

Chapter 9-25

MASTER ORDINANCE GOVERNING CABLE SYSTEM FRANCHISES

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Section 9-25-01 DEFINITIONS

- A. "Access channels" means channels to be used for educational purposes and by government and public agencies and/or their representatives (commonly referred to as "PEG" channels) provided at no additional charge to the City, programming source, or the subscriber.
- B. "A.C.H.D." means that political subdivision of the State of Idaho responsible for streets and highways in Ada County, Idaho.
- C. "The Act" means Title VI of the Communications Act of 1934 as amended by the Cable Television Consumer Protection and Competition Act 1992, and any subsequent amendments.
- D. "Addressability" means the ability of a system allowing a franchisee to authorize by remote control customer terminals to receive, change or cancel any or all specified programming.
- E. "Affiliate" means a condition of being united, being in close connection, allied, or attached as a member or branch.
- F. "Applicant" means any person or entity that applies for a franchise.
- G. "Basic cable" is the tier of service regularly provided to all subscribers including the retransmission of local broadcast television signals.
- H. "Cable services" means
 - 1. the one-way transmission to a subscriber of video programming, other programming service or data communication by a subscriber,
 - 2. subscriber interaction, if any, which is required for the selection by the subscriber of such video programming, or
 - 3. any other programming service or data communication by a subscriber.
- I. "Cable 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 and other service to subscribers.
- J. "Channel" means a single path or section of the spectrum which carries a cable service.
- K. "City" means the City of Boise, a municipal corporation of the State of Idaho.
- L. "Council" means the present governing body of the City or any future board constituting the legislative body of the City.
- M. "Data Communication" means
 - 1. the movement of encoded information by means of electrical, electronic, or light

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transmission systems; or

2. the transmission of data from one point to another over a cable system.
- N. "Disconnection" means the discontinuance of all cable service to a subscriber by a cable operator.
- O. "FCC" means the Federal Communications Commission, a regulatory agency of the United States government.
- P. "Franchise" shall mean the initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate or otherwise, which authorizes construction or operation of the cable system for the purpose of offering cable service or other service to subscribers.
- Q. "Franchisee" means the person to whom a franchise, as herein above defined, is granted by the Council under this Ordinance and the lawful successor, transferee or assignee of said person subject to such conditions as may be prescribed by the City.
- R. "Gross revenues" means any and all receipts and revenues received directly or indirectly from all sources by the operator of a cable system or attributable to a cable system within the corporate limits of the City.
- S. "Gross revenues" is intended to include, but is not limited to, all income without any offsetting of expenses, costs or depreciation, derived from:
1. Subscribers receiving goods, equipment, equipment service, or cable service from or through the use of a cable system within the City; revenues for service, installation and repair; and, any and all charges not specifically exempt herein such as delinquency fees, interest, or finance charges; and,
 2. Home shopping channel sales made within City.
- Without limiting the generality of the foregoing, "gross revenues" is not intended to include income, credits or revenues attributable to the operation of a cable system within the City arising from
1. Real property transactions;
 2. Taxes paid by a subscriber, the operator of a cable system within the City or another person which are imposed on any subscriber;
 3. Interest (other than interest charged subscribers of the cable system within the City or advertisers for services provided or delivered by the cable system within the City) or dividends on investments received by the operator of a cable system within the City unrelated to the delivery of cable services within the City; or
 4. Net uncollectible debts.
- S. "Headend" means the electronic equipment located at the start of a cable system, usually including antennas, preamplifiers, frequency converters, demodulator and related equipment.
- T. "Installation" means the connection of the cable system to subscribers' terminals.

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- U. "Institutional services" means a cable system designated principally for the provision of non-entertainment services to schools, public agencies or other non-profit agencies, separate and distinct from the subscriber network, or on secured channels of the subscriber network.
- V. "NCTA" means the National Cable Television Association.
- W. "Normal business hours" means those hours during which most similar business in the City are open to the service of customers and shall include at least four (4) consecutive hours per weekday and either one (1) evening per week or one (1) Saturday or Sunday.
- X. "Normal operating conditions" means those service conditions which are within the control or are reasonably anticipated by the cable operator, including special promotions, pay-per-view events, regular peak or seasonal demand periods and maintenance or upgrade of the cable system.
- Y. "Operator" means the person operating a cable system within the City limits.
- Z. "Person" means any individual, firm, partnership, corporation, organization, association, or other legal entity.
- AA. "Premium services" means programming over and above those provided by basic cable for which there is generally an additional charge.
- BB. "Property of franchisee" means all property owned, installed or used by a franchisee in the conduct of its business in the City under the authority of a franchise granted pursuant to this Ordinance.
- CC. "Proposal" means the response by a person to a City request regarding the provision of cable services; or an unsolicited plan submitted by a person seeking to provide cable services in the City.
- DD. "Public way" means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City in the service area which shall entitle the City or A.C.H.D. and a franchisee to the use thereof for the purpose of installing, operating, repairing and maintaining the cable system. "Public way" shall also mean any easement now or hereafter held by the City or A.C.H.D. within the service area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the City and a franchisee to the use thereof for the purpose of installing or transmitting franchisee's cable service or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, compliances, attachments and other property as may be ordinarily necessary and appurtenant to the cable system.
- EE. "Shall" means mandatory, not merely advisory.
- FF. "State" means the State of Idaho.
- GG. "Subscriber" means a person or user of the cable system who lawfully receives cable services or

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other service therefrom with franchisee's permission.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-02TERMS/CONDITIONS OF FRANCHISE

- A. **AUTHORITY TO GRANT FRANCHISES OR LICENSES FOR CABLE TELEVISION:** It shall be unlawful for a person to engage in or commence construction, operation, or maintenance of a cable system, or to utilize the term "cable" with reference to the delivery of video programming or subscriber interaction, without a franchise issued under this Ordinance. The Council may, by ordinance, award a non-exclusive franchise to construct, operate and maintain a cable system which complies with the terms and conditions of this Ordinance.
- B. **NON-EXCLUSIVITY:** Any franchise granted pursuant to this Ordinance shall be non-exclusive and shall not preclude the City from granting other or further franchises or permits or preclude the City from using any public way, or other public properties or affect its jurisdiction over them or any part of them, or limit the full power of the City to make such changes, as the City shall deem necessary, including the dedication, establishment, maintenance, and improvement of all new rights-of-way and thoroughfares and other public properties. All franchises granted subsequent to the effective date of this Master Cable Ordinance shall be granted consistent with the terms and conditions of this Ordinance.
- C. **INCORPORATION BY REFERENCE:** The provisions of this Ordinance shall be incorporated by reference in any franchise approved hereunder. The provisions of any proposal submitted and accepted by the City shall be incorporated by reference in the applicable franchise. However, in the event of any conflict between the proposal, this Ordinance and the franchise, the franchise shall be the prevailing document.
- D. **NATURE AND EXTENT OF THE FRANCHISE:** No privilege, right or exemption shall arise from any franchise granted hereunder, except those specifically prescribed herein, and any use of a public way shall be subject to the procedures and regulations adopted by A.C.H.D., or the other lawful authority. Any franchise granted hereunder by the City shall authorize a franchisee, subject to the provisions herein contained:
1. To engage in the business of operating and providing cable service and the distribution and sale of such service to subscribers within the City in accordance with the terms of the franchise;
 2. To use the public ways to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any street, such equipment and appliances, lines, cables, conductors, vaults, manholes, pedestals, attachments, supporting structures, and other property as may be necessary and appurtenant to the cable system; and, in addition, so to use, operate and provide similar facilities, or properties rented or leased from other persons, firms or corporations, including but not limited to any public utility or other person franchised or permitted to do business in the City.
- E. **TERM OF FRANCHISE:** The City shall have the right to grant a franchise for a period of time most appropriate to the circumstances of the particular grant. No franchise shall be granted for a period exceeding ten (10) years without findings made by Council that the term for the extended period of time is in the best interests of the City.

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(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-03APPLICATION

- A. Any person desiring a franchise to operate a cable system within the City limits may request the City to issue a Request for Proposal in accordance with the State competitive bid process. The request must be in writing, generally describe the cable services to be provided, and be accompanied by a non--refundable filing fee in the amount to be determined by the City.
- B. Upon receipt of a request to operate a cable system within the City of Boise, the City shall issue a Request for Proposal. In addition to other items required by Boise City Code Title 1, Chapter 11, the request shall require Applicants to
1. assess and describe the City's present and future cable-related community needs and interests;
 2. describe the cable services sought to be provided under the franchise and the estimated costs to subscribers or the methodology to determine subscriber costs during the period of the franchise;
 3. describe the time necessary for the Applicant to provide cable service to all households in the City limits and the methodology acceptable to the Applicant to measure progress toward providing cable service to all such households;
 4. describe the public, educational, and governmental access channel capacity, facilities, or financial support contemplated by the Applicant;
 5. describe the Applicant's financial, technical and legal qualifications to provide cable service; and,
 6. describe any non-cable services contemplated by the Applicant to be provided by or through the equipment or property installed by the Applicant in any public way.
- C. Both Requests to issue a Request for Proposals and any Proposals received by the City shall be public records and may not contain Trade Secrets or other information which the Applicant claims to be propriety or confidential.
- D. A copy of all responses for proposal shall be transmitted to A.C.H.D. and current franchisees.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-04HEARING

Prior to the granting of a franchise, the City Council shall conduct a public hearing to determine the following:

1. That the public will be benefitted by the granting of a franchise to the Applicant;
2. That the Applicant has requisite financial, management and technical resources and capabilities to build, operate and maintain a cable television system in the area;

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3. That the Applicant has no conflicting interests, either financial or commercial, which will be contrary to the interests of the City;
4. That the Applicant will comply with all terms and conditions placed upon a franchisee by this Ordinance;
5. That the Applicant is capable of complying with all relevant Federal, State, and local regulations pertaining to the construction, operation and maintenance of the facilities and systems incorporated in its application for a franchise;
6. That the present and future uses and capacity of public ways will accommodate the cable system;
7. The benefit to subscribers to be served outweighs the potential disruption to existing users of the public ways to be used by the cable system and the resultant inconvenience which may occur to the public.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-05ACCEPTANCE

- A. No franchise granted pursuant to the provisions of this Ordinance shall become effective unless and until the ordinance granting same has become effective and that all state, federal and local laws have been complied with.
- B. Within sixty (60) days after the effective date of the Ordinance awarding a franchise, or within such extended period of time as the Council in its discretion may authorize, a franchisee shall file with the City Clerk its written acceptance of the franchise, in a form satisfactory to the City Attorney, together with the bond and insurance policies required by Sections 9-25-43 Insurance and 9-25-44 Performance Bond herein.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-06POLICE POWERS

In accepting any franchise, a franchisee acknowledges that its rights hereunder are subject to the legitimate rights of the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the public and it agrees to comply with all applicable general laws enacted by the City pursuant to such power.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-07DEVELOPMENT OF CITY PLAN FOR CABLE SYSTEMS

The City is in the process of formulating an overall cable system plan with objectives to maximize service and efficiency to the community, encourage healthy competition within the market, and prepare for the technological advances in the future. In carrying out adoption of an overall policy, City shall study the industry, its community needs, and shall plan for development. The objective for City is to set forth policies and procedures which ensure City citizens receive a variety of quality programming, cable services and data communications; reliable, clear signals; and prompt, courteous service.

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(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-08 RULES AND REGULATIONS BY THE CITY

- A. In addition to the inherent powers of the City to regulate and control any franchise it issues, the authority granted to it by the Act, and those powers expressly reserved by the City, or agreed to and provided for in a franchise, the right and power is hereby reserved by the City to promulgate such additional regulations of general applicability to all franchisees which are reasonable and necessary in the exercise of its lawful powers.
- B. The City Council reserves the right to delegate its authority for franchise administration. Any delegation of authority may be accomplished by resolution. Notice of any delegation shall be transmitted to all franchisees.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-09 TECHNICAL STANDARDS

- A. Subject to Federal, State and local law, a franchisee shall comply with FCC rules, Part 76, Subpart K, Section 76.601 through 76.610 as amended, hereafter, and, at the minimum, the following:
 - 1. Applicable City, County, A.C.H.D., State and National/Federal Codes and Ordinances;
 - 2. Applicable Utility Joint Attachment Practices;
 - 3. The National Electric Safety Code; ANSI C2;
 - 4. Local Utility Code Requirements;
 - 5. Local Rights-of-Way and A.C.H.D. Procedures.
- B. PREVENTIVE MAINTENANCE: A comprehensive routine preventive maintenance program shall be developed, effected, and put into operation to ensure continued top quality cable communications operating standards in conformance with FCC Regulations Part 76 or as may be amended.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-10 PARENTAL CONTROL DEVICES

Upon request by a subscriber a franchisee will make available and may charge the subscriber a fee not to exceed the franchisee's actual cost including applicable handling fees, a device by which the subscriber can prohibit viewing of a particular cable service.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-11 ADAPTATION TO NEW TECHNOLOGY

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At the periodic meetings as provided herein, the City and franchisees shall discuss technological developments and their incorporation into the services provided.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-12 DEVICES FOR THE HEARING IMPAIRED

Franchisee shall provide sound enhancing devices to requesting subscriber for a hearing impaired subscriber or subscriber's family member in compliance with the Act. This requirement may be met by providing closed caption programming.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-13 CONSTRUCTION STANDARDS

- A. All facilities constructed under this Ordinance shall be placed and maintained at such places and positions in or upon such public ways and public places as shall not interfere with the passage of traffic and the use of adjoining property, and shall conform to all of the applicable laws, rules or regulations.
- B. A franchisee is required in all cases to request and apply for all construction variances for system extension, subscriber installations, or any other variances as may be required by the City and A.C.H.D.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-14 CONSTRUCTION NOTIFICATION

All permits required by law shall be obtained before construction in a public way.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-15 UNDERGROUNDING AND LANDSCAPING

A franchisee shall fully comply with City Code and other applicable regulations pertaining to the underground installation of utility lines and the use of joint trenches with other utilities where feasible. In those areas and portions of the City where the transmission or distribution facilities of the public utility providing telephone service or those of the facility providing electric service are underground or hereafter may be placed underground, then a franchisee shall likewise construct, operate and maintain all of its transmission and distribution facilities in the same area underground. All activities shall be conducted in coordination with other utilities but not necessarily in the same trench. Upon approval by the appropriate authority, amplifiers and associated equipment in a franchisee's transmission and distribution lines may be in appropriate housing upon the surface of the ground.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-16 CONSTRUCTION IN PUBLIC WAY

Whenever, in the sole opinion of the City or, where applicable, A.C.H.D., any of a franchisee's facilities or equipment needs to be relocated or altered due to a construction or repair project by the City

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or A.C.H.D. in a public way, a franchisee shall move or relocate said facilities or equipment within thirty (30) days from receiving written notice from the City or A.C.H.D. However, in the event such relocation is required due to emergency repairs deemed necessary by the City, such relocation or moving shall be accomplished within twenty-four (24) hours. Any relocation or alteration of a franchisee's facilities or equipment required under this section shall be at the sole expense of a franchisee.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-17SAFETY REQUIREMENTS

- A. A franchisee, in accordance with applicable National, State, and Local safety requirements, shall, at all times, employ reasonable care and shall install, maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public.
- B. All structures and all lines, equipment and connections in, over, under, and upon the streets, sidewalks, alleys, and public way or places of a franchise area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair.
- C. The City reserves the general right to see that the system of a franchisee is constructed and maintained in a safe condition. If a violation of the National Electrical Safety Code or other applicable regulation is found to exist by the City, the City will, after discussions with a franchisee, establish a reasonable time for a franchisee to make necessary repairs. If the repairs are not made within the established time frame, the City may make the repairs itself or have them made and collect all reasonable costs thereof from a franchisee.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-18BUILDING MOVING

Whenever any person shall have obtained permission from the appropriate authority to use any street for the purpose of moving any building, a franchisee, upon seven (7) days written notice from the City, shall obtain all necessary permits and approvals to raise or remove, at the expense of the permittee desiring to move the building, any of a franchisee's wires which may obstruct the removal of such building; provided, that the moving of such building shall be done in accordance with regulations and general ordinances of the City. Where more than one street is available for the moving of such building, the building shall be moved on such street as shall cause the least interference. In such event, the City shall be responsible for determining the path of least interference. It is further provided that the person or persons moving such building shall indemnify and save harmless said franchisee of and from any and all damages or claims of whatsoever kind or nature caused directly or indirectly for such temporary arrangement of the lines and poles of a franchisee.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-19TREE TRIMMING

Upon approval of the City Director of Parks and Recreation and upon granting of a permit by City Forestry Division of Parks and Recreation where applicable, a franchisee shall have the authority to trim trees upon and overhanging streets, public ways and public places in the Franchise Area so as to prevent the branches of such trees from coming into contact with a franchisee's wires and cables, or its microwave path. A franchisee shall be responsible for debris removal from such activities. Failure to

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remove debris after a reasonable time shall result in the debris being removed by the City and the costs involved charged to the franchisee.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-20CUSTOMER SERVICE

- A. A franchisee shall render repair service to restore the quality of the signal at approximately the same standards existing prior to the failure or damage of the component causing the failure and make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during a period of minimum use of the system. A log of all service interruptions shall be maintained for at least a period of one year.
- B. Customer service center and bill payment locations shall be open for transactions during normal business hours. Additionally, based upon the community's needs, a franchisee shall schedule supplemental hours on weekdays and/or weekends during which these centers will be open.
- C. The franchisee shall respond to any system outage affecting more than five subscribers regardless of whether within or without normal business hours. A copy of the instructions to the answering service utilized by a franchisee shall be furnished to the City or its designee.
- D. A repair technician shall be on call seven (7) days a week, twenty- four (24) hours a day.
- E. A franchisee shall maintain a sufficient repair force to respond to individual requests for repair service within two (2) working days after receipt of the complaint or request, except Saturday, Sunday and legal holidays. All complaints shall be resolved within seven (7) days, to the extent reasonable. If a subscriber has notified a franchisee of an outage, no charge for the period of the outage shall be made to the subscriber if the subscriber was without service for a period exceeding twenty-four (24) hours, unless the outage was due to acts of God, or circumstances reasonably beyond a franchisee's ability to control.
- F. A franchisee shall supply at the time of a new connection, and upon all billing statements, the title, address, and telephone number of the City official or his/her designee supplied by the Director of the City Finance Department, to whom system subscribers may direct their concerns.
- G. In no case will a franchisee's service standards fall below the standards established by this Ordinance or any FCC regulation.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-21OFFICE HOURS AND TELEPHONE AVAILABILITY

- A. Each cable operator shall provide within the City limits one or more customer service centers and bill payment locations which must be open at least during normal business hours and which are conveniently located. The minimum number, location and hours of such shall be negotiated and specified in the franchise agreement.
- B. Each cable operator will maintain a local, toll-free or collect call access line which shall be

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available to its subscribers twenty-four (24) hours a day, seven days a week the phone number of which shall be published under the operator's name in any advertisement or directory.

- C. Each cable operator shall have in place procedures for utilization of other manpower and/or recording devices for handling the flow of telephone calls at peak periods of large outages or other major causes of subscriber concern. A copy of such procedures and/or policies shall be made available to the City.
- D. Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.
- E. After normal business hours, the access line may be answered by an answering service or an automated response system, including an answering machine. Inquiries received outside normal business hours must be responded to by a trained company representative on the next business day.
- F. Under normal operating conditions, telephone answer time by a trained customer service representative, including wait time, shall not exceed thirty (30) seconds after the connection is made. If the call needs to be transferred, the time required to transfer the call, shall not exceed thirty (30) seconds.
- G. Those systems which utilize automated answering and distributing equipment will limit the number of routine rings to four (4) or fewer. Systems not utilizing automated equipment shall make every effort to answer incoming calls as promptly as the automated systems.
- H. Busy signals cannot be received more than three percent (3%) of the time under normal operating conditions.
- I. The standards described in this section shall be met no less than ninety percent (90%) of the time measured on a quarterly basis.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-22 FAILURE TO IMPROVE CUSTOMER SERVICE

- A. The City or its designee shall review telephone response and customer service information with each franchisee. It will be assumed that improvements will be made by the franchisee in the appropriate categories which were found deficient in Section 9-25-20 Customer Service and Section 9-25-21 Telephone Response from the last reporting period. Failure to do so may result in the calling of a public hearing by the City Council for the purpose of examining the reasons, if any, why such improvements were not achieved by a franchisee. An unsatisfactory record will result in:
 - 1. the hearings being made part of an exhibit under Section 626(c)(1)(A) and (B) of the Act alleging that such practices have failed to conform with franchising requirements as stated therein; and,
 - 2. a requirement that such franchisee acquire equipment and procedures necessary to record data of performance and perform surveys to measure compliance with the customer service standards.

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(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-23RESERVED

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-24CUSTOMER BILLING

- A All billing statements and charges to subscribers shall be:
1. Clear, concise and understandable;
 2. Itemized as to basic cable charges, premium charges, equipment charges, whether payments for purchase or rental, deposits, delinquent fees, and franchise fees.
 3. Show all activity during the billing period including optional charges, rebates, credits. Said billing period shall not exceed forty-five (45) days.
- B. All billing disputes by subscribers shall be responded to and resolved in writing within thirty (30) days.
- C. No late fee, interest or other late payment penalty shall be assessed until at least thirty (30) days from the date of original billing.
- D. No fee shall be charged by franchisee for equipment or services not actually provided.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-25COMMUNICATIONS AND REFUNDS

- A. The cable company will provide written information in each of the following areas at the time of installation, at least once a year, and at any future time upon request:
1. products and services offered;
 2. prices and service options;
 3. installation and service policies, including complaint procedures;
 4. how to use the cable service;
 5. conditions of subscription to programming and other services; and,
 6. any substantial changes in technology which may affect subscriber services.
- B. Refund checks shall be issued promptly, but no later than
1. forty-five (45) days from the date the claim for refund is made and determined by the

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franchisee to be owed; or

2. the subscriber's next billing cycle following the resolution of the request; or
 3. the return of the equipment supplied by the cable company if service is terminated.
- C. Credits shall be issued no later than the subscriber's next billing cycle following determination that credit is warranted.
- D. Subscribers shall be given reasonable notification, a minimum of thirty (30) days in advance, of any rate, programming service, channel change, or alteration of any of the areas described in Section 9-25-25(A) provided the change is with in the control of the cable operator.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-26DISCONNECT FEES, PROHIBITED

No franchisee shall charge a subscriber a disconnection fee regardless of the reason for discontinuing cable service.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-27CONTINUITY OF SERVICE

- A. It shall be the right of all subscribers to continue receiving service so long as their financial and other obligations to a franchisee are fulfilled.
- B. In this regard a franchisee shall act so far as it is within its control to ensure that all subscribers receive continuous uninterrupted service during the term of the franchise.
- C. In the event a franchisee fails to operate a system for seventy-two (72) continuous and consecutive hours without prior notification to and approval of the City Council or without just cause such as an impossibility to operate the system because of the occurrence of an act of God or other circumstances reasonably beyond a franchisee's control, the City may, after notice and an opportunity for a franchisee to commence operations at its option, operate the system or designate someone to operate the system until such time as a franchisee restores service to conditions acceptable to the City Council or a replacement franchisee is selected. If the City is required to fulfill this obligation for a franchisee, the franchisee shall reimburse the City for all reasonable costs or damages in excess of revenues from the system received by the City that are the result of the franchisee's failure to perform.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-28INSTALLATION, OUTAGES AND SERVICE CALLS

- A. Under normal operating conditions, each of the following five (5) standards will be met no less than 95% of the time measured on a quarterly basis.
1. Standard installations will be performed within seven business days after an order has

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been placed. "Standard" installations are up to one hundred, twenty-five (125) feet from the existing distribution system.

2. Excluding those situations beyond the control of the cable operator, the cable operator will respond to service interruptions promptly and in no event later than twenty-four (24) hours from becoming aware of the interruption. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

3. The appointment window alternatives for installations service calls, and other installation activities will be either a specific time or, no greater than a four (4) hour block during normal business hours. With agreement of the customer, the cable operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer. Additionally, based on community needs, cable systems will schedule supplemental hours during which appointments can be set.

4. Appointments made between a customer and a franchisee for installation, repair or service call cannot be cancelled by franchisee after the close of business the business day before scheduled appointment.

5. If, at any time an installer or technician is running late, the customer shall be contacted by franchisee and the appointment rescheduled at a time which is convenient for the customer.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-29 CABLE SYSTEM EVALUATION

- A. In addition to periodic meetings, the City may require reasonable evaluation sessions at any time during the term of a franchise.
- B. It is intended that such evaluations cover areas such as customer service, response to the community's cable-related needs, and a franchisee's performance under and compliance with the terms of a franchise.
- C. During an evaluation session, a franchisee shall fully cooperate with the City and shall provide without cost such reasonable information and documents as the City may request to perform evaluations.
- D. If the City has concerns because of uncorrected reoccurring problems with the franchisee's cable system it may retain an independent consultant to conduct an analysis of the cable system and its performance and submit a report of such analysis to the City. The City shall take into consideration any efforts taken to correct such deficiencies.
- E. The report prepared by the consultant in response to the City's request for a system evaluation shall include:
 - 1. A description of the technical problem in cable system performance which precipitated the special tests;
 - 2. What cable system components were tested;

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3. The equipment used and procedures employed in testing;
 4. The method, if any, by which specific performance problems may be resolved; and,
 5. Any other information pertinent to said tests and analyses which may be required by the City, or determined when the test is performed.
- F. If the tests indicate that the system is not in compliance with FCC standards or the requirements of the franchise, a franchisee shall reimburse the City for any and all reasonable costs involved in conducting such tests.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-30FRANCHISE FEE

- A. **RATE OF FRANCHISE FEE:** Recognizing current Federal restrictions, the rate of the franchise fee is established at five percent (5%).
- B. **RESERVATION OF RIGHT TO NEGOTIATE FEE AMOUNT:** In the event the Act or regulations promulgated thereunder allows for a change in the allowable rate or revenues or activities upon which the franchise fee may be calculated, the City and franchisee reserve the right to renegotiate this particular term of any franchise granted pursuant to this ordinance.
- C. **AMOUNT OF FRANCHISE FEE:** Every franchisee shall pay the franchise fee to the City quarterly; currently a sum equal to the rate of five percent (5%), of the gross revenue as defined herein for the preceding three (3) months.
- D. **METHOD AND SCHEDULE OF PAYMENT:** Franchisee shall pay the franchise fee to the City quarterly, on or before the fifteenth (15th) day of each February, May, August and November. Payments of franchisee fees may be based upon actual or estimated gross revenues. If estimated, the first three (3) such payments shall be twenty-five percent (25%) of the total annual estimated franchise fee due by the franchisee. The fourth such payment shall be the balance of the franchise fee due. Such remittances shall be accompanied by forms furnished or approved by the City to report detailed information as to the sources of such income.
- E. **LATE PAYMENT INTEREST:** All sums which become delinquent, shall accumulate interest at the statutory rate provided in **Idaho Code** Title 28, Chapter 22, Section 104(1). The accrual of interest is not intended to waive or in any manner restrict City's ability to elect any procedure or method of collection permissible by law to enforce all the terms and conditions of this Master Ordinance, the proposal, or the franchise agreement.
- F. **PENALTIES FOR FAILING TO PAY FRANCHISE FEES:** Where the City determines by audit, financial statement or other method, that franchisee has underpaid franchise fees or other charges owed to City and where payment was not received by City within the quarter due, franchisee may be required to pay, in addition to any other remedy sought by City, all fees and interest due, and an additional penalty of fifty percent (50%) of the total amount owed.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-31OTHER CHARGES

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City reserves the right to establish and charge franchisee costs associated with application, renewal and penalties for failure to comply with franchise permitted by law.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-32 PERIODIC MEETINGS

Upon request, a franchisee shall meet with designated City officials and/or designated representative(s) to review the performance of a franchisee for the preceding period. The subjects may include, but are not limited to, those items covered in the periodic reports and performance tests.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-33 RECORD INSPECTION

Subject to statutory and constitutional limits and two working days' advance notice, the City reserves the right to inspect the records of a franchisee necessary for the enforcement of a franchise and verification of the accuracy of franchise fee payments at any time during normal business hours provided that the City shall maintain the confidentiality of any trade secrets or other proprietary information in the possession of a franchisee. Such documents shall include such information as financial records, subscriber records within the context of Section 631 of the Act, and plans pertaining to a franchisee's operation in the City.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-34 REPORTS

A franchisee shall furnish, upon request, a report of its activities as appropriate. Such report shall include:

1. Most recent annual report;
2. A copy of the 10-K Report, if required by the Securities and Exchange Commission;
3. The number of homes passed;
4. The number of subscribers with basic services;
5. The number of subscribers with premium services;
6. The number of hook-ups in period;
7. The number of disconnects in period;
8. Total number of miles of cable in City;
9. Summary of complaints received by category, length of time taken to resolve and action taken to provide resolution;
10. A statement of its current billing practices, and a sample copy of the bill format;
11. A current copy of its subscriber service contract; and,

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12. Report on Operations - Such other reports with respect to its local operation, affairs, transactions or property that may be appropriate.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-35PROGRAMMING

For informational purposes a franchisee shall file a listing of its programming and the tiers in which they are placed.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-36NON-DISCRIMINATION

- A. A franchisee shall not, as to rates, charges, service facilities, rules, regulations or in any other respect, make or grant any preferences or advantage to any person nor subject any person to any prejudice or disadvantage; provided, that nothing in this Ordinance shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled, and provided further that connection and/or service charges may be waived or modified during promotional campaigns of a franchisee.
- B. A franchisee will not deny access to cable communications service to any group of potential residential subscribers because of the income of the residents of the local area in which the group resides.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-37FRANCHISE RENEWAL

The provisions of Section 626 of the Act or other applicable Federal or State law will govern the actions of the City and a franchisee in proceedings relating to franchise renewal. The City expressly reserves the right to establish guidelines and monitoring systems in accordance with the provisions of the Act to measure the effectiveness of a franchisee's performance during the term of such franchise.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-38TRANSFER OF OWNERSHIP

- A. A franchisee's right, title, or interest in the franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an Affiliate, without the prior consent of the City. Such consent shall not be unreasonably withheld so long as:
1. The franchisee has substantially complied with the material terms of the existing franchise and with applicable law;
 2. the quality of the franchisee's service, including signal quality, response to consumer complaints, and billing practices has been reasonable in light of community needs;
 3. The transferee has the financial, legal, and technical ability to provide the services,

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facilities, and equipment contained in the existing franchise and proposal upon which the franchise was issued; and,

4. The transfer is reasonable to meet the future cable-related community needs and interests.
- B. No such consent shall be required, however, for a transfer in trust, by other hypothecation, or by assignment of any rights, title, or interest of the franchisee in the franchise or Cable System in order to secure indebtedness. Approval shall not be required for mortgaging purposes provided that the collateral does not specifically affect the assets of this franchise, or if the said transfer is from a franchisee to another person or entity controlling, controlled by, or under common control with a franchisee.
- C. In any transfer of a franchise requiring City approval, the applicant must show technical ability, financial capability, legal and general qualifications as determined by the City. Applicant must agree to comply with all provisions of the franchise. Costs associated with the transfer process shall be reimbursed to the City.
- D. An assignment of a franchise shall be deemed to occur if there is an actual change in control or where ownership of fifty percent (50%) or more of the beneficial interests, singly or collectively, are obtained by other parties. The word "control" as used herein is not limited to majority stock ownership only, but includes actual working control in whatever manner exercised.
- E. Regardless of the circumstances, a franchisee shall promptly notify the City prior to any proposed change, transfer, or acquisition by any other party of a franchisee's company. In the event that the City adopts a resolution denying its consent and such change, transfer or acquisition of control has been effected, the City may cancel the franchise.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-39REMOVAL & ABANDONMENT OF PROPERTY OF FRANCHISEE

- A. The City may direct a franchisee to temporarily disconnect or bypass any equipment of a franchisee in order to complete street construction or modification, install and remove underground utilities, or for other reasons of public safety and efficient operation of the City. Such removal, relocation or other requirement shall be at the sole expense of a franchisee.
- B. In the event that the use of any part of the cable system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such system or property has been installed in any street or public place without complying with the requirements of the franchise or other City ordinances or the franchise has been terminated, canceled or has expired, a franchisee shall promptly, upon being given ten (10) days' notice, remove within ninety (90) days from the streets or public places all such property and poles of such system other than any which the City may permit to be abandoned in place. In the event of such removal, a franchisee shall promptly restore the street or other areas in accordance with local regulations and standards from which such property has been removed to a condition similar to that existing before such removal and satisfactory to the City. Such approval shall not be unduly withheld.
- C. Any property of a franchisee remaining in place ninety (90) days after the termination or expiration of the franchise shall be considered permanently abandoned. The City may extend such time not to exceed an additional ninety (90) days. Any property of a franchisee to be

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abandoned in place shall be abandoned in such manner as the City shall prescribe. Upon permanent abandonment of the property of a franchisee in place, the property shall become that of the City, and a franchisee shall submit to the City Clerk an instrument in writing, to be approved by the City Attorney, transferring to the City the ownership of such property. None of the foregoing affects or limits franchisee's rights to compensation for an involuntary abandonment of its property under State, or Federal law. In the event the City and a franchisee are unable to agree as to whether an abandonment is voluntary for the purposes of this section either party may invoke arbitration to resolve such question.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-40 REVOCATION FOR CAUSE

- A. If a franchisee willfully violates or fails to comply with any of the material provisions of this franchise, the City shall give written notice to a franchisee of the alleged non-compliance of its franchise. A franchisee shall have forty-five (45) days from the date of notice of non-compliance to cure such alleged default or, if such default cannot be cured within forty-five (45) days, to present to the City a plan of action whereby such default can be promptly cured.
- B. If such default continues beyond the applicable dates agreed to for such cure, the City shall give a franchisee written notice that all rights conferred under this Ordinance and its franchise may be revoked or terminated by the Council after a public hearing. A franchisee shall be entitled to not less than thirty (30) days prior notice of the date, time and place of the public hearing. The City may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to obtain an order from the district court having jurisdiction compelling a franchisee to comply with the provisions of the franchise and recover damages and costs incurred by the City by reason of a franchisee's failure to comply.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-41 EFFECT OF TERMINATION FOR NON-COMPLIANCE

- A. Subject to State and Federal law, if any franchise is terminated by the City by reason of a franchisee's non-compliance, that part of the system under such franchise located in the streets and public property, shall, at the election of the City, become the property of the City at a cost consistent with the provisions of Section 627(b)(1) of the Act. If the City, or a third party, does not purchase the system, a franchisee shall, upon order of the City Council, remove the system as required under Section 9-25-39 Removal and Abandonment of Property of Franchisee of this Ordinance.
- B. In no case shall a termination for cause be considered as a "taking".

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-42 INDEMNITY & HOLD HARMLESS

- A. A franchisee shall indemnify and hold harmless the City from any and all liabilities, fees, costs and damages, including attorney's fees for any claim, action, or collection made against the City which arises or occurs by reason of the construction, operation, maintenance, repair and alteration

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of a franchisee's facilities or any other actions of a franchisee in the City. In any case in which suit or action is instituted against the City by reason of damage or injury allegedly caused by a franchisee, the City shall cause written notice thereof to be given to a franchisee and a franchisee thereupon shall have the duty to appear and defend any such suit or action, without cost or expense to the City.

- B. If any applicant or franchisee claims any record, report or information provided by such applicant or franchisee to the City to constitute a "Trade secret", as defined in Section 9-340(2), **Idaho Code**, such applicant or franchisee shall expressly agree to defend, indemnify and hold harmless the City from any claim or suit arising from the City's refusal to disclose any such record, report or information to any person not affiliated with the City. No such claim of "Trade secret" shall be valid or effective without such express agreement.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-43INSURANCE

- A. A franchisee shall, concurrently with the filing of an acceptance of award of any franchise granted hereunder, furnish to the City and file with the Council's franchise enforcement designee, and at all times during the existence of any franchise granted hereunder, maintain in full force and effect, at its own cost and expense, a general comprehensive liability insurance policy, for the purpose of protecting the City and all persons against liability for loss or damage, for personal injury, death and property damage, civil rights violations, and errors or omissions, occasioned by the operations of a franchisee under such franchise.
- B. Such policy shall name the City as an additional named Insured and provide minimum limits of one million dollars (\$1,000,000.00) for both personal injury and/or property damage.
- C. The certificate of insurance reflecting the policy mentioned in the foregoing subsections shall contain a provision that a written notice of cancellation or reduction in coverage of said policy shall be delivered to the City thirty (30) days in advance of the effective date thereof. If such insurance is provided by a policy which also covers a franchisee or any other entity or person other than those above named, then such policy shall contain the standard cross-liability endorsement.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-44PERFORMANCE BOND

A franchisee shall promptly repair or cause to be repaired any damage to City property caused by a franchisee or any agent of a franchisee. A franchisee shall comply with all present and future ordinances and regulations regarding excavation or construction and, if deemed necessary by the City, shall be required to post a performance bond or other surety acceptable to the City in an amount specified by the City in favor of the City warranting that all restoration work will be done promptly and in a workmanlike manner and that penalties, if any, after final adjudication are paid to the City within ninety (90) days of such finding.

(Ord. No. 5515, Enacted, 12/21/93)

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Section 9-25-45RESERVED

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-46EQUALIZATION OF CIVIC CONTRIBUTIONS

- A. In the event of one or more franchises being granted the City shall require that such subsequent franchisees pay to the City an amount proportionally equal to franchising costs contributed by the initial franchisee. These costs may include but are not limited to such features as access and institutional network costs, bi-directional or equivalent cable installed to municipal buildings and similar expenses.
- B. On the anniversary of the grant of each later awarded franchise, such franchisees shall pay to the City an amount proportional to the amount contributed by the original franchisee, based upon the amount of subscribers held by such franchisees.
- C. Additional franchisees shall provide all PEG access channel(s) and emergency override systems currently available to the subscribers of existing franchisees. In order to provide these access channels, additional franchisees may interconnect, at their cost, with existing franchisees, subject to any reasonable terms and conditions that the existing franchisee providing the interconnection may require. These interconnection agreements shall be made directly between the franchisees. The City Council, in such cases of dispute of award, may be called upon to arbitrate regarding these arrangements.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-47PENALTY

Any person violating any provision of this Chapter shall be guilty of a misdemeanor. A person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this Chapter is committed, continued or permitted. Upon conviction of any violation of any of the provisions of this Chapter, such person shall be punished by a fine or not more than three hundred dollars (\$300.00), or by imprisonment for not more than six (6) months, or both. Any such prosecution shall not be deemed a waiver, election or diminution of any remedies available by law to the City.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-48INCONSISTENCY

If any portion of this Ordinance should be inconsistent or conflict with any rule or regulation now or hereafter adopted by the FCC or other Federal law, then to the extent of the inconsistency or conflict, the rule or regulation of the FCC or other Federal law shall control for so long, but only for so long, as such rule, regulation, or law shall remain in effect; provided the remaining provisions of this Ordinance shall not be effected thereby.

(Ord. No. 5515, Enacted, 12/21/93)

Section 9-25-49SEVERABILITY

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Each section, subsection or other portion of this Ordinance shall be severable and the invalidity of any section, subsection, or other portion shall not invalidate the remainder. (Ord. No. 5515, Enacted, 12/21/93)