subscriber complaints and disputes.~~

(a)

~~Grantee shall establish written procedures for receiving, acting upon and resolving subscriber complaints without intervention by the county. The written procedures shall prescribe the manner in which a subscriber may submit a complaint either orally or in writing specifying the subscriber's grounds for dissatisfaction.~~

(b)

~~Upon prior written request, county shall have the right to review grantee's response to any subscriber complaints in order to determine grantee's compliance with the franchise requirements, subject to the subscriber's right to privacy.~~

(c)

~~Subject to applicable law, it shall be the right of all subscribers to continue receiving cable service insofar as their financial and other obligations to the grantee are honored. In the event that the grantee elects to rebuild, modify, or sell the system, or the county gives notice of intent to terminate or not to renew the franchise, the grantee shall act so as to ensure that all subscribers receive cable service so long as the franchise remains in force.~~

(d)

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

(e)

~~Grantee response to subscriber complaints, as well as complaints made by subscribers to county and provided by county to grantee, shall be initiated within one~~

~~business day of receipt by grantee. The resolution of subscriber complaints shall be effected by grantee not later than three business days after receipt of the complaint. For complaints received by county and provided by county to grantee, grantee shall notify county of grantee's progress in responding to, and resolving, said complaints.~~

~~(Ord. 3052 (part), 2004)~~

~~6.48.470 – Other requirements.~~

~~(a)~~

~~In the event grantee fails to operate the system for seven consecutive days other than for reasons beyond the control of grantee, without prior approval or subsequent excuse of the county, the county may, at its sole option, operate the system or designate an operator until such time as grantee restores service under conditions acceptable to the county or a permanent operator is selected. If the county should fulfill this obligation for the grantee, then during such period as the county fulfills such obligation, the county shall be entitled to collect all revenues from the system, and the grantee shall reimburse the county for all reasonable costs or damages in excess of the revenues collected by county that are the result of grantee's failure to perform.~~

~~(b)~~

~~All officers, agents or employees of grantee or its contractors or subcontractors who, in the normal course of work come into contact with members of the public or who require entry onto subscribers' premises shall carry a photo identification card. Grantee shall account for all identification cards at all times. Every vehicle of the grantee or its major subcontractors shall be clearly identified as working for grantee.~~

~~(c)~~

~~Additional service standards and standards governing consumer protection and response by grantee to subscriber complaints not otherwise provided for in this chapter may be established in the franchise agreement or by separate ordinance. A verified and continuing pattern of noncompliance may be deemed a material breach of the franchise, provided that grantee shall receive due process, including prior written notification and a reasonable opportunity to cure, prior to any sanction being imposed.~~

~~(Ord. 3052 (part), 2004)~~

~~6.48.475 – Penalties for violations of customer service and consumer protection standards.~~

~~(a)~~

~~For each violation of a cable system customer service standard, penalties may be imposed as follows, or as otherwise stipulated within the franchise agreement, and shall not be charged or passed through to subscribers:~~

~~(1)~~

~~Two hundred dollars for each day of each material breach, not to exceed six hundred dollars for each occurrence of material breach;~~

~~(2)~~

~~If there is a subsequent material breach of the same provision within twelve months, four hundred dollars for each day of each material breach, not to exceed one thousand two hundred dollars for each occurrence of the material breach;~~

~~(3)~~

~~If there is a third or additional material breach of the same provision within twelve months of the first, one thousand dollars for each day of each material breach, not to exceed three thousand dollars for each material breach.~~

~~(b)~~

~~Any penalty assessed under this section will be reduced dollar for dollar to the extent any liquidated damage provision of a franchise imposes a monetary obligation on a franchisee for the same customer service failures, and no other monetary damages may be assessed. A citation may be served on the franchisee by providing a copy to the person to whom notices are sent under the franchise. Penalties will be imposed in a manner consistent with California Government Code Section 53088(2)(r).~~

~~(Ord. 3052 (part), 2004)~~

6.48.480 – Franchise fee.

~~(a)~~

~~Following the issuance and acceptance of the franchise, the grantee shall pay to the county a franchise fee on gross annual cable service revenues in the amount and at the times set forth in the franchise agreement.~~

~~(b)~~

~~In the event that any franchise fee payment or payment of any adjustment to any franchise fee is not made on or before the dates specified in the franchise agreement, grantee shall pay an interest charge on the outstanding balance at the rate of one and one half percent per month.~~

~~(c)~~

~~In the event grantee overpays its franchise fee, the grantee shall notify the county in writing, and provide sufficient documentation to verify the alleged overpayment. Upon written authorization by the county, the grantee may begin deducting the amount overpaid beginning with the next franchise fee payment due from grantee to county, and grantee may continue to deduct the amount paid on subsequent franchise fee payments until the amount overpaid is fully reimbursed to grantee.~~

~~(d)~~

~~The county, on an annual basis, shall be furnished a statement within ninety days of the close of the calendar year, either audited and certified by an independent~~

~~certified public accountant or certified by an officer of the grantee, reflecting the total amounts of gross revenues and all payments, deductions and computations for the period covered by the payment.~~

~~(e)~~

~~Franchise fee payments shall be made in accordance with the schedule indicated in the franchise agreement.~~

~~(f)~~

~~Except as otherwise provided by law, no acceptance of any payment by the county shall be construed as a release or as an accord and satisfaction of any claim the county may have for further or additional sums payable as a franchise fee under this chapter or for the performance of any other obligation of the grantee.~~

~~(Ord. 3052 (part), 2004)~~

~~6.48.490 – Franchise fee audit.~~

~~Upon thirty days prior written notice, county shall have the right to conduct an independent financial audit of grantee's gross annual cable service revenues and franchise fee records, in accordance with generally accepted auditing standards, and if such audit indicates a franchise fee underpayment of two percent or more, the grantee shall assume all reasonable documented costs of such audit. Audits shall be limited to no more than one per two year period.~~

~~(Ord. 3052 (part), 2004)~~

~~6.48.500 – Security fund.~~

~~(a)~~

~~County may require grantee to provide a security fund, in an amount and form established in the franchise agreement. The amount of the security fund shall be established based on the extent of the grantee's obligations under the terms of the franchise.~~

~~(b)~~

~~The security fund shall be available to county to satisfy all claims, liens and/or taxes due county from grantee which arise by reason of construction, operation, or maintenance of the system, and to satisfy any actual or liquidated damages arising out of a material breach of the franchise agreement, subject to the procedures and amounts designated in the franchise agreement.~~

~~(c)~~

~~If the security fund is drawn upon by county in accordance with the procedures established in this chapter and the franchise agreement, grantee shall cause the security fund to be replenished to the original amount no later than thirty days after receiving written confirmation from the bank where such security fund is deposited~~

~~that county has made a draw against the security fund. Failure to replenish the security fund shall be deemed a material breach of the franchise.~~

~~(Ord. 3052 (part), 2004)~~

~~**6.48.510 – System construction.**~~

~~(a)~~

~~Grantee shall not construct any cable system facilities until grantee has secured the necessary permits from county, or other responsible public agencies. The grantee shall be subject to all permit and bonding requirements applicable to contractors working within the public rights of way. No provision of this chapter or the franchise agreement shall be deemed a waiver of the obligation of a grantee to pay county for the issuance of a permit.~~

~~(b)~~

~~In those areas of the county where transmission lines or distribution facilities of the public utilities providing telephone and electric power service are underground, the grantee likewise shall construct, operate and maintain its transmission and distribution facilities underground.~~

~~(c)~~

~~In those areas of the county where the grantee's cables are located on the aboveground transmission or distribution facilities of the public and/or municipal utility providing telephone or electric power service, and in the event that the facilities of both the telephone and electric power utilities subsequently are placed underground, then the grantee likewise shall reconstruct, operate and maintain its transmission and distribution facilities underground, at grantee's cost, provided, however, that if grantee is required by the county to place any of grantee's preexisting aboveground cable system underground, the grantee shall be allowed to recover from subscribers such reasonable and documented undergrounding costs in the manner prescribed by and in accordance with federal and state law and regulation. Certain of grantee's existing equipment, such as pedestals, amplifiers and power supplies, which normally are placed aboveground, may continue to remain in aboveground enclosures, unless otherwise provided in the franchise agreement.~~

~~(d)~~

~~Any changes in or extensions of any poles, anchors, wires, cables, conduits, vaults, laterals or other fixtures and equipment (herein referred to as "Structures"), or the construction of any additional structures, in, upon, along, across, under or over the public rights of way, alleys and public ways shall be made under the direction of county's public works director or the public works director's designee, who shall, if the proposed change, extension or construction conforms to the provisions hereof, issue written permits therefor within thirty days of receiving a complete permit application. The height above public thoroughfares of all aerial wires shall conform to the requirements of the California regulatory body having jurisdiction thereof.~~

(1)

All transmission and distribution structures, lines and equipment erected by the grantee shall be located so as not to interfere with the proper use of the public rights-of-way, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said public rights-of-way, and not to materially interfere with existing public and municipal utility installations.

(2)

Upon issuance of a written finding by the county that any property or improvement of the county in the public rights-of-way is disturbed or damaged by the grantee or any of its contractors, agents or employees in connection with undertaking any and all work pursuant to the rights granted to the grantee pursuant to this chapter and the franchise agreement, the grantee shall promptly, at the grantee's sole cost and expense, restore as nearly as practicable to at least their former condition and to the county's reasonable satisfaction said property or improvement which was so disturbed or damaged. If such property or improvement becomes uneven, unsettled or otherwise require additional restorative work, repair or replacement because of the initial disturbance or damage to the property by the grantee, then the grantee, as soon as reasonably possible, shall, promptly upon receipt of written notice from the county and at the grantee's sole cost and expense, restore as nearly as practicable to at least their former condition and to the county's reasonable satisfaction said property or improvement which was disturbed or damaged. Any such restoration by the grantee shall be made in accordance with such materials and specifications as may, from time to time, be established by the county.

(3)

Prior to commencing any work on the system in the public rights-of-way, the grantee shall obtain any and all permits, licenses and authorizations lawfully required for such work. If emergency work on the system in the public right-of-way is required, the grantee shall with all due diligence, seek to obtain any and all such required permits, licenses and authorizations within seven calendar days after commencing such emergency work.

(4)

There shall be no unreasonable or unnecessary obstruction of the public rights-of-way by the grantee in connection with any of the work provided for herein. The grantee shall maintain any barriers, signs and warning signals during any work performed on or about the public rights-of-way or adjacent thereto as may be necessary to reasonably avoid injury or damage to life and property.

~~(5)~~

~~If the county lawfully elects to alter or change the grade or location of any public right of way, the grantee shall, upon reasonable notice by the county, and in a timely manner, remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense. If, however, other similarly situated users of such public rights of way are compensated or reimbursed for any of the cost associated with the removal, relay or relocation of any equipment or facilities, grantee shall be entitled to compensation in kind.~~

~~(6)~~

~~The grantee shall not place poles, conduits or other fixtures above or below ground where the same will interfere with any gas, electric, telephone fixtures, water hydrants or other utility, and all such poles, conduits or other fixtures placed in any public rights of way shall be so placed as to comply with all ordinances of the county.~~

~~(7)~~

~~In accordance with applicable law, the grantee or any utility user of the public rights of way may be required by the county to permit joint use of its poles located in the public rights of way, by any authorized user insofar as such joint use may be reasonably practicable and upon payment of a reasonable rental fee for such usage. In the absence of agreement regarding such joint use, each party shall be entitled to exercise any rights and defenses provided by applicable law. In areas where the grantee is installing new conduit as part of a rebuild or extension, the grantee shall notify the county in advance of the trench being opened to allow the county to place conduit for its own future use.~~

~~(8)~~

~~The grantee, on request of any person holding a moving permit issued by the county, shall temporarily raise or lower its wires or fixtures to permit the moving of buildings. The expense of such temporary raising or lowering of wires or fixtures shall be paid by the person requesting the same, and the grantee shall have the authority to require such payment in advance. The grantee shall be given not less than ten business days prior written notice to arrange for the temporary wire or equipment changes.~~

~~(9)~~

~~The grantee shall have the authority to trim any trees or other natural growth overhanging the public rights of way so as to prevent the branches of such trees or other natural growth from coming in contact with the grantee's wires, cables and other equipment.~~

~~(10)~~

~~Grantee shall be subject to any and all requirements established by the county with regard to the location, either aboveground or underground, as well as screening of grantee's facilities and equipment located in the public rights of way. Such requirements may include, but not be limited to, use of landscaping to screen pedestals and cabinets and requiring that construction be flush with the natural grade of the surrounding area.~~

~~(Ord. 3052 (part), 2004)~~

~~6.48.520 – Not used.~~

~~6.48.530 – Applicable technical standards.~~

~~(a)~~

~~The grantee shall construct, install, operate and maintain its cable system in a manner consistent with all applicable laws, ordinances, construction standards, governmental requirements, FCC technical standards, and any detailed standards set forth in its franchise agreement. In addition, the grantee shall provide to the county, upon written request, a written report of the results of the grantee's periodic proof of performance tests conducted pursuant to FCC and franchise standards and guidelines.~~

~~(b)~~

~~Should the FCC no longer require proof of performance tests, the grantee shall make and submit such equivalent proof of performance tests and reports in response to a written request from the county. Such report shall be submitted to the county within sixty days of issuance of the county request.~~

~~(c)~~

~~Repeated and verified failure to maintain specified technical standards shall constitute a material breach of the franchise.~~

~~(Ord. 3052 (part), 2004)~~

~~6.48.540 – Hold harmless.~~

~~Grantee shall indemnify, defend and hold county, its officers, agents and employees harmless from any liability, claims, damages, costs or expenses, to the extent provided in the franchise agreement.~~

~~(Ord. 3052 (part), 2004)~~

~~6.48.550 – Insurance.~~

~~On or before commencement of franchise operations, the grantee shall furnish to county certificates of insurance for all insurance and associated coverage limits as required in the franchise agreement.~~

~~(Ord. 3052 (part), 2004)~~

6.48.560—Records required.

(a)

Grantee shall at all times maintain, for the specific service area covered only by the franchise:

(1)

A written or computer-stored record of all service calls and interruptions or degradation of service experienced for the preceding two years, provided that such complaints result in or require a service call, subject to the subscriber's right of privacy.

(2)

A full and complete set of record drawings showing the locations of the cable system installed or in use in the unincorporated area of the county, exclusive of subscriber service drops and equipment provided in subscriber's homes.

(3)

If requested by county, a quarterly summary of service calls, identifying the number, general nature and disposition of such calls, on a monthly basis. A summary of such service calls shall be submitted to the county within thirty days following any written request by county, in a form reasonably acceptable to the county.

(4)

If requested by county, a complaint record which shall contain a semi-annual (through June 30th and December 31st) breakdown indicating the total number of complaints received for the preceding reporting period, and shall indicate the classifications of complaints as follows: construction, billing, customer relations/service and miscellaneous.

(5)

A full and complete record of rates for cable services, such as programming services, equipment, installations and other subscriber charges. This information shall include, but not be limited to, rates for the basic service tier, tiers of service beyond the basic tier, premium service, pay-per-view services, late fees, additional outlets, converters, remote controls and any charges for installation or service at the subscriber premises.

(b)

The county may impose requests for additional information, records and documents from grantee, provided they reasonably relate to the scope of the county's rights under this chapter or the grantee's franchise agreement.

(c)

Upon reasonable written notice, and during normal business hours, grantee shall permit examination by any duly authorized representative of the county of all:

~~(1)~~

~~Cable system property and facilities, together with any appurtenant property and facilities of grantee situated within the service area; and~~

~~(2)~~

~~All records relating to the operation of the cable system, provided they are necessary to enable the county to carry out its regulatory responsibilities under this chapter or the franchise agreement. Grantee shall have the right to be present at any such examination.~~

~~(Ord. 3052 (part), 2004)~~

~~6.48.565 – Reports generally.~~

~~(a)~~

~~All reports and records required to be delivered to county under this chapter shall be furnished at the sole expense of the grantee, except as otherwise provided in the franchise agreement.~~

~~(b)~~

~~The willful refusal, failure, or willful negligence of grantee to file any of the reports required as and when due under this chapter, may be deemed a material breach of the franchise agreement if such reports are not provided to county upon written request, within sixty days after written request thereof, and may subject the grantee to all remedies, legal or equitable, which are available to county under this chapter or the franchise agreement.~~

~~(c)~~

~~Any materially false or misleading statement or representation made knowingly and willfully by the grantee in any report required under this chapter or under the franchise agreement may be deemed a material breach of the franchise and may subject grantee to all remedies, legal or equitable, which are available to county.~~

~~(Ord. 3052 (part), 2004)~~

~~6.48.570 – Annual reports.~~

~~(a)~~

~~Within one hundred twenty days after the end of the calendar year, grantee shall, upon written request made within thirty days of the close of the calendar years, submit a written report to county with respect to the preceding calendar year in a form approved by county, including, but not limited to, the following information:~~

~~(1)~~

~~A summary of the previous year's (or in the case of the initial reporting year, the initial year's) activities in development of the cable system, including but not limited to, cable services begun or discontinued during the reporting year;~~

~~(2)~~

~~A list of grantee's officers and members of its board of directors;~~

~~(3)~~

~~A list of stockholders or other equity investors holding five percent or more of the voting interest in grantee;~~

~~(4)~~

~~Information as to:~~

~~(A)~~

~~The number of homes passed,~~

~~(B)~~

~~Total subscribers, and~~

~~(C)~~

~~The number of basic and pay subscribers;~~

~~(5)~~

~~Any other information relevant to franchise regulation which the county shall reasonably request, and which is relevant to its regulatory responsibilities.~~

~~(b)~~

~~Upon written request, grantee shall submit to county copies of all pleadings, applications and reports submitted by grantee to any federal, state or local court, regulatory agency, or other governmental body as well as copies of all decisions issued in response to such pleadings, applications and reports, which are nonroutine in nature and which will materially affect its cable system within the franchise area.~~

~~(c)~~

~~Information otherwise confidential by law and so designated by grantee, which is submitted to county, shall be retained in confidence by county and its authorized agents and shall not be made available for public inspection. Notwithstanding the foregoing, grantee shall have no obligation to provide copies of documents to county which contain trade secrets of grantee or which are otherwise of a confidential or proprietary nature to grantee unless it receives satisfactory assurances from county that such information can and will be held in strictest confidence and protected by the county. To the extent possible, grantee may provide county with summaries of any required documents or copies thereof with trade secrets and proprietary matters deleted therefrom. The burden of proof shall be on grantee to establish the confidential nature of any information submitted, to the reasonable satisfaction of the county.~~

~~(d)~~

~~If grantee or its parent is publicly held, grantee shall, upon written request, submit a copy of grantee's or grantee's parent's publicly filed annual financial statement within forty five of releasing the annual report to the public.~~

~~(Ord. 3052 (part), 2004)~~

6.48.580 – Not used.

6.48.590 – Biannual review.

(a)

If county determines that grantee is not in compliance with the requirements of this chapter or the grantee's franchise agreement, county shall provide grantee, in the form of written findings from the board, the specific details of each alleged noncompliance. County may then direct grantee to correct the areas of noncompliance within a reasonable period of time, but not less than thirty days. Failure of the grantee, after due notice, to:

(1)

Correct the area(s) of noncompliance within the period specified therefor;

(2)

Commence compliance within such period and diligently achieve compliance thereafter; or

(3)

Demonstrate that the allegations of noncompliance are incorrect shall be considered a material breach of the franchise, and county may exercise any remedy within the scope of this chapter and the franchise agreement considered appropriate under the circumstances.

(Ord. 3052 (part), 2004)

6.48.600 – Special review.

When there have been extensive complaints made or where there exists other demonstrative evidence which, in the reasonable judgment of the county, casts reasonable doubt on the reliability or quality of cable service to the effect that the grantee is not in compliance with the requirements of this chapter or its franchise, the county shall have the right to compel the grantee to test, analyze and report on the performance of the cable system in order to protect the public against substandard cable service. County may not compel grantee to provide such tests or reports unless and until county has provided grantee with at least thirty days prior written notice of its intention to exercise its rights under this article and has provided grantee with an opportunity to be heard prior to its exercise of such rights. Such test or tests shall be made and the report shall be delivered to the county no later than thirty days after the county notifies the grantee in writing that it is exercising such right, and shall be made at grantee's sole cost. Such report shall include the following information: The nature of the complaints which precipitated the special tests, what system component was tested, the equipment used and procedures employed in said testing, the results of such tests, and the method by which such complaints were resolved. Any other information pertinent to the special test shall be recorded.

(Ord. 3052 (part), 2004)

6.48.610 – Public education and government cable TV access fund distribution.

(a)

All funds received by the county from a grantee for the purpose of public, education and government cable TV access (PEG) purposes will be deposited by the county into the PEG trust fund, upon receipt of funds from the grantee. The funds will be allocated in thirds to public access, educational access and government access programs. Funds will be distributed to parties designated below on an annual basis, if the payment is at least twenty thousand dollars, or biannually if less.

(b)

The San Luis Obispo County office of education shall be utilized for the educational access portion of the PEG trust funds under the following criteria:

(1)

The funds must be used for specific cable TV access/telecommunications capital purposes that promote educational needs programs;

(2)

These funds shall not be used to supplant existing funding;

(3)

Where possible, partnerships with the government and public access constituents should be developed for joint benefit;

(4)

Specific use of the PEG trust funds must be reviewed by an appropriate education advisory committee before the annual budgeting of these funds is considered by the county board of education.

(c)

The special districts shall be utilized for the governmental access portion of the PEG trust funds with the following criteria:

(1)

The government access portion of the PEG trust funds be allocated to the special district(s) in the communities from which the funds were collected;

(2)

If a particular community has multiple special districts, then those districts must build a consensus on how to share or utilize the funds before the money is distributed;

(3)

Where possible, partnerships with the educational community and public access should be developed for joint benefit.

(d)

The public access portion will be maintained within the funds and accounts of the county and distributed for capital purposes based on best use as determined by the board.

(Ord. 3052 (part), 2004)

6.48.620 – Remedies for violations.

If grantee fails to perform in a timely manner any material obligation required by this chapter or a franchise granted hereunder, following reasonable written notice from the county and a reasonable opportunity to cure such nonperformance in accordance with the provisions of this chapter and the franchise, county may at its option and in its sole discretion:

(a)

Cure the violation and recover the actual cost thereof from the security fund established in the franchise agreement if such violation is not cured within thirty days after written notice to the grantee of county's intention to cure and draw upon the security fund;

(b)

Assess against grantee liquidated damages in an amount set forth in the franchise agreement for any such violation(s) if such violation is not cured, or if grantee has not commenced a cure, on a schedule reasonably acceptable to county, within thirty days after written notice to the grantee of county's intention to assess liquidated damages. Such assessment may be withdrawn from the security fund, and shall not constitute a waiver by county of any other right or remedy it may have under the franchise or applicable law, including without limitation, its right to recover from grantee such additional damages, losses, costs and expenses, including actual attorney's fees, as may have been suffered or incurred by county by reason of or arising out of such material breach of the franchise.

(Ord. 3052 (part), 2004)

6.48.630 – Procedure for remedying franchise violations.

Prior to imposing any remedy or other sanction against grantee specified in this chapter, county shall give grantee notice and opportunity to be heard on the matter, in accordance with the following procedures:

(a)

County shall first notify grantee of the alleged violation in writing by personal delivery or registered or certified mail, and demand correction, or evidence of nonviolation, within a reasonable time, which shall not be less than fifteen business days in the case of the failure of the grantee to pay any sum or

~~other amount due the county under this chapter or the grantee's franchise and thirty business days in all other cases. If grantee fails to:~~

~~(1)~~

~~Correct the alleged violation within the time prescribed;~~

~~(2)~~

~~Commence correction of the alleged violation within the time prescribed and diligently remedy such alleged violation thereafter; or~~

~~(3)~~

~~Provide evidence that there is no violation the county shall then give, by personal delivery or registered or certified mail written notice of not less than thirty days of a public hearing to be held before the board. Said notice shall set forth in detail each of the violations alleged to have occurred.~~

~~(b)~~

~~Subsequent to the public hearing, the board shall hear and consider all other relevant evidence, and thereafter render findings and its decision.~~

~~(c)~~

~~If the board finds that:~~

~~(1)~~

~~The grantee has corrected the alleged violation;~~

~~(2)~~

~~The grantee has diligently commenced correction of such alleged violation after notice thereof and is diligently proceeding to fully remedy such alleged violation; or~~

~~(3)~~

~~No material violation has occurred the proceedings shall terminate and no liquidated damages under the franchise agreement, or where applicable penalties under this chapter shall be imposed.~~

~~(d)~~

~~If the board finds that material violations exist and that grantee:~~

~~(1)~~

~~Has not corrected the same in a satisfactory manner; or~~

~~(2)~~

~~Has not diligently commenced correction of such violation after notice thereof and is not diligently proceeding to fully remedy such violation then the board may impose one or more of the remedies provided in this chapter and the franchise agreement as it, in its discretion, deems appropriate under the circumstances.~~

~~(Ord. 3052 (part), 2004)~~

6.48.640—County's power to revoke.

(a)

County may revoke any franchise granted pursuant to this chapter and rescind all rights and privileges associated with it in the following circumstances, each of which shall represent a default by grantee and a material breach under the franchise:

(1)

If grantee fails to perform any of its material obligations under this chapter or the franchise agreement and continues such failure to perform after receipt of due notice and a reasonable opportunity to cure;

(2)

If grantee fails to provide or maintain in full force and effect the insurance coverage or security fund as required in the franchise agreement;

(3)

If grantee violates any order or ruling of any regulatory body having jurisdiction over the grantee relative to the grantee's franchise, unless such order or ruling is being contested by grantee in good faith in an appropriate proceeding;

(4)

If grantee knowingly practices any material fraud, or deceit upon county.

(b)

After completing the procedures set forth above, the county may make a formal request before the board that the grantee's franchise be revoked. The board shall cause to be served on the grantee written notice of its intent to consider revoking grantee's franchise. Such notice shall be served on grantee at least sixty days prior to the date of the hearing on the issue. The notice shall contain the time and place of the hearing and shall be published at least once in a newspaper of general circulation within the franchise area ten days prior to the hearing date.

(c)

The board shall hear any person(s) interested in the revocation and within ninety days after the date of the hearing shall make its determination, based on a preponderance of the evidence, whether the grantee has committed a material breach of the franchise.

(d)

If the county determines that the grantee has committed a material breach, then the county may:

(1)

Declare the franchise revoked and any security fund and bonds forfeited; or

(2)

If the material breach is curable by the grantee, direct the grantee to take appropriate remedial action within the time and manner and under the terms and conditions reasonably specified by the county.

The termination and forfeiture of the grantee's franchise shall in no way affect any right of county to pursue any remedy under the franchise or any provision of law.

(Ord. 3052 (part), 2004)

6.48.650 – Appeal of finding of revocation.

The grantee may appeal a finding of revocation to an appropriate court of jurisdiction, which shall have the power to review "de novo." Any such appeal must be initiated by the grantee within sixty days of the issuance of the county's decision to revoke the franchise.

(Ord. 3052 (part), 2004)

6.48.660 – Inability to perform.

In the event grantee's performance of any of the terms, conditions or obligations required by this chapter or a franchise granted hereunder is prevented by a cause or event not within grantee's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof; provided, however, that such inability to perform shall not relieve a grantee from the obligations pertaining to refunds and credits for interruptions in service. For the purpose of this section, causes or events not within the control of grantee shall include without limitation acts of God, war, strikes, sabotage, riots or civil disturbances, labor disputes, restraints imposed by order of a governmental agency or court, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires, but shall not include financial inability of the grantee to perform or failure of the grantee to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of grantee, or the failure of the grantee to secure supplies, services or equipment necessary for the installation, operation, maintenance or repair of the cable system where the grantee has failed to exercise reasonable diligence to secure such supplies, services or equipment.

(Ord. 3052 (part), 2004)

6.48.670 – Abandonment or removal.

(a)

If the grantee discontinues the use of any of its property within the public rights-of-way for a continuous period of twelve months, such property shall be deemed to have been abandoned by grantee. Any part of the cable system that is parallel or redundant to other parts of the system and is intended for use only when needed as

~~a backup for the system or a part thereof, shall not be deemed to have been abandoned because of its lack of use.~~

~~(b)~~

~~County, upon such reasonable terms as county may lawfully impose, may give grantee permission to abandon, without removing, any system facility or equipment laid, directly constructed, operated or maintained under the franchise. Unless such permission is granted or unless otherwise provided in this chapter, the grantee shall remove all abandoned aboveground facilities and equipment upon receipt of written notice from county and shall restore to county's reasonable satisfaction any affected public right of way to at least its former state at the time such facilities and equipment were installed. In removing its plant, structures and equipment, grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public rights of way in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles, or attachments. County shall have the right to inspect and approve the condition of the public rights of way, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this chapter and the security fund as provided herein shall continue in full force and effect during the period of removal and until full compliance by grantee with the terms and conditions of this section.~~

~~(c)~~

~~Upon the approved abandonment of any cable system property, the grantee, if required by the county, shall submit to the county an instrument, satisfactory in form to the county, transferring to the county the ownership of the abandoned cable system property.~~

~~(d)~~

~~At the expiration, without renewal or extension, of the term for which the franchise is granted, or upon its revocation, as provided herein, the county shall have the right to require grantee to remove, at its own expense, all aboveground portions of the cable system from all public right of way and public ways within the service area within a reasonable period of time, which shall not be less than one hundred eighty days.~~

~~(e)~~

~~Notwithstanding anything to the contrary set forth in this chapter, the grantee may abandon any underground cable system property in place so long as it does not materially interfere with the use of the public rights of way in which such property is located or with the use thereof by any public utility or other franchise holder.~~

~~(Ord. 3052 (part), 2004)~~

~~6.48.680 – Restoration by county—Reimbursement of costs.~~

~~Upon reasonable written notice and upon the failure of the grantee to commence, pursue or complete any work to be done in any public right of way required by law or by the~~

provisions of this chapter or the franchise agreement, within the time prescribed and to the reasonable satisfaction of the county, the county may cause the work to be commenced and/or completed. The county shall provide to the grantee an itemized work order setting forth in detail the exact nature of the work completed and the supplies used in such work. The grantee shall pay to the county the reasonable costs for such work no later than thirty days after receipt of the itemized work order.

(Ord. 3052 (part), 2004)

6.48.690 – Extended operation and continuity of services.

Upon expiration or revocation of the franchise, the county shall have the discretion to permit grantee to continue to operate the cable system for an extended period of time. Grantee shall continue to operate the system under the terms and conditions of this chapter and the franchise and to provide the regular subscriber service and any and all of the cable services that may be provided at that time. It shall be the right of all subscribers to continue to receive all available cable services provided that financial and other obligations to grantee are honored. The grantee shall use reasonable efforts to provide continuous, uninterrupted service to its subscribers, including operation of the system during transition periods following franchise expiration or termination.

(Ord. 3052 (part), 2004)

6.48.700 – Reservation of county rights.

In addition to any rights specifically reserved to the county by this chapter, the county reserves to itself every right and power which is required to be reserved by a provision of any ordinance or under the franchise.

(Ord. 3052 (part), 2004)

6.48.710 – Waiver.

(a)

The county shall have the right to waive any provision of the franchise, except those required by federal or state regulation, if the county determines (1) that it is in the public interest to do so, and (2) that the enforcement of such provision will impose an undue hardship on the grantee or on the subscribers. To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the county. Waiver of any provision in one instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of the franchise unless the statement so recites.

(b)

~~The grantee shall not be excused from complying with any of the requirements of this chapter or the franchise agreement by any failure of the county on any one or more occasions to require or seek compliance with any such terms or conditions.~~

~~(Ord. 3052 (part), 2004)~~

~~6.48.720 – Rights of individuals.~~

~~(a)~~

~~Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, age, gender or sexual orientation. Grantee shall comply at all times with all other applicable federal, state and local laws and regulations relating to nondiscrimination.~~

~~(b)~~

~~Grantee shall adhere to the applicable equal employment opportunity requirements of federal, state and local regulations, as now written or as amended from time to time.~~

~~(c)~~

~~Unless directed or conducted by an authorized law enforcement agency, which has obtained all necessary permits, neither grantee, nor any person, or entity shall, without the subscriber's consent, tap, or arrange for the tapping, of any cable, line, signal input device, or subscriber outlet or receiver for any purpose except routine maintenance of the system, detection of unauthorized service, polling with audience participation, or audience viewing surveys to support advertising research regarding viewers where individual viewing behavior cannot be identified.~~

~~(d)~~

~~In the conduct of providing its cable services or in pursuit of any collateral commercial enterprise resulting therefrom, grantee shall take reasonable steps to prevent the invasion of a subscriber's or general citizen's right of privacy or other personal rights through the use of the system as such rights are delineated or defined by applicable law. The grantee shall not without lawful court order or other applicable valid legal authority utilize the system's interactive two-way equipment or capability, if such equipment or capability exists, for unauthorized personal surveillance of any subscriber or general citizen.~~

~~(e)~~

~~No cable line, wire amplifier, converter, or other piece of equipment owned by grantee shall be installed by grantee in the subscriber's premises, other than in appropriate easements, without first securing any required consent. If a subscriber requests service, permission to install upon subscriber's property shall be deemed granted.~~

~~(f)~~

~~Any list of the names and addresses of subscribers containing the names and addresses of subscribers who request in writing to be removed from such list.~~

~~(g)~~

~~Any list which identifies the viewing habits of individual subscribers, without the prior written consent of such subscribers. This does not prohibit the grantee from providing composite ratings of subscriber viewing to any party.~~

~~(Ord. 3052 (part), 2004)~~

~~6.48.730 – Severability.~~

~~If any provision of this chapter is held by any court or by any federal or state agency of competent jurisdiction, to be invalid as conflicting with any federal or state law, rule or regulation now or hereafter in effect, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such law, rule or regulation, such provision shall be considered a separate, distinct, and independent part of this chapter, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed, so that the provision thereof which had previously been held invalid or modified is no longer in conflict with such law, rule or regulation, said provision shall thereupon return to full force and effect and shall thereafter be binding on county and grantee, provided that county shall give grantee thirty days written notice of such change before requiring compliance with said provision or such longer period of time as may be reasonably required for grantee to comply with such provision.~~

~~(Ord. 3052 (part), 2004)~~

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