American TV & Communication Corp.

Ordinance 015213, Amended by Ordinance 15843, and Ordinance 16042

Term - April 9, 1980 - April 8, 2010. There is a possibility of 20-year extension. (Section 7)

Renegotiation - Possible renegotiating every fifth year. Either party must give notice during the year prior. Next potential renegotiation is effective April 9, 1990. (Section 7)

Consideration and Statements - Grantee must pay three percent of gross receipts. Within 60 days after the quarters ending March 31, June 30, September 30, and December 31, grantee must file a statement in duplicate showing material facts in determining the amount due accompanied by payment. (Section 21)

Option to Purchase System - Upon franchise termination, City has option to purchase system. Two years prior to expiration, either party may demand arbitration to determine price. The first possible date to demand arbitration is April 8, 2008. (Section 24)

Exceptions to Extension of Service Requirements - An annual review of the construction formula shall be held in March. (Section 12.b)

Regulation of Rates and Service - Generally, the City Council must review and approve rate changes. (Section 15)

Filings and Communications with Regulatory Agencies - Copies of all filings and communications of all types by the City or grantee to the FCC, SEC, CPUC, or any federal or state regulatory commission or agency having any jurisdiction over grantee's system must be submitted to grantee or City every three months. (Section 25)

Inspection of Property and Records - At all reasonable times grantee shall permit examinations by the City Manager, City Engineer, and City Auditor. (Section 23)

MLS:baa(3)95
12-15-89

AT&T C-LEGAL

(O-84-5)

ORDINANCE NUMBER O- 16042 (New Series)

Adopted on SEP 12 1983

AN ORDINANCE OF THE CITY OF SAN DIEGO AMENDING ORDINANCE NO. O-15213 (NEW SERIES), WHICH GRANTED TO AMERICAN TELEVISION AND COMMUNICATIONS CORPORATION THE NONEXCLUSIVE RIGHT, PRIVILEGE AND FRANCHISE TO LAY AND USE LINES, WIRES, COAXIAL CABLE AND APPURTENANCES FOR TRANSMITTING, DISTRIBUTING AND SUPPLYING RADIO AND CABLE TELEVISION SERVICE ALONG, ACROSS AND UPON THE PUBLIC STREETS, WAYS, ALLEYS AND PLACES WITHIN CERTAIN AREAS OF SAN DIEGO, BY AMENDING PARAGRAPH (b) OF SECTION 7 CONCERNING THE TERM OF THIS FRANCHISE.

WHEREAS, The City of San Diego has by Ordinance No. O-15213 (New Series) granted to American Television and Communications Corporation the non-exclusive right, privilege and franchise to lay and use lines, wires, coaxial cable and appurtenances for transmitting, distributing and supplying radio and cable television service along, across and upon the public streets, ways, alleys and places within certain areas of San Diego; and

WHEREAS, Section 7(b) of Ordinance No. O-15213 (New Series) provided for a franchise term of twenty (20) years and also provided for the term of the franchise to be extended for an additional period of ten (10) years upon a determination of compliance with the franchise provisions within the initial three (3) years; and

WHEREAS, the Grantee, American Television and Communications Corporation, has made application for the term of

the franchise to be extended for ten (10) years; and

WHEREAS, the City Council, pursuant to the provisions of the franchise and having held a public hearing on the matter, finds that Grantee has fully complied with all provisions of the franchise during the initial three (3) years of the term of the franchise; NOW THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. Section 7, Paragraph (b) of Ordinance No. O-15213 (New Series) is hereby amended to read as follows:

Section 7. DURATION OF GRANT

(b) The term of this Franchise shall be thirty (30) years, commencing on the effective date of the Franchise as provided in Paragraph (a) of this section; provided, however, that the term of this Franchise may be extended in accordance with the procedures set forth below:

(1) The provisions of this ordinance shall be subject to renegotiation every fifth (5th) year during the term of the Franchise, including any extensions thereof. These renegotiation opportunities shall be referred to as "renegotiation intervals." Renegotiation shall be initiated upon written notice given by the City or Grantee to the other during the one (1) year prior to the particular renegotiation interval. If both parties agree to renegotiation, renegotiation shall be directed towards effecting

alterations in the terms and conditions of this Franchise to reflect any significant changes which occurred during the interim period.

(2) If any renegotiation prior to the end of the term, including extensions of this Franchise, results in agreement between the City and Grantee, or if, alternatively, both parties agree, at any renegotiation interval as defined above, that no renegotiation is needed or required, then the term of this Franchise shall be extended for an additional five (5) years by an appropriate action of the City Council.

(3) This Franchise shall terminate without further action by the City at the end of the term of this Franchise; provided, however, that the total term of the Franchise may be extended to fifty (50) years; provided, further, that the City Council, at or before the end of the term, or the term as extended, retains the exclusive power to grant a further extension, or a renewal of this Franchise, or a new Franchise to Grantee.

Section 2. All other provisions of Ordinance No. O-15213 (New Series) remain in full force and effect.

Section 3. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: John W. Witt, City Attorney

By _____
C. M. Fitzpatrick
Senior Chief Deputy

CMF:ps
7/13/83
Or.Dept:T&LU
Form=r.none

Councilmen	Yeas	Nays	Not Present	Ineligible
Bill Mitchell	☑	☐	☐	☐
Bill Cleator	☑	☐	☐	☐
Gloria McColl	☑	☐	☐	☐
William Jones	☑	☐	☐	☐
Ed Struiksma	☑	☐	☐	☐
Mike Gotch	☑	☐	☐	☐
Dick Murphy	☑	☐	☐	☐
Uvaldo Martinez	☑	☐	☐	☐
Mayor Roger Hedgecock	☑	☐	☐	☐

AUTHENTICATED BY:

Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

(Seal)

By Jane A. Blackwell, Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

AUG 16 1983, and on SEP 12 1983.

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

(Seal)

By Jane A. Blackwell, Deputy.

Office of the City Clerk, San Diego, California

Ordinance Number O-16042 Adopted SEP 12 1983

CC-1255-A (REV. 1-82)

Effective 11-25-82 Property S/A AT&C Legal

(0-83-72)

ORDINANCE NO. O- 15843
(New Series)

OCT 25 1982

AN ORDINANCE OF THE CITY OF SAN DIEGO AMENDING ORDINANCE NO. 154834 (N.S.) AND ORDINANCE NO. 15213 (N.S.) GRANTING TO AMERICAN TELEVISION AND COMMUNICATIONS CORPORATION THE NONEXCLUSIVE RIGHT, PRIVILEGE AND FRANCHISE TO LAY AND USE LINES, WIRES, COAXIAL CABLE AND APPURTENANCES FOR TRANSMITTING, DISTRIBUTING AND SUPPLYING RADIO AND TELEVISION SERVICE ALONG, ACROSS AND UPON THE PUBLIC STREETS, WAYS, ALLEYS AND PLACES WITHIN CERTAIN AREAS OF THE CITY OF SAN DIEGO AND REPEALING ORDINANCES NO. 8926 (N.S.) AND NO. 12106 (N.S.) CONCERNING THE SERVICE TERRITORY KNOWN AS RANCHO BERNARDO.

WHEREAS, The City of San Diego has by Ordinance No. 8926 (N.S.) granted the nonexclusive right, privilege and franchise to lay and use lines, wires, coaxial cable and appurtenances for transmitting, distributing and supplying radio and television antenna service along, across and upon certain public streets, ways, alleys and places within the City of San Diego known as the Rancho Bernardo area to Rancho Bernardo Antenna Systems, Inc., as more particularly set forth in said ordinance; and

WHEREAS, The City of San Diego has by Ordinance No. 12106 (N.S.) consented to the transfer to American Television and Communications Corporation ("ATC") of the franchise heretofore granted by Ordinance No. 8926 (N.S.) to Rancho Bernardo Antenna Systems, Inc. subject to all the terms and conditions contained in said Ordinances No. 8926 (N.S.) and No. 12106 (N.S.); and

WHEREAS, The City of San Diego has by Ordinance No. 15213 (N.S.) and Ordinance No. 15483 (N.S.) granted to ATC the non-exclusive right, privilege and franchise to lay and use lines, wires, coaxial cable and appurtenances for transmitting, distributing and supplying radio and television antenna service along, across and upon the public streets, ways, alleys and places within certain other areas of the City of San Diego, as more particularly set forth in said ordinances; and

WHEREAS, ATC has requested The City of San Diego to consolidate ATC's franchise rights and obligations as set forth in Ordinances No. 8926 (N.S.) and No. 12106 (N.S.) with those rights and obligations provided for in Ordinance No. 15213 (N.S.) and Ordinance No. 15483 (N.S.), subject to certain terms and conditions; and

WHEREAS, it appears appropriate and desirable to The City of San Diego to so consolidate ATC's rights and obligations; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Ordinances No. 8926 (N.S.) and No. 12106 (N.S.) be and they are hereby repealed.

Section 2. That Ordinance No. 15213 (N.S.), Section 6, and Ordinance No. 15483 (N.S.), Section 6, be and they are hereby amended to read as follows:

Section 6. DESIGNATION OF SERVICE AREA

The service area referred to in Section 3 of this ordinance is as follows:

(a) All areas within the corporate limits of the City of San Diego lying northerly of the center line of the San Diego River Channel, as said line was established by the City Council in Document No. 750693 on file in the office of the City Clerk which is by this reference incorporated into this ordinance as if set out fully herein.

(b) Provided, however, that in no event shall the foregoing service area descriptions exclude from this franchise ordinance any area now served by Grantee and inadvertently omitted due to inaccuracies or oversight in said service area description.

Section 3. That Ordinance No. 15213 (N.S.), Section 15(a), be and it is hereby amended to read as follows:

Section 15. REGULATION OF RATES AND SERVICE

(a) The City Council shall have the power and right at all times for the duration of the Franchise granted by this ordinance to require Grantee to conform to reasonable rules and regulations now or hereafter adopted by the City Council, including the power to regulate and establish reasonable rates and charges by Grantee for services rendered under this ordinance. The establishment of such rules and regulations shall be discretionary with the City Council. With the

exception of rate increases provided for in subsection 15(b) below, the establishment of rates and charges shall only be made subsequent to appropriate public proceedings affording due process, which proceedings shall be held upon request therefor by Grantee or at the initiation of the City, all in accordance with the City's established rules and regulations for rate setting proceedings. However, Grantee may establish its own rates and charges for services for which the City Council has not affirmatively established rates and charges; provided, however, that Grantee shall at all times keep, maintain and provide City with separate, operational and financial records for the Rancho Bernardo system as presently described on Exhibit C attached hereto and by this reference made a part hereof in order that the operations and rate structures of said system may be analyzed and inspected by the City as a separate operating entity and rates established therefor at all times during the effective period of this Franchise.

Section 4. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By C. M. Fitzpatrick
C. M. Fitzpatrick
Senior Chief Deputy

CMF:vl:490.3
9/17/82
Or.Dept. T&LU

All that portion of Rancho San Bernardo, in the City of San Diego, County of San Diego, State of California, according to the Map thereof recorded in Book 2, Page 462 of Patents, records of said County, described as follows:

Beginning at the Southeast corner of said Rancho San Bernardo; thence along the boundary of said Rancho according to Record of Survey No. 6081, records of said County, North 83° 51' 43" West 12,174.55 feet to a point; thence leaving said Rancho Boundary and continuing along said Record of Survey No. 6081, North 12° 50' 05" East 5,273.25 feet to a point; thence North 85° 23' 24" West 982.10 feet to a point; thence North 12° 20' 52" East 12,089.08 feet to a point; thence leaving the boundary of said Record of Survey No. 6081, and continuing along the prolongation of the previous course, North 12° 20' 52" East to an intersection with the 315 foot contour line of Lake Hodges (mean sea level datum); thence generally Easterly along said 315 foot contour line to an intersection with the East 1,758,000 grid (California Grid Zone 6); thence due East to an intersection with the East boundary of said Rancho San Bernardo; thence Southerly along said East boundary to the POINT OF BEGINNING.

EXHIBIT C

Franchise - 5/4

ORDINANCE NO. O- 15213
(New Series)

O. 80-110
(Rev. 1/11/80)

MAR 10 1980

AN ORDINANCE OF THE CITY OF SAN DIEGO GRANTING TO AMERICAN TELEVISION AND COMMUNICATIONS CORPORATION THE NONEXCLUSIVE RIGHT, PRIVILEGE AND FRANCHISE TO LAY AND USE LINES, WIRES, COAXIAL CABLE AND APPURTENANCES FOR TRANSMITTING, DISTRIBUTING AND SUPPLYING RADIO AND CABLE TELEVISION SERVICE ALONG, ACROSS AND UPON THE PUBLIC STREETS, WAYS, ALLEYS AND PLACES WITHIN CERTAIN AREAS OF SAN DIEGO; WHICH ORDINANCE REPEALS AND REPLACES ORDINANCE NOS. 9085 (N.S.), 9824 (N.S.), 9966 (N.S.), 11864 (N.S.), 10502 (N.S.), 11863 (N.S.), 10110 (N.S.), 11865 (N.S.), 10207 (N.S.) and 11862 (N.S.).

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SEC. 30 EFFECTIVE DATE OF ORDINANCE

WHEREAS, The City of San Diego previously adopted five ordinances granting nonexclusive cable television franchises for the use of public streets to separate entities as follows:

Southwestern Cable	Ord.	No.	9085	(N.S.)	Adopted	9/29/64
Penasquitos Antenna	"	"	9966	"	"	7/7/76
Mira Mesa Antenna	"	"	10502	"	"	7/7/76
University Antenna	"	"	10110	"	"	7/7/76
South Bay Terraces Antenna	"	"	10207	"	"	7/7/76

WHEREAS, the transfer of said franchises to American Television and Communications Corporation was authorized by the City Council as follows:

Ord.	No.	9085	(N.S.)	by	Ord.	No.	9824	(N.S.)	adopted	6/20/68
"	"	9966	"	"	"	"	11864	"	"	7/7/76
"	"	10502	"	"	"	"	11863	"	"	7/7/76
"	"	10110	"	"	"	"	11865	"	"	7/7/76
"	"	10207	"	"	"	"	11862	"	"	7/7/76

WHEREAS, The City of San Diego and American Television and Communications Corporation desire to consolidate said franchises into one and standardize their provisions and terms; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego that the above numbered ordinances are hereby repealed and the following provisions are hereby adopted in place thereof:

Section 1. CITATION OF ORDINANCE

This ordinance may be cited as the City of San Diego American Television and Communications Franchise Ordinance.

Section 2. RULES OF CONSTRUCTION

This ordinance shall be construed liberally in order to effectuate its purposes. Unless otherwise specifically prescribed in this ordinance, the following provisions shall govern its interpretation and construction:

(a) When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number.

(b) Time is of the essence of this ordinance. Grantee shall not be relieved of its obligation to comply promptly with any provision of this ordinance by any failure of City to enforce prompt compliance with any of its provisions.

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

(d) Grantee shall have no recourse whatsoever against City for any loss, cost, expense or damage arising out of any provision or requirement of this ordinance or the enforcement thereof.

(e) This ordinance does not relieve Grantee of any requirement of the City Charter or of any ordinance, rule, regulation or specification of City now or hereafter in effect, including, but not limited to, any requirement relating to street work, street excavation permits, undergrounding of utility facilities, including cable television system facilities, or the use, removal or relocation of property in streets.

(f) Provisions of this ordinance shall be construed in accordance with Sections 103, 103.1 104 and 105 of the Charter of The City of San Diego.

(g) None of the provisions of this Ordinance shall deprive Grantee of any rights, privileges or protections afforded under the express provisions of the Charter and ordinances of the City of San Diego and Constitution and laws of the State of California or the United States of America. Nor shall the City exercise any of its rights and powers in an arbitrary or capricious manner, or without affording Grantee due process of law.

Section 3. PURPOSE AND INTENT

It is the purpose and intent of this ordinance to grant a franchise to engage in the business of operating a Cable Television System in that portion of the City of San Diego particularly described in Section 6 of this ordinance.

Section 4. DEFINITIONS

Whenever in this ordinance the following words or phrases are used, they shall be construed as follows:

(a) "City" shall mean The City of San Diego, a municipal corporation in the State of California and successors in interest of the City.

(b) "Council" shall mean the City Council of City and successors in interest of the Council.

(c) "Dwelling Unit" shall mean a room or suite of rooms in a building or portion thereof, including in a mobile home, as that term is defined in Section 18008 of the California Health and Safety Code, used, or designed or intended to be used, for living purposes by one family. "Dwelling Unit" shall not mean a building used solely for commercial uses or a building providing rooms or suites of rooms exclusively for transient occupancy use as such use is described in Section 35.0102 of the San Diego Municipal Code.

(d) "Franchise" shall mean the right and authority granted by this ordinance to Grantee to construct, maintain and operate a Cable Television System through use of public streets, other public rights of way or public places in City.

(e) "Franchise Property" shall mean all property owned, installed or used in the public streets, other public rights of way or public places in City under authority of this ordinance by Grantee.

(f) "Grantee" shall mean American Television and Communications Corporation and any lawful successor or assignee of the original Grantee.

(g) "Public School" shall mean any school at any educational level operated within the corporate limits of the City of San Diego by any public school system, including, but not necessarily limited to, elementary, junior high school, high school, community college, state colleges and universities.

(h) "Street" shall mean the surface, the air space above the surface and the area below the surface of any public street, other public right of way or public place.

(i) "Cable Television System" shall mean a system of antennas, cables, wires, lines, towers, wave guides, or any other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, amplifying and distributing, audio, video and other forms of electronic or electrical signals, located in the City as delineated in Section 6 of this ordinance.

(j) "Subscriber" shall mean a member of the general public that receives programming distributed by a cable system and does not further distribute it. This term shall include the occupants of one or more multiple-occupancy buildings who receive signals distributed by an internal distribution system that is interconnected to a Cable Television System for this purpose.

(k) "Total Gross Receipts" shall mean any and all compensation and other consideration collected or received or in any manner gained or derived by Grantee from the operation of its Cable Television System. Total gross receipts shall not include (a) uncollectible amounts; (b) refunds or rebates made

by Grantee; (c) revenues received as a direct reimbursement of Grantee's expense in the operation of any access channels; (d) sales, ad valorem, or other types of "add on" taxes, levies or fees calculated by gross receipts or gross revenues which Grantee might have to pay or collect for Federal, State or local government (exclusive of franchise fees provided for herein); (e) revenues received for advertising on Grantee's local origination channel, to the extent of Grantee's direct costs of operation of Grantee's local origination channel; (f) nonoperating revenues such as interest income or gain from sale of an asset; (g) revenues received for converter deposits; and (h) revenues received from the service extension surcharge authorized in Section 13(b) of this ordinance.

(l) "Undeveloped Region" shall mean any area in which there exist few or no buildings, streets or other improvements.

(m) "Head End Facilities" shall mean that portion of the cable television system consisting of the television receiving antenna and structures necessary to support such antenna in a position to receive television broadcast signals and any microwave facilities that are a part of such antenna system.

(n) "Resale Customer" shall mean any customer who provides, operates and maintains its own cable television distribution system within a multi-dwelling-unit complex and is eligible to receive

for its service payment at the rate for resale customers as established by the City Council.

Section 5. NATURE AND EXTENT OF GRANT

The franchise granted by this ordinance to Grantee, constitutes authority to use the public streets, other public rights of way or public places in City, to engage in the business of operating a Cable Television System within the service area described in Section 6 of this ordinance subject to all of the terms and conditions contained in this ordinance. Pursuant to such authority, until lawfully revoked, Grantee may construct, maintain and operate wires, cables, poles, conduits, manholes and other television conductors and equipment necessary for the maintenance and operation of a Cable Television System.

With the exception of channel converters, Grantee shall not engage in the business of selling, leasing or renting television sets which make use of signals transmitted by its system, nor shall Grantee engage in the repair of or sale of parts for such sets.

Section 6. DESIGNATION OF SERVICE AREA

The service area referred to in Section 3 of this ordinance is as follows:

(a) All areas within the corporate limits of the City of San Diego lying northerly of the center line of the San Diego River Channel, as said line was established by the City Council in Document No. 750693 on file in the

office of the City Clerk which is by this reference incorporated into this ordinance as if set out fully herein; provided, however, that those areas more particularly delineated in Exhibit A of Ordinance No. 8926 (N.S.) on file in the office of the City Clerk which is by this reference hereby incorporated into this ordinance as if set out fully herein, are hereby excluded from the service area granted from this franchise ordinance. Said exhibit to contain a map and legal description of said excluded areas.

(b) Those additional areas within the corporate limits of the City of San Diego lying southerly of the line referred to in (a) above, as said additional areas are more particularly delineated in Document No. 730147 on file in the office of the City Clerk which is by this reference hereby incorporated into this ordinance as if set out fully herein, said document to contain a map and legal description of said additional areas;

(c) Provided, however, that in no event shall the foregoing service area descriptions exclude from this franchise ordinance any area now served by Grantee and inadvertently omitted due to inaccuracies or oversight in said service area description.

Section 7. DURATION OF GRANT

(a) The Franchise shall become effective on the thirtieth (30th) day after the passage of this ordinance provided that prior to the date of the passage of this ordinance Grantee has filed with the City Clerk:

(1) A written instrument, addressed to the Council, accepting the Franchise and agreeing to comply with all the provisions of this ordinance;

(2) A construction plan setting forth projected installation accomplishment in accordance with paragraph (b), Section 11 of this ordinance.

(3) Performance surety bonds, cash deposits or deposits in any Federal or State of California chartered bank or savings and loan association in accordance with the provisions of Section 11 of this ordinance.

(b) The term of this Franchise shall be twenty (20) years, commencing on the effective date of the Franchise as provided in paragraph (a) of this section; provided, however, that the term of this Franchise shall be extended for an additional period of ten (10) years upon a determination by the City Council that Grantee has fully complied with all provisions of the Franchise during the initial three (3) years of the term of the Franchise, said determination to be made at the end of the third year of the effective date of this Franchise upon Grantee's application to the City Council and after a public hearing of the City Council; provided, further, that the term of this Franchise may be extended in accordance with the procedures set forth below:

(1) The provisions of this ordinance shall be subject to renegotiation every fifth (5th) year

during the term of the Franchise, including any extensions thereof. These renegotiation opportunities shall be referred to as "renegotiation intervals." Renegotiation shall be initiated upon written notice given by the City or Grantee to the other during the one (1) year prior to the particular renegotiation interval. If both parties agree to renegotiation, renegotiation shall be directed towards effecting alterations in the terms and conditions of this Franchise to reflect any significant changes which occurred during the interim period.

(2) If any renegotiation prior to the end of the term, including extensions of this Franchise, results in agreement between the City and Grantee, or if, alternatively, both parties agree, at any renegotiation interval as defined above, that no renegotiation is needed or required, then the term of this Franchise shall be extended for an additional five (5) years by an appropriate action of the City Council.

(3) This Franchise shall terminate without further action by the City at the end of the term, including extensions, of this Franchise; provided, however, the total term of this Franchise, with extensions, shall not exceed thirty (30) years from the effective date of this ordinance; provided, further, that the total term of the Franchise with extensions may be extended to fifty (50) years upon

a determination by the City Council, pursuant to subsection (b) of this section, that Grantee has fully complied with all provisions of this Franchise during the initial three (3) years of the term of the Franchise; provided, further, that the City Council, at or before the end of the term, or the term as extended, retains the exclusive power to grant a further extension, or a renewal of this Franchise, or a new Franchise to Grantee.

(c) The Franchise may be terminated at any time by Council in the event Council finds, after notice and hearing, that:

(1) The Grantee fails to comply with any material provision of this ordinance; however, termination proceedings shall only be commenced in a public hearing affording due process, if, after sixty (60) days from written notification from the City stating with particularity the grounds upon which the City relies, Grantee fails to correct stated violation. In the event stated violation is not reasonably curable within sixty (60) days, the Franchise shall not be terminated or revoked if the Grantee provides, within the said sixty (60) days, a plan, satisfactory to the City Manager to remedy the violation and continues to demonstrate good faith in seeking to correct said violation.

If the Council finds after said public hearing, that Grantee has breached any material provision of this ordinance, Grantee shall have 30 days from the date of the Council's finding to correct the stated breach or to provide the City Manager within the same 30 days a written plan satisfactory to the City Manager to remedy the breach in a reasonable period of time. In addition, if the Council determines, after said public hearing, to terminate the Franchise on account of said breach, and if within 30 days of such Council determination Grantee requests in writing that there be an independent and de novo determination as to whether or not Grantee has breached any material provision of this ordinance, then the Franchise shall not be terminated until and unless such determination is made by a court of competent jurisdiction.

It shall not be a failure to comply with a material provision of this ordinance for Grantee to comply with any rules and regulations of the Federal Communications Commission, or any Federal or State regulatory commission or agency having jurisdiction over Grantee's operations.

(2) City wishes to purchase the property of Grantee, as provided in Section 104 of the Charter of City; provided, however, that Grantee shall be given thirty (30) days' notice of any termination proceedings.

Section 8. LIMITATIONS UPON GRANT

(a) No privilege or exemption is granted or conferred by this ordinance except those specifically prescribed in it and necessarily included in it.

(b) The Franchise granted by this ordinance is subordinate to any public use or any other type of franchise or lawful occupancy existing in 1964 at the time of the grant of Southwestern Cable Company's original franchise, of any public highway, street, or road or other public property for the purpose of erecting, operating and maintaining poles, lines, conduits, cables, gas pipe lines and other necessary fixtures used in connection with the purpose of other existing types of franchises or any extension of them.

(c) The Franchise granted by this ordinance is a privilege personal to the original Grantee. It cannot in any event be sold, transferred, leased, assigned, or disposed of as a whole, or in part, either by forced sales, merger, consolidation, by operation of law, or otherwise, without prior consent of City expressed by ordinance, and then only under such conditions as may be prescribed in the consenting ordinance which consent shall not unreasonably be withheld; provided, however, that no such consent shall be required for any transfer in trust, mortgage, or other hypothecation, as a whole, to secure an indebtedness.

(d) In the event the Grantee is a corporation, prior approval of the City Council, expressed by resolution, shall be required when ownership or control of thirty percent (30%) or more of the voting stock of Grantee is

acquired by a person or a group of persons acting in concert, none of whom already own or control thirty percent (30%) or more of the voting stock, singularly or collectively. Any such acquisition occurring without prior approval of the City Council shall constitute a failure to comply with a provision of this ordinance within the meaning of subparagraph (1) of paragraph (c) of Section 7 of this ordinance.

Section 9. RIGHTS RESERVED TO CITY

(a) City provides and reserves to itself every right and power which is required to be reserved or provided in this ordinance by any provision of the Charter of City or of any ordinance of City, and Grantee by its acceptance of this Franchise agrees to be bound thereby and to comply with any action or requirement of City in its reasonable exercise of any such right or power.

(b) Neither the granting of this Franchise nor any provision of this ordinance shall constitute a waiver or bar to the reasonable exercise of any governmental right or power of City.

(c) The Franchise granted by this ordinance shall be nonexclusive and neither the granting of this Franchise nor any of the provisions contained in this ordinance shall prevent City from granting any identical or similar franchise to any person or corporation other than the Grantee, either within or without the area designated in Section 6.

Section 10. SERVICES TO CITY

(a) Grantee shall at its own expense and without any cost to City whatsoever, make a good faith effort to provide and maintain the following facilities and services to City and Public Schools as hereinafter provided:

(1) One cable television connection to each City unit designated by the City Manager such as police stations, fire stations, public libraries and other City facilities within Grantee's authorized service area that require an aerial drop of 150 feet or less from the existing cable television distribution system; provided that City shall have obtained or will furnish to Grantee all necessary easements and rights necessary to provide such service. Furthermore, unless mutually agreed to by City and Grantee, Grantee shall not be required to construct any underground facilities or any new support poles for making such service available. Grantee shall not be required to provide or maintain the cable television distribution system within said facilities; and

(2) One cable television connection to each public elementary school site, secondary school site, college or university school site and educational administrative site within Grantee's authorized service area that requires an aerial drop of 150 feet or less from the existing cable television distribution system; provided that the entity shall have obtained

or will furnish to Grantee all necessary easements and rights necessary to provide such service. Furthermore, unless mutually agreed to by City and Grantee, Grantee shall not be required to construct any underground facilities or any new support poles for making such service available. Grantee shall not be required to provide or maintain the cable distribution system within said facilities.

(b) In the event that City or any Public School desires to have additional connections of the cable television system or the cable television distribution system within such buildings installed by Grantee, Grantee shall make such connections or installations charging to the City or Public School the actual variable cost to Grantee of such connections or installations. Grantee shall reserve the right to subcontract such installations or connections when deemed necessary. Installation of all additional connections to public buildings shall be completed within sixty (60) days of receipt of request for such connections.

(c) Grantee shall not charge City or any Public School for delivering any regularly carried basic service signals to any of the buildings described in subsections (a) or (b) of this section.

(d) Grantee shall provide without cost one channel for use by Local Governments for the distribution of programming in the public interest. Grantee shall provide

interconnection of such channel with all other Cable Television Systems operating pursuant to a franchise granted by the City; provided, however, that the receiving Cable Television System shall bear not more than the actual direct cost of receiving Grantee's transmission of such channel. Such receiving costs shall be subject to review and approval by the City. If Grantee operates a remote or permanent vehicle and equipment for telecasting and video taping, Grantee shall provide origination service to the City at such reasonable times and costs as are mutually agreed upon.

(e) Grantee shall provide without cost, one channel for use by Public Schools. As required by Grantee, the Public Schools shall save and hold harmless Grantee from any uses made by the Public Schools in the distribution of programming.

(f) City shall save and hold harmless Grantee from any uses made by the City in the distribution of programming in the public interest as provided for in Subsection (d) of this section.

(g) Grantee shall provide without cost, one channel for public or community access in accordance with reasonable rules, regulations and conditions mutually established by Grantor and Grantee after appropriate public hearing, provided, however, that to the extent that the Federal Communications Commission (FCC) exercises jurisdiction as determined by Federal statute or decisional law to be valid and appropriate, said access rules shall govern.

Section 11. ESTABLISHMENT AND EXTENSION OF SERVICE

(a) Grantee shall extend and offer service to one hundred percent (100%) of the Dwelling Units existing within the franchise area on the effective date of the ordinance by the end of the second (2nd) year after the effective date of this ordinance with the exception of those Dwelling Units falling under the exclusions set forth in Section 12.

(b) To insure conformance with the provisions of this section, Grantee shall within the period specified in paragraph (a) of Section 7 file with the City Clerk and the City Manager:

(1) A construction plan showing the schedule of extension of service conforming to the requirements of paragraph (a). Said plan shall be in a format prescribed by the City Manager and shall at a minimum include cable installation plans and maps presenting the total amount of cable to be installed during the two-year period provided for in paragraph (a) of this section, the amounts of cable to be installed during each year, and any areas to be excluded from the plan as provided in Section 12. Grantee's performance obligation under such construction plan shall be subject to delays caused by acts of God, natural disasters and calamities or other cause, without fault and beyond the reasonable control of Grantee (financial inability excepted); and Grantee shall furnish to City specific details of the event or

events which cause the delay and the efforts undertaken by Grantee to minimize the delays caused by such event or events.

(2) An acceptable corporate performance bond in the amount of $50,000 which shall guarantee conformance with the construction plan filed in accordance with paragraph (b)(1) of this section. In lieu of said bond Grantee may deposit cash with The City of San Diego or in a Federal or State of California bank or savings and loan association in the name of The City of San Diego, but with interest reserved to the Grantee, on terms and conditions approved by the City Attorney.

(c) In areas where Grantee must install its system underground, Grantee may charge an installation charge up to the actual cost of connecting to the distribution system.

(d) Extensions of service to Dwelling Units developed after the effective date of this ordinance shall be made prior to the acceptance of the subdivision by the City unless such locations are excepted under the provisions of Section 12.

(e) Subsequently developed locations which are exempted from the mandatory extension requirements of paragraph (d) of this section under the provisions of Section 12 shall be provided service upon request under the provisions of Section 13.

(f) Annually, during January of each year, following the adoption of this Franchise, as cable extension and service required in paragraph (a) of this section is actually accomplished, the City Manager, at the request of the Grantee, may authorize a reduction in the amount of the corporate performance bond or deposit specified in paragraph (b)(2) of this section in proportion to the amount of the plan actually accomplished to that date. Upon completion of all cable extension work required by Section 11(a), the City Manager shall authorize release of the remaining bond or deposit to Grantee.

Section 12. EXCEPTIONS TO EXTENSION OF SERVICE REQUIREMENTS

Grantee shall not be required to extend or offer service:

(a) In any area where the investment required per prospective subscriber is greater than the maximum capital investment per subscriber as established by application of the following construction formula:

$$I \quad \text{(the maximum capital investment per subscriber)} = \frac{R - E}{Crf + t}$$

$$\text{where } t = \frac{e}{1 - e} \quad (a-bc) \left[1 - \frac{Gf}{15} \right]$$

The variables in these formulas are defined as follows:

I = The maximum capital investment per subscriber.

R = Annual incremental revenue from one additional subscriber.

E = Incremental annual maintenance and operating cost of maintaining one additional subscriber.

These shall only include actual cash costs and shall exclude such non-cash expenses as depreciation and amortization costs.

t = Annual income taxes as a proportion of initial investment.

Crf = Capital recovery factor assuming a fifteen (15) year life and an interest rate equal to Grantee's last authorized rate of return.

e = Combined federal and state tax rate.

a = Grantee's last authorized rate of return.

b = Interest rate paid on borrowed funds.

c = Fraction of net plant financed by borrowing.

Gf = Uniform gradient factor to convert a gradient series to an equivalent annual series assuming a fifteen (15) year life and an interest rate equal to Grantee's last authorized rate of return.

Provided, however, that the assumption of a fifteen (15) year capital recovery factor and uniform gradient factor (as defined herein) for the purpose of determining the construction formula set forth above shall not be construed as establishing any precedent for any other purpose, including but not limited to ratemaking.

The number of prospective subscribers shall be equal to 50% of the single family homes plus 30% of the multi-family Dwelling Units to be passed.

(b) An annual review of the construction formula shall be held in March of each year. Grantee shall submit updated computations for the maximum capital investment per subscriber using the construction formula set forth in paragraph (a). These computations shall be reviewed by the City

Manager, and when approved, the maximum capital investment so computed shall be used by Grantee in determining service extension requirements until the completion of the next annual review.

(c) All exceptions claimed by Grantee under provisions of paragraph (a) shall be subject to review and approval by the City Manager.

Section 13. SYSTEM EXTENSIONS TO EXCEPTED AREAS

(a) Grantee shall extend service to areas excluded from mandatory extension by the provisions of paragraph (a), Section 12, if at least thirty (30) percent of the single family Dwelling Units to be passed by the extension agree in writing to pay for the installation of cable television service facilities on their property. Grantee shall begin construction of the cable service extension within one year of receiving these written agreements.

(b) In areas where Grantee extends service under the provisions of (a), Grantee shall be authorized to collect a service extension surcharge in addition to any other normal monthly service charges. The purpose of the surcharge is to allow Grantee to fully recover its excess investment in the extension project. The surcharge shall be computed as follows:

(1) Divide the total cost of making the extension by the number of prospective subscribers as determined in accordance with the provisions of paragraph (a), Section 12.

(2) From the figure obtained in (b)(1) subtract Grantee's maximum capital investment per subscriber computed in paragraph (a), Section 12, to get the amount of Grantee's excess per subscriber investment.

(3) Multiply Grantee's excess per subscriber investment as computed in (b)(2) by the capital recovery factor obtained by assuming a twenty year period and an interest rate equal to Grantee's last authorized rate of return to get the annual per subscriber surcharge. Divide this figure by twelve (12) to get the monthly service extension surcharge which may be collected from subscribers in the extension area.

(c) The surcharge authorized and computed in (b) may be collected by Grantee for a period of twenty years subsequent to the activation of the extension or until Grantee's excess investment is fully amortized, whichever occurs first.

(d) With approval of the City Manager, variations in the extension provisions set forth in (a) and (b) above may be allowed if the application of these provisions would result in an undue burden being placed on Grantee or main body of system subscribers.

Section 14. ABANDONMENT OF SERVICE

(a) After Grantee has established service pursuant to this ordinance in the Franchise area, such service shall not be suspended or abandoned in the whole of or any part of the Franchise area unless the suspension or abandonment is authorized by the City Council.

(b) Whenever Grantee shall file with the City Council a written application alleging that the public interest, convenience and necessity no longer require that Grantee furnish service pursuant to this ordinance in the whole of or in any part of the Franchise area, the City Council, at a public hearing, shall take evidence upon that question and shall make a finding with respect to it. Notice of the hearing shall be given by Grantee in writing to each Subscriber in the part of the Franchise area in question at least fifteen (15) days prior to the date scheduled for the hearing. If the City Council shall find that the public interest, convenience and necessity no longer require that Grantee furnish service, the City Council, after hearing as provided herein, shall authorize suspension or abandonment of service upon such reasonable terms and conditions as may be prescribed by the City Council.

Section 15. REGULATION OF RATES AND SERVICE

(a) The City Council shall have the power and right at all times for the duration of the Franchise granted by this ordinance to require Grantee to conform to reasonable rules and regulations now or hereafter adopted by the City Council, including the power to regulate and establish reasonable rates and charges by Grantee for services rendered under this ordinance. The establishment of such rules and regulations shall be discretionary with the City Council. With the exception of rate increases provided for

in subsection 15(b) below, the establishment of rates and charges shall only be made subsequent to appropriate public proceedings affording due process, which proceedings shall be held upon request therefor by Grantee or at the initiation of the City, all in accordance with the City's established rules and regulations for rate setting proceedings. However, Grantee may establish its own rates and charges for services for which the City Council has not affirmatively established rates and charges.

(b) Grantee may, upon filing a notice of intention thirty (30) days in advance with the City Manager, receive an increase in the amount of its maximum allowable cable service rates subject to the following conditions and limitations:

(1) The amount of the increase in percent shall be limited to six-tenths (6/10ths) multiplied by the percentage increase, since Grantee's last rate increase, in the San Diego Area Consumer Price Index for all Urban Consumers, as compiled by the United States Department of Labor, Bureau of Labor Statistics. In no event shall the amount of the increase exceed ten (10) percent of the service rates.

(2) In the event that the consumer price index referred to in paragraph (b)(1) shall no longer be published, then another similar, generally recognized index may be substituted upon approval of the City.

(3) Grantee shall provide to the City Manager, along with the notice of intention, such information as may be required to document the basis of the request.

(4) Increases shall be subject to the review and approval of the City Manager. The City Manager shall notify Grantee in writing of approval of the increase within ten (10) calendar days of receipt of accurate and complete information, satisfactorily supporting any increase requested in accordance with (b)(1) above. In the absence of any written communication from the City Manager within said ten (10) days to the contrary, the increase is deemed approved.

(5) Grantee shall give notice to subscribers at least fifteen (15) days in advance of the implementation of such an increase, and no part of the increase shall be applicable to any bills for service which have already been sent to subscribers.

(6) No more than one such increase may be implemented in any one calendar year although Grantee shall have at any time the right to submit a request to the City Council for any additional rate relief as provided in the rules and regulations established by Council, as provided for in Section 15(a) above.

(c) Grantee shall:

(1) Operate the Cable Television System authorized by this Franchise in accordance with the minimum technical standards set forth in Chapter VII, Article 3,

Division 1 of the San Diego Municipal Code (Section 73.0101 et seq.), and any subsequent amendments thereto, to the effect that the Subscriber shall receive the best possible signal to his television set consistent with the state of the art at rates reasonable to Grantee and Subscriber.

(2) Limit failure to a minimum by locating and correcting malfunctions promptly, but in no event longer than twenty-four (24) hours after notice, except for unavoidable delays, without fault and beyond the reasonable control of Grantee (financial inability excepted).

(3) Upon complaint by a Subscriber to make a demonstration satisfactory to the City Manager or his designated representative that a signal is being delivered which is of sufficient strength and quality to meet the said technical standards referenced to in (1) above.

(4) Render efficient service, making repairs promptly and interrupting service only for good cause and for the shortest time possible; such interruptions insofar as possible shall be preceded by notice given to Subscribers twenty-four (24) hours in advance and shall occur during periods of minimum use of system.

(5) Maintain an office within the City of San Diego, which office shall be open during reasonable business hours, have a local telephone number

listed in the directory of The Pacific Telephone and Telegraph Company, and be so operated that complaints and requests for repair or adjustments may be received at any time.

(d) Grantee shall operate the Cable Television System authorized by this ordinance twenty-four (24) hours per day, seven (7) days per week.

(e) Grantee's performance obligation under this ordinance shall be subject to delays caused by acts of God, labor strikes, natural disasters and calamities of other cause, without fault and beyond the reasonable control of Grantee (financial inability excepted).

Section 16. UNDERGROUND SYSTEM

(a) The Cable Television System to be installed under authority of this ordinance shall be placed underground in all subdivisions which are subject to the provisions of paragraph 2, Section 102.0404 of the San Diego Municipal Code, except as otherwise provided in this Franchise.

(b) Where facilities are required to be installed underground, Grantee may place above ground the Head End Facilities and pedestals necessary to operate the system; provided, however, that irrespective of whether the system is aboveground or underground, no Head End Facilities shall be placed in any street.

(c) With approval of the City Manager, expressed in writing, Grantee may place coaxial cables aboveground in undeveloped regions of the service area. The City Manager,

in writing, at his sole discretion, may withdraw such permission at any time, after giving Grantee 30 days' notice of his intention to do so. When approval for aboveground cable is withdrawn, conversion to underground service shall be accomplished with minimal interruption of service to Subscribers.

(d) Under no circumstances may the City Manager grant permission to place aboveground in any street any portion of the Cable Television System authorized by this Franchise and required by Section 102.0404 of the San Diego Municipal Code to be constructed underground.

Section 17. LOCATION OF FRANCHISE PROPERTY

Franchise Property shall be constructed or installed only at such locations and in such manner as shall be approved by the City Manager, acting in the exercise of reasonable discretion.

Section 18. REMOVAL OR ABANDONMENT OF FRANCHISE PROPERTY

(a) In the event that any Franchise Property has been installed without complying with the requirements of this ordinance, Grantee shall, at the request of the City Manager and at its sole cost and expense, either install the Franchise Property in compliance with this ordinance or remove promptly from the street all Franchise Property other than any which the City Manager may permit to be abandoned in place. In the event of any such removal, Grantee shall promptly restore to a condition satisfactory to the City Manager the public street or other dedicated public right of way or other public places in the City from which the Franchise Property has been removed.

(b) Franchise Property to be abandoned in place shall be abandoned in the manner prescribed by the City Manager. Upon permanent abandonment of any Franchise Property in place, Grantee shall submit to the City Manager an instrument satisfactory in form to the City Attorney, transferring to City the ownership of the Franchise Property abandoned.

Section 19. CHANGES REQUIRED BY PUBLIC IMPROVEMENTS

Grantee shall, at its sole expense, protect, support, temporarily disconnect, relocate in the same street, alley, or public place, or remove from any street, alley or public place, any Franchise Property when required by the City Manager by reason of traffic conditions; public safety; street vacation; freeway and street construction; change or establishment of street grade; installation of sewers, drains, water pipes, power lines, signal lines, and tracks or any other type of structures or improvements including, but not limited to, placing such structures and improvements underground, by governmental agencies when acting in a governmental or proprietary capacity; provided, however, that Grantee shall in all such cases have the privilege and be subject to the obligation to abandon Franchise Property in place as provided in Section 18; and provided further that Grantee shall have the benefit of any local, state or federal law or regulation providing for reimbursement of or contribution toward Grantee's expense necessitated by such improvements. It is further provided, however, that where such improvements, requiring actions

to protect, support, disconnect, relocate or remove any Franchise Property by Grantee, are not for a municipal or governmental purpose Grantee may be required to engage in the above action only upon condition that the Grantee is reimbursed for any and all costs of such actions incurred by Grantee and occasioned by such improvements.

Section 20. FAILURE TO PERFORM STREET WORK

Upon failure of Grantee to commence, pursue or complete any work required by law or by the provisions of this ordinance to be done in any street, within the time prescribed and to the satisfaction of the City Manager, the City Manager may, at his option, cause such work to be done and the Grantee shall pay to the City the cost thereof and the itemized amounts reported by the City Manager to Grantee, within thirty (30) days after receipt of such itemized report.

Section 21. ANNUAL PAYMENTS TO THE CITY

(a) By its acceptance of this Franchise, Grantee agrees to pay to City annually in lawful money of the United States three percent (3%) of the Total Gross Receipts collected or received, or in any manner gained or derived by Grantee in each calendar year, or portion thereof, during the term of this Franchise, from the properties, operations and business referred to in Section 5 of this Franchise.

(b) Within sixty (60) days after the calendar quarters ending on March 31, June 30, September 30 and December 31 in each year during the term of this Franchise and forty-five (45) days after the expiration of the term of this Franchise, Grantee shall:

(1) File a statement in duplicate, verified by Grantee or by a general officer or other duly authorized representative of Grantee, showing in such form and detail as the City Manager may require from time to time the facts material to a determination of the amount due for the previous calendar quarter.

(2) Pay to the City Treasurer the money required to be paid by Grantee to City upon the basis of the data set forth in the quarterly statement required in paragraph (b)(1).

(c) Payments made to City by Grantee pursuant to this section for any calendar year shall be as a rental for use of the public right of way in lieu of any fee or tax prescribed by City for the same period, but only to the extent of such payment.

(d) In the event Grantee fails to make the payments for this Franchise on or before the dates due as hereinabove provided, Grantee shall pay, as additional consideration a sum of money equal to one percent (1%) of the amount due for each month or fraction thereof during which the payment is due and unpaid, as interest and for loss of use of the money due.

(e) The sanctions of paragraph (d) of this section are not exclusive, and do not preclude action by Council under the terms of subparagraph (1) of paragraph (c) of Section 7 of this ordinance in the event that payments become overdue by more than sixty (60) days.

Section 22. INDEMNIFICATION TO CITY

Grantee shall indemnify City, its officers and its employees, against all claims, demands, actions, suits and proceedings by others and against all liability to others, and against any loss, cost and expense resulting therefrom, including reasonable attorneys' fees, arising out of the exercise or enjoyment by Grantee of the Franchise granted by this ordinance, except as may arise from the governmental, school or public access channels described in Section 10(d), (e) and (g), irrespective of the amount of the bond designated in Section 11.

Section 23. INSPECTION OF PROPERTY AND RECORDS

(a) At all reasonable times Grantee shall permit examination by any duly authorized representative of the City Manager, City Engineer or the City Auditor of all Franchise Property located within the City. Grantee shall also permit any duly authorized representative of the City Manager, City Engineer or the City Auditor to examine and transcribe any and all maps and other records kept or maintained by Grantee or under its control concerning the operations, affairs, transactions or property of Grantee. If any of such maps or records are not kept in the City or upon reasonable request made available in the City, and if the City Manager, City Engineer or the City Auditor shall determine that an examination of such maps or records is necessary or appropriate to the performance of any of their duties, then all reasonable travel and maintenance expense necessarily incurred in making such examination shall be paid by Grantee.

(b) Grantee shall prepare and furnish to the City Manager, City Engineer or the City Auditor, and in the form prescribed by the City Manager, City Engineer or the City Auditor, such reports with respect to its operations, affairs, transactions or property as may be reasonably necessary or appropriate to the performance of any of the duties of the City Manager, City Engineer or the City Auditor in connection with this Franchise. Such reports may include, but are not limited to, a complete set of records and plans of all facilities as finally installed within the Franchise service area.

Section 24. DISPOSITION OF FRANCHISE PROPERTY OR CABLE DISTRIBUTION SYSTEM UPON EXPIRATION OR TERMINATION OF FRANCHISE

(a) Upon the expiration of this Franchise, or upon the termination of this Franchise under Section 7(c)(1) hereof, the City shall have the option to purchase the system in accordance with subsection (c) of this section. If the City elects to purchase the system, the Grantee shall promptly execute, upon receipt of the purchase price, all appropriate documents to transfer title to the City, and shall assign all other contracts, leases, licenses, permits and other rights necessary to maintain continuity of service to the public. Upon acquisition of and payment for the system, the Grantee shall cooperate with the City, or with any other person authorized or directed by the City to operate the system, in maintaining continuity of service. Grantee shall receive fair and reasonable compensation for

maintaining continuity of service. Nothing herein is intended as a waiver of any other rights the City may have.

(b) If the City, pursuant to Section 7(c)(2) hereof, exercises its right of eminent domain contained in Section 104 of the City Charter, City shall purchase the system for a price to be determined by the law affecting the purchase of public utility properties applicable on the effective date of this Franchise.

(c) If this Franchise ends (1) by termination as a result of the exercise by City of any right under Section 7(c)(1) hereof; or (2) by expiration of the term of this Franchise, the purchase price to the City for the Grantee's property shall be determined by agreement or by arbitration held pursuant to Section 25 of this Franchise. The standard for determining the price to be paid for the property so acquired shall be that provided by law affecting the purchase of public utility properties applicable on the effective date of this Franchise. Beginning with two years prior to expiration, and whether or not the City has then elected to purchase the system, either the City or the Grantee may demand an arbitration pursuant to Section 25 of this Franchise, for the purpose of determining the price on date of expiration, to be paid by the City if it elects to purchase the system. If the City does not purchase the system, the Grantee shall deal with the part of the system located in the streets in accordance with the provisions of subsections (d) and (e) of this section.

(d) In the event that (1) the use of any Franchise Property is discontinued for any reason for a continuous period of twelve (12) months; or (2) the Franchise has been terminated or has expired, and City has not exercised its rights pursuant to subsection (a) of this section, Grantee, at the direction of the City Manager, shall remove promptly from the street, at its expense, all or such portion of the Franchise Property which the City Manager may reasonably require. Alternatively, Grantee has the option of removing all or any portion of the Franchise Property from the street or other public places and rights of way at its expense. In the event of any such removals, Grantee shall promptly restore to a condition satisfactory to the City Manager the street or other dedicated public rights of way or other public places in City from which the Franchise Property has been removed.

(e) Franchise Property not removed may be abandoned in place and, if abandoned, shall be abandoned in the manner prescribed by the City Manager. Alternatively, Franchise Property not so removed may be sold or leased to third parties possessing the legal right to use the street or other dedicated public rights of way or other public places in City. Upon permanent abandonment of any Franchise Property in place, Grantee shall submit to the City Manager an instrument, satisfactory in form to the City Attorney, transferring to the City the ownership of the Franchise Property abandoned.

Section 25. ARBITRATION

Matters which are expressly made subject to a call for arbitration by either party under the provisions of this Franchise shall be determined by a panel of three arbitrators. Arbitration shall be mandatory as to both parties. Each of the parties, City and Grantee, shall appoint one arbitrator apiece. The third arbitrator shall be appointed by the Presiding Judge of the Superior Court of the County wherein such arbitration proceedings are to be conducted, San Diego County, California, except if the Presiding Judge declines to appoint, or the parties agree, the two arbitrators appointed by the parties shall appoint a third arbitrator. Arbitrations hereunder shall be governed by the provisions of the California Arbitration Act, Sections 1280 through 1294.2 of the Code of Civil Procedure. The expenses of the arbitration, including the fees of the arbitrators shall be borne by the parties in such manner as the arbitrators provide in their award. The determination of a majority of the arbitrators shall be binding on the parties.

Section 26. FILINGS AND COMMUNICATION WITH REGULATORY AGENCIES

A descriptive listing of all petitions, applications and communications of all types submitted by Grantee or City to the Federal Communications Commission, Securities and Exchange Commission, California Public Utilities Commission, or any other Federal or State regulatory commission

or agency having jurisdiction over any matter affecting operation of Grantee's Cable Television System shall be submitted every three (3) months commencing with the effective date of this Franchise. The City and Grantee shall have the right to request and receive complete copies of any and all such petitions, applications and communications; provided, however, that complete copies of any information required to be filed with the Federal Communications Commission in regards to technical performance requirements and standards shall be submitted simultaneously to the City. A copy of each document filed by Grantee with the City Clerk in accordance with this section shall be delivered to the City Manager and City Attorney.

Section 27. SEVERABILITY

Each section, part, term and/or provision of this agreement shall be considered severable, and if, for any reason, any section, part, term and/or provision herein is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation, such shall not impair the operation or affect the remaining portions, sections, parts, and/or provisions of this agreement, and the latter will continue to be given full force and effect and bind the parties hereto; and said invalid sections, parts, terms and/or provisions shall be deemed not to be a part of this agreement.

Section 28. FRANCHISE GRANTED UNDER AUTHORITY OF CHARTER

Notwithstanding any other provisions contained herein, this Franchise is granted solely and exclusively under Sections 103, 103.1, 104 and 105 of the Charter of The City of San Diego and under no other authority.

Section 29. PUBLICATION EXPENSE

Grantee shall pay to City a sum of money sufficient to reimburse the City for all publication expenses incurred by it in connection with the granting of this Franchise; such payment to be made within thirty (30) days after City shall have furnished Grantee with a written statement of such expenses.

Section 30. EFFECTIVE DATE OF ORDINANCE

This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By _____
C. M. Fitzpatrick
Senior Chief Deputy

CMF:vl:490
5/30/79
Or. Dept.: City Manager