

Chapter 5.5

CABLE TELEVISION AND TELECOMMUNICATIONS

Art. I. Cable Television Franchises, §§ 5.5-1--5.5-50

Art. II. Telecommunications Facilities, §§ 5.5-51--5.5-56

ARTICLE I.

CABLE COMMUNICATIONS FRANCHISES*

* **Editors Note:** Ord. No. 2139, § 1, adopted Oct. 8, 1997, repealed §§ 5.5-1--5.5-7, which pertained to cable television franchises, derived from Ord. No. 1533, § 1, adopted Feb. 3, 1988, as amended. Sec. 2 of Ord. No. 2139 enacted new provisions which pertained to the same subject matter. Such provisions, §§ 5.5-1--5.5-33, have been designated by the editor as Art. I of this chapter.

Cross References: Building code, § 5-41; construction in streets, § 23-36 et seq.; street cuts, permit, repair specifications, § 23-76; requirements for dish antennas, § 27-653(d)--(f).

State Law References: Minimum standards for grant of franchise for cable service, Laws of Fla., Ch. 87-62.

Sec. 5.5-1. Short title.

This article shall be known and may be cited as City of Plantation, Florida Cable Communications Code. (Ord. No. 2139, § 2, 10-8-97)

Sec. 5.5-2. Definitions.

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

Access channel means any channel on a cable system set aside without charge by the franchisee for public, educational or local governmental use.

Activated channel means those channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use. Channels on which signals flow in the direction from the headend to the subscriber are referred to as "downstream channels". Where the signal flows to the headend for redistribution, it shall be referred to as an "upstream channel".

Affiliate means any person which directly or indirectly owns or controls a grantee or franchisee, any person which a grantee or franchisee directly or indirectly owns or which it controls, or any person under common ownership or control with a grantee or franchisee.

Applicant means any person submitting an application within the meaning of this article.

Application means any proposal, submission or request to (1) construct and operate a cable system within the city; (2) transfer a franchise or control of the franchisee; (3) renew a franchise; (4) modify a franchise; or (5) seek any other relief from the city pursuant to this article, a franchise agreement, the Communications Act, or other applicable law. An application includes an applicant's initial proposal, submission or request, as well as any and all subsequent amendments or supplements to the proposal and relevant correspondence.

Basic cable service or *basic service* means any service tier which includes the retransmission of local television broadcast signals, and public, educational, or governmental access channels.

Cable service means the transmission of video or other programming services over a cable system to subscribers together with any subscriber interaction, if any, which is required for the selection or use of such video programming or other programming services.

Cable system, cable television system, or system, means any facility consisting of a set of closed transmission paths or other transmission lines or forms of terrestrial transmission and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within the city. Such term does not include (a) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations; (b) a facility that serves subscribers without using any public right-of-way; (c) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title 11 of the Communications Act of 1934, 47 U.S.C. § 201 et seq., except that such facility will be considered a cable system to the extent it is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on demand services; (d) an open video system that complies with Section 653 of the Telecommunications Act of 1996; or (e) any facilities of any electric utility used solely for operating its electric utility systems. The foregoing definition of "cable system" shall not be deemed to circumscribe the valid authority of the city to regulate the activities of any other communications system or provider of communications services, including but not limited to telephony and open video systems.

City means the City of Plantation, a municipal corporation of the State of Florida, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

Communications Act means the Communications Act of 1934, 47 U.S.C. § 151 et seq., as that act has and may hereinafter be amended.

Control of a franchisee, grantee or applicant means possession of the ability to direct or cause the direction of the management or policies of a franchisee, grantee or applicant, or the operation of a franchisee's system, either directly or indirectly, whether through ownership of voting securities, by contract or understanding, or in any other manner.

Fair market value means the price that a willing buyer would pay to a willing seller for a going concern but with no value allocated to the franchise itself.

FCC means the Federal Communications Commission, or any successor governmental entity thereto.

Franchise means the right granted by the city to a franchisee in a franchise agreement to construct, maintain and operate a cable system under, on, and over streets, roads and any other public ways, rights-of-way, or easements within the city. The term does not include any license or permit that may be required by this article or other laws, articles or regulations of the city for the privilege of transacting and carrying on a business within the city or for disturbing or carrying out any work on any street.

Franchise agreement means a contract entered into in accordance with the provisions of this article between the city and a franchisee that sets forth the terms and conditions under which the franchise will be exercised.

Franchisee means any person granted a franchise pursuant to this article who has entered into a franchise agreement with the city.

Gross revenues means all revenues recognized in accordance with Generally Accepted Accounting Procedures (GAAP) generated directly or indirectly by the franchisee and, any affiliates, subsidiaries or parent of the franchisee from any source whatsoever arising from, attributable to, or in any way derived from the operation of the cable system to provide cable services in the city. Gross revenues includes, but is not limited to, fees charged subscribers for basic service; fees charged subscribers for any optional, premium, per-channel or per-program service; fees charged subscribers for any tier of service other than basic service; installation, disconnection, reconnection and change-in-service fees; late fees; leased access fees; fees, payments or other consideration from programmers for carriage of programming on the system including, but not limited to infomercials (excluding marketing support provided for the launch of new services on the system to the extent such funds are not considered revenue under GAAP); revenue from converter, remote, modem or any other equipment rentals or sales; revenues from studio and studio equipment rental; revenues from leases of cable or fiber optic lines and other transmission devices and equipment; revenues from transmission of data; revenues from consumer products including but not limited to cable guides; advertising revenues allocable to the city based on a percentage of subscriber base in the city divided by the subscriber base of the system (such percentage will then be multiplied by the systems' total advertising revenue to determine the allocable gross revenue stemming from advertising) revenues from home shopping channels or other sources allocable to the city, provided that where certain home shopping channel or other such revenue is allocable to more than one (1) franchise area due to common zip codes, the franchise will allocate the percentage of revenue to the city which is equivalent to the percentage of the city's population divided by the total population for the allocable franchise areas in question. Gross revenues shall be the basis for computing the franchise fee imposed pursuant to section 5-5.16 hereof. Gross revenues shall not include any taxes on services furnished by the franchisee which are imposed upon any subscriber or user by the state, county, city or other governmental unit and collected by the franchisee on behalf of said governmental unit and which the franchisee passes on in full to the applicable tax authority or authorities. However, it is hereby expressly provided that unless otherwise prohibited by applicable law, franchise fees shall be included in the calculation of gross revenues. Further, franchise fees shall not be paid on subscriber deposits unless said deposit is applied to a customer's account for services rendered.

Institutional network means a voice, data and/or video communications system constructed, operated and/or maintained by the franchisee for the city, the transmissions on which are generally available only to, and intended to be sent and received by, persons other than cable subscribers generally. This is meant to define the network itself, and not any peripheral equipment, such as computers and modems, that may be required.

Interconnection means the electronic connection of two (2) or more cable systems for the purpose of sharing programming.

Law means all duly enacted and applicable federal, state, county and city laws, articles, codes, rules, regulations and orders.

Leased access channel means a channel designated in accordance with Section 612 of the Communications Act, 47 U.S.C. § 532, for commercial use by persons unaffiliated with the franchisee.

Overbuild means a cable system constructed to serve subscribers already served by an existing cable system.

Person means any individual, corporation, partnership, association, joint venture, organization or legal entity of any kind, and any lawful trustee, successor, assignee, transferee or personal representative thereof, but shall not mean the city.

Public hearing means a meeting of the city council to consider a cable related matter, notice of which shall be published in a newspaper of general circulation at least one (1) time ten (10) days prior to the date of the meeting. The agenda for the meeting shall be posted at City Hall three (3) days prior to the meeting date.

Service tier means a category of cable service provided by a franchisee and for which a separate charge is made by the franchisee.

State of the art means that level of production facilities, technical performance, capacity, equipment, components and service equal to that which has been developed and demonstrated to be more modern than generally accepted and used in the cable industry for comparable areas of equivalent population. The system shall have, at minimum, the capability of providing the channel capacity, products, services and technology available from a cable system to any other community of equivalent population in the United States.

Street or streets means the surface, the air space above the surface and the area below the surface of any public street, highway, road, boulevard, concourse, driveway, freeway, thoroughfare, parkway, sidewalk, bridge, tunnel, park, waterway, dock, bulkhead, wharf, pier, court, lane, path, alley, way, drive, circle, easement, or any other public right-of-way or public place, including public utility easements dedicated for compatible uses, or any other property in which the city holds any kind of property interest or over which the city exercises any type of lawful control, and any temporary or permanent fixtures or improvements located thereon, as may be ordinarily necessary and pertinent to construct and operate a cable system. The term includes any right-of-way granted to the public or to any governmental body by way of conveyance, dedication, restriction, or by easement. Developers within the city have been permitted to request the waiver of dedication of rights-of-way giving access to their proposed dwellings either by means of plat dedications or conveyances when site plan development approvals are sought, when such developers will grant easements for governmental purposes. Because these easements are substitutes for dedications of right-of-way, "public right-of-way" shall

include any area within an easement given for governmental purposes as a condition of the city council waiving, at developer's request, the dedication of public right-of-way to such proposed dwellings from the nearest available public road(s).

Subscriber means any person who lawfully receives cable service delivered over the cable system.

Subscriber base means the total number of residential and commercial subscribers within the city. For purposes of calculating subscribers under bulk or multi-user contracts, the franchisee shall count each individual unit (e.g., in a multiple-family dwelling, a unit will be defined as each subscriber unit within the structure) included within a contract for service as one (1) subscriber. The franchisee shall not use any equivalency measures including calculation based on market rate.

System malfunction means any cable system equipment, facility or signal failure or malfunction that results in the loss of satisfactory service on one (1) or more channels to one (1) or more subscribers. A malfunction is major if it affects ten (10) or more subscribers.

Transfer of a franchise means any transaction in which (1) an ownership or other interest in a franchisee or its cable system is transferred from one (1) person or group of persons to another person or group of persons so that control of a franchisee is transferred; or (2) the rights and/or obligations held by a franchisee under a franchise agreement are transferred or assigned to another person, group of persons or business entity. A transfer shall be considered "pro forma" when it involves a transfer to a person, group of persons or business entity wholly owned by the franchisee and will not result in a change in the control or ownership of the Franchisee.

Two-way capability means the incorporation into a cable system of all appropriate design and engineering characteristics and features so that two-way transmission, including but not limited to addressability, over the system can be implemented and activated.

Video channel or channel means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel, including the associated audio signal, as television channel is defined by the FCC by regulation or otherwise.
(Ord. No. 2139, § 2, 10-8-97)

Sec. 5.5-3. Intent and purposes.

(a) It is the intent of the city and the purpose of this article to promote the public health, safety, and general welfare by providing for the grant of one (1) or more franchises for the construction and operation of a cable system within the city; to provide for the regulation, to the extent provided for by law, of each cable system within the city in the public interest; to provide for the payment of fees and other valuable consideration by a franchisee to the city for the use of streets by its cable system; to promote the widespread availability of quality cable service to city residents and businesses, the city, and other public institutions; to encourage the development of cable and other communications technologies and cable systems as a means of communication between and among members of the public, city businesses, the city, and other public institutions; to promote competitive cable rates and services; to promote the safe and efficient use of city streets; to enhance and maximize the communicative potential of streets used by cable systems; and to encourage the provision of a diversity of information sources to city residents, businesses, the community, the city, and other public

institutions by cable technology.

(b) Recognizing the continuing development of communications technology and uses, it is the policy of the city to encourage experimentation and innovation in the development of cable system uses, services, programming and techniques that will be of general benefit to the community to the extent all such experiments and innovations are consistent with applicable laws.

(Ord. No. 2139, § 2, 10-8-97)

Sec. 5.5-4. Grant of authority; franchise required.

(a) The city may grant one (1) or more franchises in accordance with this article.

(b) No person may construct or operate a cable system or any other communications transmission facilities over, on, or under public streets in the city without a franchise granted by the city and no person may be granted a franchise without having entered into a franchise agreement with the city pursuant to this article or other such article of the city as may be applicable.

(c) Unless otherwise authorized by law, any franchise granted pursuant to this article is solely for the provision of cable service and shall not be construed to authorize the provision of telephone, noncable video or other telecommunications service. However, any person including but not limited to franchisees shall, unless otherwise prohibited by applicable law, submit an application to the city for the privilege of providing other telecommunications services including, but not limited to telephone service and/or alternative video programming services.

(Ord. No. 2139, § 2, 10-8-97)

Sec. 5.5-5. Franchise characteristics.

(a) A franchise authorizes use of city streets for installing cables, wires, lines, optical fiber, underground conduit, ducts, conductors, amplifiers, vaults, and other facilities as necessary and pertinent to operate a cable system to serve subscribers within the city, but does not expressly or implicitly authorize the franchisee to provide service to, or install cables, wires, lines, underground conduit, or any other equipment or facilities upon private property without owner consent (except for use of compatible easements pursuant to section 621 of the Communications Act, 47 U.S.C. § 541 (a)(2)), or to use publicly or privately owned conduits without a separate agreement with the owners.

(b) A franchise is nonexclusive, and will not expressly or implicitly preclude the issuance of other franchises to operate cable systems within the city, or affect the city's right to authorize use of city streets to other persons to operate cable systems or for other purposes as it determines appropriate.

(c) All privileges prescribed by a franchise shall be subordinate to any prior lawful occupancy of the streets, and the city reserves the right to reasonably designate where a franchisee's facilities are to be placed within the streets. Such designation may include, but not be limited to, consideration of the availability of space in the rights-of-way.

(d) A franchise shall be a privilege which is in the public trust. No transfer of a franchise shall occur without the prior consent of the city and unless application is made by the franchisee, and city approval

obtained, pursuant to section 5.5-24 hereof and the franchise agreement.

(e) A franchise granted to an applicant pursuant to this article to construct, operate and maintain a cable television system within the city, shall be deemed to constitute both a right and an obligation on the part of the franchisee to provide the services and facilities of a cable television system as required by the provisions of this article and the franchise. The franchise agreement shall incorporate by reference all of the provisions of the franchisee's application for the franchise that are finally negotiated and agreed upon by the city and the franchisee; and, all relevant representations made by the franchisee in its application and/or public hearings before the city council shall be deemed to be material and made for the purpose of inducing the city to grant the franchise in the form accepted.

(f) Notwithstanding anything to the contrary, in the event that franchisee, its parent, affiliate or subsidiary elects to offer to subscribers video programming services through any means or method not included within the definition of a cable system, including but not limited to an "open video system", the franchisee shall remain subject to all terms and conditions of the cable television franchise granted pursuant to this article. (Ord. No. 2139, § 2, 10-8-97)

Sec. 5.5-6. Franchisee subject to other laws, police power.

(a) A franchisee shall at all times be subject to and shall comply with all applicable federal, state and local laws. A franchisee shall at all times be subject to all lawful exercise of the police power of the city.

(b) Subject to applicable law, except as may be specifically provided in this article or under the terms of a franchise agreement and subject to the Communications Act, the failure of the city, upon one (1) or more occasions, to exercise a right or to require compliance or performance under this article or a franchise agreement shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance. (Ord. No. 2139, § 2, 10-8-97)

Sec. 5.5-7. Interpretation of franchise terms; conflicts.

(a) The provisions of this article shall apply to a franchise agreement as if fully set forth in the franchise agreement, and the express terms of this article will prevail over conflicting or inconsistent provisions in a franchise agreement unless such franchise agreement expresses an explicit intent to waive a requirement of this article. In considering the grant of such waiver, the council shall consider factors, including but not limited to, those factors enumerated in section 5.5-9(c) herein.

(b) Except as to matters which are governed by federal law or regulation, a franchise agreement will be governed by and construed in accordance with the laws of the State of Florida. (Ord. No. 2139, § 2, 10-8-97)

Sec. 5.5-8. Applications for grant, renewal, modification or transfer of franchises.

(a) A written application shall be filed with the city for (1) grant of a new franchise; (2) renewal of a franchise in accordance with section 626 of the Communications Act, 47 U.S.C. 546; (3) modification of a franchise agreement; (d) a transfer of a franchise; or (e) any other relief from the city pursuant to this article or a franchise agreement.

(b) To be acceptable for filing, a signed original of the application shall be submitted together with seven (7) copies, be accompanied by the required nonrefundable application filing fee as set forth in section 5.5-8(i) hereof, conform to any applicable request for proposals, and contain all reasonably required information. All applications shall include the names and addresses of persons authorized to act on behalf of the applicant with respect to the application.

(c) All applications accepted for filing shall be made available by the city for public inspection.

(d) An application for the grant of a new franchise may be filed pursuant to a request for proposals issued by the city or on an unsolicited basis. The city, upon receipt of an unsolicited application, may issue a request for proposals. If the city elects to issue a request for proposals upon receipt of an unsolicited application, the applicant may submit an amended application in response to the request for proposals, or may inform the city that its unsolicited application should be considered in response to the request for proposals, or may withdraw its unsolicited application. An application which does not conform to the reasonable requirements of a request for proposals may be considered nonresponsive and denied on that basis.

(e) An application for the grant of an initial franchise shall contain, at minimum, the following information:

- (1) Name and address of the applicant and identification of the ownership and control of the applicant, including: the names and addresses of all persons with five (5) percent or more ownership interest in the applicant, including the names and addresses of parents or subsidiaries holding such ownership interests directly or indirectly; the persons who control the applicant; all officers and directors of the applicant; and any other cable system ownership or other communication ownership interest of each named person;
- (2) An indication of whether the applicant, or any person controlling the applicant, or any officer, or director or person with five (5) percent or more ownership interest in the applicant, has been adjudged bankrupt, had a cable franchise or license revoked, or been found by any court or administrative agency to have violated a security or antitrust law, or to have committed a felony, or any crime involving moral turpitude; and, if so, identification of any such person and a full explanation of the circumstances;
- (3) A demonstration of the applicant's technical, legal and financial ability to construct and/or operate the proposed cable system, including identification of key personnel;
- (4) A statement prepared by a certified public accountant or duly authorized financial officer of the applicant regarding the applicant's financial ability to complete the construction and operation of the cable system proposed;
- (5) A description of the applicant's prior experience in cable system ownership, construction and operation, and identification of communities in which the applicant or any person controlling the applicant or having more than a ten (10) percent ownership interest in applicant has, or has had, a cable franchise or license or any interest therein;

- (6) A description of the physical facilities proposed, including channel capacity, performance characteristics, headend, and access facilities; upon request, the applicant shall make information on technical design available for inspection;
 - (7) Where applicable, a description of the construction of the proposed system, including an estimate of plant mileage and its location, the proposed construction schedule, a description, where appropriate, of how services will be converted from existing facilities to new facilities, and information on the availability of space in conduits including, where appropriate, an estimate of the cost of any necessary rearrangement of existing facilities;
 - (8) For informational purposes, the proposed rate structure, including projected charges for each service tier, installation, converters, and other equipment or services, and the applicant's ownership interest in any proposed program services to be delivered over the cable system;
 - (9) A demonstration of how the applicant's proposal will reasonably meet the future cable-related needs and interests of the community, including a description of how the proposal will meet the needs described in any recent community needs assessment conducted by or for the city;
 - (10) A description of any noncable telecommunications services offered by the applicant or its parent, affiliate or subsidiary and franchisee's plan with respect to the availability of such services to subscribers in the city.
 - (11) Pro forma financial projections for the first five (5) years of the franchise term, including a statement of projected income, and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules;
 - (12) If an applicant proposes to provide cable service to an area already served by an existing cable franchise, the identification of the area where the overbuild would occur, the potential subscriber density in the area which would encompass the overbuild, and the ability of the streets to accommodate an additional system;
 - (13) Any other information as may be reasonably necessary to demonstrate compliance with the requirements of this article and information that the city may request of the applicant that is relevant to the city's consideration of the application; and
 - (14) An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, acknowledging the enforceability of application commitments, and certifying that the proposal meets all federal and state law requirements.
- (f) An application for modification of a franchise agreement shall include, at minimum, the following information:
- (1) The specific modification requested;
 - (2) The justification for the requested modification, including the impact of the requested modification on subscribers and others, and the financial impact on the applicant if the

modification is approved or disapproved;

- (3) A statement whether the modification is sought pursuant to section 625 of the Communications Act, 47 U.S.C. § 545, and, if so, a demonstration that the requested modification meets the standards set forth in 47 U.S.C. § 545;
 - (4) Any other reasonable information necessary for the city to make an informed determination on the application for modification; and
 - (5) An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, and certifying that the application is consistent with all federal and state law requirements.
- (g) An application for renewal of a franchise shall comply with the requirements of section 5.5-23 hereof.
- (h) An application for approval of a transfer of a franchise shall comply with the requirements of section 5.5-24 hereof.
- (i) To be acceptable for filing, an application shall be accompanied by a nonrefundable filing fee in the following amount, as appropriate:
- (1) For a new or initial franchise \$7,500.00
 - (2) For renewal of a franchise 5,000.00
 - (3) For a transfer of a franchise (other than a pro forma transfer) 2,500.00
 - (4) For a pro forma transfer of a franchise 1,000.00
 - (5) For modification of a franchise agreement pursuant to 47 U.S.C. § 545 2,500.00
 - (6) For any other relief 1,000.00

The purpose of the filing fee is to defray a portion of the city's cost in processing an application. Such fee shall be credited against amounts due under section 5.5-9(f) herein. The filing fee is therefore intended to be a charge incidental to the awarding or enforcing of a franchise within the meaning of section 622(g)(2)(D) of the Communications Act, 47 U.S.C. § 542(g)(2)(D), and may not be deducted from the franchise fee imposed in a franchise agreement.

(Ord. No. 2139, § 2, 10-8-97)

Sec. 5.5-9. Grant of franchises.

- (a) The city may grant a franchise for a period not to exceed fifteen (15) years.
- (b) The city may make the grant of a franchise conditioned upon the completion of construction

within a reasonably prescribed time or upon the performance of other specific obligations which are to be set forth in the franchise agreement, specifying that failure to comply with the condition will cause the franchise to become null and void.

(c) In evaluating an application for a franchise, the city may consider, among other things, the following factors: the applicant's technical, financial, and legal qualifications to construct and operate the proposed system; the adequacy of the proposed construction arrangements, facilities, equipment, and services based on the public convenience, safety and welfare; the applicant's experience in constructing and operating cable systems and providing cable service in other communities, if any; the ability of city streets to accommodate the proposed system; the potential disruption to users of city streets and any resultant inconvenience to the public; and whether the proposal will meet reasonably anticipated community needs and serve the public interest. Evaluation by the city shall not be based on the content of the programming the applicant proposes to provide.

(d) The city shall hold a public hearing to consider an application or applications. The applicant(s) shall be notified of the hearing and shall be given an opportunity to be heard. Based upon the applications, the testimony presented at the public hearing, any recommendations of the city or staff, and any other information relevant to the application(s), the city shall decide by resolution whether to grant or deny a franchise application and decide the terms and conditions of any franchise granted. Upon the grant of a franchise, the franchisee's application shall become an integral part of such franchise, and the franchisee shall be bound by the representations therein made.

(e) After complying with the above requirements, the city council shall approve or disapprove the proposed franchise agreement by resolution.

(f) The franchisee shall reimburse the city for all reasonable expenses incurred by the city in considering and processing the application, including but not limited to consulting and legal costs, less the amount of the filing fee set pursuant to section 5.5-8(i) up to an amount not to exceed thirty-five thousand dollars (\$35,000.00) for each transaction. Within thirty (30) calendar days from the date of the resolution approving or denying the franchise agreement or renewal or modification or transfer thereof by the city council, the city shall bill the franchisee for the amount of the processing fee and its method of calculation. If the processing fee is not paid to the city within sixty (60) calendar days of the date of the city council resolution approving or denying the franchise agreement or a modification or transfer thereof, any approval granted by such resolution will be null and void. This processing fee is intended to be a charge incidental to the awarding or enforcing of a franchise within the meaning of section 622(g)(2)(D) of the Communications Act, 47 U.S.C. § 542(g)(2)(D), and may not be deducted from the franchise fee imposed in a franchise agreement and shall not be passed through to subscribers.

(Ord. No. 2139, § 2, 10-8-97)

Sec. 5.5-10. Insurance; surety; indemnification.

(a) A franchisee shall maintain, and by its acceptance of the franchise specifically agrees that it will maintain, throughout the entire term of the franchise including any renewals thereof, the following liability insurance coverage insuring the franchise and naming the city as an additional insured: worker's compensation and employer liability insurance to meet all requirements of Florida law and general comprehensive liability insurance with respect to the construction, operation and maintenance of the cable system, and the conduct of

franchise's business in the city, in the minimum amounts of:

- (1) Two hundred fifty thousand dollars (\$250,000.00) for property damage in any one (1) accident;
- (2) Five hundred thousand dollars (\$500,000.00) for personal bodily injury to any one (1) person;
and
- (3) One million dollars (\$1,000,000.00) for personal bodily injury in any one (1) accident.

(b) All insurance policies shall be with sureties qualified to do business in the State of Florida; shall be with sureties with a minimum rating of A-1 in Best's Key Rating Guide, *Property/Casualty Edition*. The city may require coverage and amounts in excess of the above minimums where necessary to reflect changing liability exposure and limits or where required by law.

(c) A franchisee shall keep on file with the city certificates of insurance which certificates shall indicate evidence of payment of the required premiums and shall indicate that the city, its officers, boards, commission, commissioners, agents and employees are listed as additional insureds. In the event of a potential claim such that the city claims insurance coverage, the franchisee shall immediately respond to all reasonable requests by the city for information with respect to the scope of the insurance coverage.

(d) All insurance policies shall name the city as additional insureds and shall further provide that any cancellation or reduction in coverage shall not be effective unless thirty (30) days' prior written notice thereof has been given to the city. A franchisee shall not cancel any required insurance policy without submission of proof that the franchisee has obtained alternative insurance satisfactory to the city which complies with this article.

(e) A franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend the city, its elected or appointed officials, employees, boards, and committees, against any and all claims, suits, costs, losses, damages, expenditures, causes of action, proceedings, judgments for equitable relief, and costs and expenses (including but not limited to all fees and charges of expert witnesses, attorneys, and other professionals, and all court or other dispute resolution costs) arising out of the construction, maintenance or operation of its cable system, the conduct of franchisee's business in the city, or in any way arising out of the franchisee's enjoyment or exercise of a franchise granted hereunder, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this article or a franchise agreement, and regardless of whether the act or omission complained of was a negligent, reckless, willful, or intentional act or omission of the franchisee, its contractors, or agents, provided, however, that franchisee's obligation hereunder shall not extend to any claims entirely caused by the sole misconduct or sole negligence of the city, its elected or appointed officials, boards, committees, or employees. This indemnity includes but is not limited to claims attributable to bodily injury, sickness, disease or death, or to injury or destruction of tangible property, and including the loss of use resulting therefrom. In addition, and notwithstanding anything to the contrary, any franchisee granted a renewal of a franchise on or after the effective date of this article shall indemnify and hold harmless the city, its elected or appointed officials, boards, committees and agents or employees from any claim arising under federal or state law with respect to the requirements of section 5.5-13(b) herein. This provision includes, but is not limited to, the city's reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings; and claims arising out of copyright infringements or a failure by the franchisee to secure consents from the owners, authorized distributors, or providers of programs to be delivered by the cable system,

claims arising out of section 638 of the Communications Act, 47 U.S.C. 558, and claims against the franchisee for invasion of the right of privacy, defamation of any person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark or patent, or of any other right of any person, firm or corporation. Notwithstanding the foregoing, the franchisee may select counsel to represent the city. The city agrees to notify franchisee, in writing, within ten (10) days of city receiving notice, of any issue it determines may require indemnification. Nothing in this section shall prohibit the city from participating in the defense of any litigation by its own counsel and at its own cost if in the city's reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict, or if required by the city's liability insurance or program, and the franchisee shall pay the reasonable expenses of such legal counsel. If the franchisee fails to make any payment required under this indemnity or any other required indemnity, the franchisee shall pay all reasonable attorneys' fees and costs incurred by the city in obtaining such payment, and shall be assessed interest at a single rate of twelve (12) percent per annum.
(Ord. No. 2139, § 2, 10-8-97)

Sec. 5.5-11. Security fund.

(a) A franchise agreement may provide that, prior to the franchise becoming effective, the franchisee shall post with the city a cash deposit to be used as a security fund to ensure the franchisee's faithful performance of and compliance with all provisions of this article, the franchise agreement, and other applicable law, and compliance with all orders, permits and directions of the city, and the payment by the franchisee of any claims, liens, fees, or taxes due the city which arise by reason of the construction, operation or maintenance of the system. The amount of the security fund shall be the amount that the city determines, under circumstances existing at the time, that is necessary to protect the public, to provide adequate incentive to the franchisee to comply with this article and the franchise agreement, and to enable the city to effectively enforce compliance therewith. The franchise agreement shall provide for the procedures to be followed with respect to the security fund. Neither the posting of the cash deposit or filing of an indemnity bond or any form of surety bond with the city, nor the receipt of any damages recovered by the city thereunder, shall be construed to excuse faithful performance by the franchisee or limit the liability of the franchisee under the terms of its franchise for damages, either to the full amount of the bond or otherwise. The city may commingle these funds with other city funds and all interest, dividends, or other return on investing such security funds shall become owned by the city and may be used for any public purpose.

(b) The rights reserved to the city with respect to the security fund or an indemnity bond are in addition to all other rights of the city, whether reserved by this article or authorized by other law or the franchise agreement, and no action, proceeding or exercise of a right with respect to such security fund or indemnity bond will affect any other right the city may have.
(Ord. No. 2139, § 2, 10-8-97)

Sec. 5.5-12. Construction bond.

(a) A franchise agreement may provide that, prior to any cable system construction, upgrade, rebuild or other significant work in the streets a franchisee shall establish in the city's favor a construction bond in an amount specified in the franchise agreement or other authorization as necessary to ensure the franchisee's faithful performance of the construction, upgrade, rebuild or other work.

(b) In the event a franchisee subject to such a construction bond fails to complete the cable system

construction, upgrade or other work in the streets in a safe, timely and competent manner in accord with the provisions of the franchise agreement, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the city as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the franchisee, or the cost of completing or repairing the system construction, upgrade or other work in the streets, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond. The city may also recover against the bond any amount recoverable against the security fund pursuant to section 5.5-11 hereof where such amount exceeds that available under the security fund. The conditions of the construction bond (i.e., the form) shall be substantially the same as a statutory public construction bond form as set forth in § 255.05, Florida Statutes (1995), or such other form as is acceptable to the city legal department providing similar covenants.

(c) The franchise agreement may specify that upon completion of the system construction, upgrade, rebuild or other work in the streets and payment of all construction obligations of the cable system to the satisfaction of the city, the city may eliminate the bond or reduce its amount. However, the city may subsequently require an increase in the bond amount for any subsequent construction, upgrade, rebuild or other work in the streets.

(d) The construction bond shall be issued by a surety having a minimum rating of A-1 in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of the city attorney; and shall provide that:

"This bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the city, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

(e) The rights reserved by the city with respect to any construction bond established pursuant to this section are in addition to all other rights and remedies the city may have under this article, the franchise agreement, or at law or equity.
(Ord. No. 2139, § 2, 10-8-97)

Sec. 5.5-13. Minimum facilities and services.

(a) The following minimum requirements for facilities and services apply to all franchises granted by the city. The city may require in a franchise agreement that a franchisee exceed these minimum requirements where it determines, under circumstances existing at the time of the application, that the additional requirements are necessary to meet the city's future cable related needs and interests or to serve the public interest.

- (1) Any cable system that commences construction, including but not limited to initial construction, rebuild, upgrade, or reconstruction after the effective date of this article shall have a minimum capacity of at least seven hundred fifty (750) MHZ providing no less than seventy-eight (78) video channels available for immediate use. A franchise agreement may provide for a larger minimum channel capacity requirement.
- (2) The city may require in a franchise agreement that a franchisee provide access channels, facilities and other support for public, educational and/or governmental use.

- (3) At the city's request, a franchisee shall provide cablecasting of city council meetings live to all subscribers located within the city.
- (4) A cable system shall provide leased access channels as required by federal law.
- (5) A franchisee shall, upon request, provide at least one (1) cable television service outlet and when technically feasible, at least one (1) additional outlet equipped for on-line access to all city buildings and all public schools and private within its franchise area that are passed by its cable system at no cost to the city or school involved, and shall charge no more than its time and material costs for any additional service outlets to such facilities.
- (6) A franchisee shall design its system to allow the city or other appropriate government body, to interrupt cable service in an emergency to deliver necessary information to subscribers.
- (7) A franchisee shall make available to its subscribers equipment capable of decoding closed circuit captioning information for the hearing impaired. A franchisee may impose a reasonable charge for such equipment.
- (8) Standard installation shall consist of a drop, not exceeding one hundred twenty-five (125) feet from the cable plant to the nearest part of a subscriber's residence. Residential drops in excess of one hundred twenty-five (125) feet may be charged according to the franchisee's rate schedule.

(b) Unless a franchise agreement provides otherwise, a franchisee shall make cable service available to every dwelling within the franchise area as defined in a franchise agreement unless prohibited by a private property owner from doing so.
(Ord. No. 2139, § 2, 10-8-97)

Sec. 5.5-14. Technical standards.

(a) Any cable system within the city shall at minimum meet the technical standards of the FCC or other applicable federal or state technical standards, including any such standards as hereinafter may be amended or adopted including but not limited to digital transmission, HDTV or other advanced technologies. The system shall be capable of delivering all National Television Systems Committee (NTSC) color and monochrome standards signals and designed to provide picture quality of TASO grade 1 or better and superior reliability. All television signals transmitted on a cable system shall include any closed circuit captioning information for the hearing impaired. Antennas, supporting structures, and outside plant used in the system shall be designed to comply with all generally accepted industry practices and standards and with all federal, state, county, city and/or utility laws, articles, rules and regulations.

(b) All construction, installation and maintenance shall comply with the National Electrical Safety Code, the National Electric Code, the South Florida Building Code, and all laws and accepted industry practices, and as hereinafter may be amended or changed.

(c) At the times specified in the franchise agreement or as required by FCC rules, the franchisee shall perform at its expense proof of performance tests designed to demonstrate compliance with the requirements of this article, the franchise agreement, and FCC requirements. The franchisee shall provide, upon

written request, the proof of performance test results to the city within thirty (30) days after completion. The city shall have the right to inspect the cable system facilities during and after their construction to ensure compliance with the requirements of the franchise agreement, this article, and FCC standards.

(d) The city may require any other tests as specified in a franchise agreement or applicable law or regulation, to be performed at the expense of the franchisee. The franchisee shall provide the test results to the city within thirty (30) days of completion of the proof of performance or other tests.

(e) The franchisee shall provide the city ten (10) days advance written notice when a proof of performance test required in subsections (c) and (d) above is scheduled so that the city may have an observer present.

(f) A franchisee shall not design, install or operate its facilities in a manner that will interfere with the signals of any broadcast station, the facilities of any public utility, the cable system of another franchisee, or individual or master antennas used for receiving television or other broadcast signals.

(g) The franchisee shall provide access channels and facilities, or where a franchise agreement so provides, financial support, in accordance with section 5.5-15 hereof.
(Ord. No. 2139, § 2, 10-8-97)

Sec. 5.5-15. Access channels and facilities.

(a) Applications for an initial or renewed franchise may and, at the city's request, shall include proposals for the provision of access channels and equipment and facilities relating to such channels sufficient to meet community needs.

(b) A franchise shall provide, at the request of the city, use of franchisee's studio equipment and technical services for production of live and video-taped municipal programs, subject to reasonable availability and scheduling requirements of the franchisee.

(c) To the extent it is possible, a franchisee shall provide, at the request of the city, trained personnel to assist the city in production of live and video-taped municipal programs at locations other than franchisee's studio as designated by the city.

(d) Applications for an initial or renewed franchise may and, at the city's request, shall include proposals for the provision of an Institutional Network interconnecting city, educational institution, and/or other public facilities.

(e) Applications for an initial or renewed franchise may and, at the city's request, shall include proposal for the interconnection of franchisee to any or all other cable systems operating within the city or in areas adjacent to the city.

(f) A franchise may provide for a financial grant in lieu of some or all of the facilities, equipment, and services referenced in section 5.5-15(a), (b), (c), and (d).
(Ord. No. 2139, § 2, 10-8-97)

Sec. 5.5-16. Franchise fee.

(a) A franchisee, as compensation for the privilege granted under a franchise for the use of the city's streets to construct and operate a cable system, shall pay to the city a franchise fee in an amount up to a maximum of either:

- (1) Five (5) percent of the franchisee's gross revenues derived directly or indirectly from the operation of its cable system within the city to provide cable services during the term of its franchise; or
- (2) In the event the Communications Act or other applicable law is amended to permit the city to assess a franchise fee of a greater amount or on a broader revenue basis than that specified in subsection (1) above, the franchisee agrees to pay to the city the new amount after a public hearing in which the public and franchisee are given an opportunity to comment on the impact of the higher fee.

(b) A franchisee shall pay the franchise fee due to the city on a quarterly basis. Payment for each quarter shall be made to the city not later than thirty (30) calendar days after the end of each calendar quarter.

(c) A franchisee shall file with the city, on a quarterly basis with the payment of the franchise fee, a financial statement setting forth the computation of gross revenues used to calculate the franchise fee for the preceding quarter and a detailed explanation of the method of computation. The statement shall be certified by a certified public accountant or the franchisee's chief financial or other duly authorized officer. The franchisee will bear the cost of the preparation of such financial statements.

(d) Subject to applicable law, no acceptance by the city of any franchise fee payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the city may have for additional sums payable.

(e) The franchise fee payment is not a payment in lieu of any other tax, fee or assessment.

(f) The city may, from time to time, and upon reasonable notice, inspect, and audit any and all books and records of the franchisee relevant to the determination of gross revenues and the computation of franchise fees due, and may recompute any amounts determined to be payable under the franchise. The cost of the audit will be borne by the franchisee if, as a result of the audit, the city determines that the franchisee has underpaid the franchise fees owed in an amount equal to or exceeding two (2) percent of the franchise fees actually paid. A franchisee shall make all books and records necessary to satisfactorily perform the audit readily available to the auditors in Broward County, for inspection and copying or in the alternative, the franchisee shall pay all costs necessary for the city to perform the audit at a location outside of Dade or Broward counties.

(g) In the event that a franchise fee payment is not received by the city on or before the due date set forth in subsection (b) above, or is underpaid, the franchisee will pay a late charge of eighteen (18) percent of the amount of the unpaid or underpaid franchise fee payment; provided, however, that such rate does not exceed the maximum amount allowed under Florida law. Any interest and/or late charges paid by the franchisee is intended to be a charge incidental to the enforcing of a franchise within the meaning of section 622 (g)(2)(D) of the Communications Act, 47 U.S.C. § 542 (g)(2)(D), and may not be deducted from the franchise fee imposed

by this article or any franchise agreement.

(h) When a franchise terminates for whatever reason, the franchisee shall file with the city within ninety (90) calendar days of the date its operations in the city cease a financial statement, certified by a certified public accountant or the franchisee's chief financial officer, showing the gross revenues received by the franchisee since the end of the previous fiscal year. Adjustments will be made at that time for franchise fees due to the date that the franchisee's operations ceased.

(Ord. No. 2139, § 2, 10-8-97)

Sec. 5.5-17. Reports and records.

(a) Within six (6) months of the close of its fiscal year, a franchisee shall provide the city an annual report that includes the following information:

- (1) Upon written request by the city, a summary of the previous year's activities in development of the state of the art of cable systems and the system serving the city including but not limited to, services and products initiated or discontinued, new technologies, number of subscribers for each tier or type of service (including gains and losses), homes passed, and miles of cable distribution plant in service. The summary shall also include a comparison of any construction, including system upgrades, during the year with any projections previously provided to the city, as well as rate and charge increases and/or decreases for the previous fiscal year. It is the obligation of the franchisee to include within this report any and all information necessary to evaluate the franchisee's system as compared to the definition of "state of the art" as defined in section 5.5-2.
- (2) Upon written request by the city a financial statement, including a statement of income, and a statement of sources of revenues. The statement shall be audited if the franchisee has audited statements performed in its normal course of business. If not, the statement shall be certified by the franchisee's chief financial officer or other duly authorized financial officer of the franchisee. The statement shall include notes that specify all significant accounting policies and practices upon which it is based. A summary shall be provided comparing the current year with previous years since the beginning of the franchise.
- (3) Upon written request, the city may review a copy of updated maps depicting the location of all cable plant, showing areas served and locations of all trunk lines and feeder lines in the city. At such time as such maps become available in digitized form, the same will be provided to the city at franchisee's expense.
- (4) A summary of subscriber or resident complaints, identifying the number and nature of complaints and their disposition. Where complaints involve recurrent system problems, the nature of each problem and the corrective measures taken shall be identified. More detailed information concerning complaints shall be submitted upon written request of the city.
- (5) Upon written request, a summary of the number of outages, number of planned outages, number of outages during prime viewing hours (8:00 p.m. to 11:00 p.m. daily), and number of outages by duration.

- (6) Upon written request by the city, if the franchisee is a corporation, a list of officers and members of the board of directors; the officers and members of the board of directors of any parent corporation; and if the franchisee or its parent corporation's stock or ownership interests are publicly traded, a copy of its most recent annual report.
 - (7) Upon written request by the city if the franchisee is a partnership, a list of the partners, including any limited partners, and their addresses; and if the general partner is a corporation, a list of officers and members of the board of directors or the corporate general partner, and the officers and directors of any parent corporation; and where the general partner or its parent corporation's ownership interests are publicly traded, a copy of its most recent annual report.
 - (8) Upon written request by the city a list of all persons holding five (5) percent or more ownership or otherwise cognizable interest in the franchisee pursuant to 47 C.F.R. 76.501.
 - (9) A copy of the franchisee's rules and regulations applicable to subscribers of the cable system, upon written request.
 - (10) Upon written request by the city a report on the number of senior citizens, economically disadvantaged or handicapped subscribers receiving any rate discounts, the number of multiple dwelling buildings and units therein receiving any discount pursuant to section 5.5-20(a) hereof, and the amount of any such discounts for specific services if the franchisee offers separate rates or discounts for those categories of subscribers.
 - (11) Upon written request a full schedule and description of services, service hours and location of the franchisee's customer service office or offices available to subscribers, and a schedule of all rates, fees and charges for all services provided over the cable system.
 - (12) Upon written request a report on the number of total subscribers served by the franchisee in the cable system, with a breakdown by the types of services received by the subscribers.
 - (13) Upon written request, a report with respect to customer satisfaction, including but not limited to, the types of programming offered on the system.
 - (14) Where there is a survey of residents in the city, the franchisee shall file the results of the survey with the city clerk and shall notify the elected officials that such results are on file.
- (b) Upon written request by the city, a franchisee shall provide, on an annual basis, the following documents to the city as received or filed, without regard to whether the documents are filed by the franchisee or an affiliate:
- (1) Annual report of the franchisee or its parent or any affiliate of franchisee which controls franchisee and issues an annual report;
 - (2) Copyright filings reflecting the operation of the system;
 - (3) FCC Forms 325 and 395A for the system, or their successor forms;

- (4) Any and all pleadings, petitions, applications, communications, reports and documents (collectively referred to as "filings") submitted by or on behalf of the franchisee to the FCC, SEC or any state or federal agency, court or regulatory commission which filings may impact the franchisee's operation of the franchisee's cable system in the city or that may impact the city's rights or obligations under this article of the franchise agreement issued pursuant to this article and any and all responses, if any, to the above-mentioned filings.
- (5) Any and all notices of deficiency, forfeiture, or documents instituting any investigation, civil or criminal proceeding issued by any state or federal agency regarding the system, franchisee, or any affiliate of the franchisee; provided, however, that any such notice or documents relating to an affiliate of the franchisee need be provided only to the extent the same may directly or indirectly affect or bear on franchisee's operations in the city. For example, a notice that an affiliate which has a management contract for the city's system was not in compliance with FCC EEO requirements would be deemed to affect or bear on operations in the city.
- (6) Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy.
- (7) Notwithstanding anything to the contrary, the franchisee agrees to provide the city, within thirty (30) days of filing or receipt of such, any document that may adversely impact the construction, operation or maintenance of the franchisee's cable system.

(c) A franchisee shall make a complete set of books and records available for inspection, and audit by the city in Broward County, for purposes of ascertaining compliance with requirements of this article and the franchise agreement. Such inspection, and audit shall be upon reasonable notice and during normal business hours.

(d) Any materials requested by city which are deemed proprietary and confidential by the franchisee shall be made available for review and inspection by the city (but not copying or removal, unless otherwise required by federal or state law, including but not limited to the public records law of the State of Florida), but shall not be required to be filed with the city.

(Ord. No. 2139, § 2, 10-8-97)

Sec. 5.5-18. Customer service requirements.

(a) A franchisee shall maintain all parts of its system in good condition and in accordance with standards generally observed by the cable television industry. Sufficient employees shall be retained to provide safe, adequate, and prompt service for all of its customers and facilities.

(b) A franchisee shall maintain at least one (1) conveniently located business office and service center within the city limits to which subscribers may telephone without incurring added message units or toll charges. This business office shall be open at minimum from 8:30 a.m. to 6:00 p.m., Monday through Friday, and some weekend and evening hours. Further, the franchisee shall locate, construct, design, staff, operate and maintain such office(s) so as to provide all subscribers, including but not limited to those subscribers who may be elderly, handicapped or otherwise impaired, with access to its office. The office shall make available for all

customers:

- (1) Parking within reasonable proximity of the office; and
- (2) Sufficient covered waiting areas and adequate seating capacity.

(c) The franchisee (or an affiliate), shall maintain a listed local, toll-free telephone number under the business name familiar to subscribers and employ a sufficient number of telephone lines, personnel and answering equipment or service to allow reasonable access by subscribers and members of the public to contact the franchisee on a full-time basis, twenty-four (24) hours per day, seven (7) days per week including holidays. Knowledgeable, qualified franchisee representatives will be available to respond to customer telephone inquiries, twenty-four (24) hours per day, seven (7) days per week including holidays.

(d) The franchisee shall answer all customer service and repair telephone calls made under normal operating conditions within thirty (30) seconds, including wait time and within an additional thirty (30) seconds to transfer the call. Customers shall receive a busy signal less than three (3) percent of the time. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

(e) A franchisee shall employ and maintain sufficient qualified personnel and equipment to be available (i) to accept payments; (ii) to exchange or accept converters or other equipment; (iii) to receive subscriber complaints or requests for service or repairs on a full-time basis, twenty-four (24) hours per day, seven (7) days per week; (iv) to initiate service installations, undertake normal repairs, initiate action with respect to any subscriber service complaints within twenty-four (24) hours; (v) to enable a service technician to respond to service calls twenty-four (24) hours per day, seven (7) days a week including holidays when more than subscribers served from the same nearest active electronic device, such as an amplifier or node, call with the same complaint.

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

- (1) Standard installation work shall be performed within seven (7) calendar days after an order has been placed except in those instances where a subscriber specifically requests an installation date beyond the seven (7) calendar day period. "Standard" installations are up to one hundred twenty-five (125) feet from the existing distribution system. If scheduled installation is neither started nor completed as scheduled, the subscriber will be telephoned by an employee of the franchisee the same day. Evening personnel shall also attempt to call subscribers at their homes between the hours of 5:30 and 8:00 p.m. If the call to the subscriber is not answered, an employee of the franchisee shall telephone the subscriber the next day;
- (2) The franchisee will respond to service interruptions promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Other service problems will be responded to promptly and in no event later than forty-eight (48) hours after the problem becomes known. All service interruptions, and service problems within the control of franchisee, will be corrected within seventy-two (72) hours after receipt of a complaint;

- (3) The appointment window alternatives made available for installations, service calls, repairs, and other installation activities will be either a specific time, a four-hour time block during normal business hours, or at the election and discretion of the subscriber, "all day";
- (4) The franchisee may not cancel an appointment with a subscriber after the close of business on the business day prior to the scheduled appointment; and

(g) If at any time an installer or technician is running late for a scheduled appointment, an attempt to contact the customer will be made and the appointment rescheduled as necessary at a time which is convenient for the customer. Subscribers who have experienced two (2) missed installation or service appointments due to the fault of franchisee shall receive installation free of charge. If the installation was to have been provided free of charge or if the appointment was for service or repair, the subscriber shall receive a credit on its bill of not less than twenty dollars (\$20.00).

(h) Disconnection.

(1) Voluntary disconnection.

- a. A subscriber may terminate service at any time.
- b. A franchisee shall promptly disconnect any subscriber who so requests from the franchisee's cable system. No period of notice prior to voluntary termination of service may be required of subscribers by any franchisee. So long as the subscriber returns equipment within three (3) business days of the disconnection, no charge may be imposed by any franchisee for such voluntary disconnection, or for any cable services delivered after the date of disconnect request.
- c. A subscriber may be asked, but not required, to disconnect the franchisee's equipment and return it to the business office.
- d. Any security deposit and/or other funds due the subscriber shall be refunded on disconnected accounts after customer premises equipment including all converters but excluding wiring have been recovered by the franchisee. The refund process shall take a maximum of thirty (30) days from the date disconnection was completed to the date the customer receives the refund.

(2) Involuntary disconnection. If a subscriber fails to pay a monthly subscriber or other fee or charge, the franchisee may disconnect the subscriber's service outlet; however, such disconnection shall not be effected until thirty-five (35) days after the due date of the monthly subscriber fee or other charge, and ten (10) days' advance written notice of intent to disconnect to the subscriber in question. If the subscriber pays within thirty-five (35) days of the due date and after notice of disconnection has been given, the franchisee shall not disconnect. After disconnection, upon payment by the subscriber in full of all proper fees or charges, including the payment of the reconnection charge, if any, the franchisee shall promptly reinstate service. The franchisee reserves the right to deny service to any customer who has been repeatedly disconnected for nonpayment of services to the extent such rights are consistent with applicable

state and federal law.

- (3) Nothing in this article shall be construed to prevent the franchisee from removing its property from a subscriber's premises upon the termination of service consistent with FCC rules and regulations and any other applicable law. At the subscriber's request, a franchisee shall remove all of its facilities and equipment from the subscriber's premises within thirty (30) calendar days of the subscriber's request. Where removal is impractical, such as with buried cable or internal wiring, facilities and equipment may be disconnected and abandoned rather than removed, unless there is a written agreement stating otherwise; provided, however, that such agreement must be consistent with applicable law and FCC rules.

- (i) The franchisee shall intentionally interrupt service only for good cause and for the shortest time possible. The franchisee shall use its best efforts to insure that such interruptions shall occur only during the hours of 1:00 a.m. to 6:00 a.m., except during a rebuild or upgrading of the cable system. The franchisee shall maintain a written log for all intentional service interruptions.

- (j) The franchisee shall notify the city immediately if a service interruption affects fifty (50) or more subscribers for a time period greater than four (4) hours.

- (k) The franchisee shall cause all its field employees to wear a picture identification badge indicating their employment by franchisee. This badge shall be clearly visible to the public.

- (l) A franchisee shall develop written procedures for the investigation and resolution of all subscriber or city resident complaints, including, but not limited to, those regarding the quality of service and equipment malfunction, which procedures shall be subject to the review and approval by the city mayor or his/her designee. A subscriber or city resident who has not been satisfied by following the franchisee's procedures may file a written complaint with the city, who will investigate the matter and, in consultation with the franchisee as appropriate, attempt to resolve the matter. A franchisee's good faith or lack thereof in attempting to resolve subscriber and resident complaints in a fair and equitable manner will be considered in connection with the franchisee's renewal application. The franchisee shall maintain a complete list of all complaints not resolved within seven (7) days of receipt and the measures taken to resolve them. This list shall be compiled in a form to be approved by the city. It shall be compiled on a monthly basis. The list for each calendar month shall be supplied to the city no later than the 15th day of the next month. The franchisee shall also maintain a list of all complaints received, which list will be available to the city.

- (m) The franchisee shall permit the city mayor or his designee to inspect and test the system's technical equipment and facilities upon reasonable notice not to be less than forty-eight (48) hours.

- (n) The franchisee shall abide by the following requirements governing communications with customers, bills and refunds:

- (1) Each franchisee shall provide to subscribers written information in each of the following areas at the time of installation, at least once annually, and at any future time upon request by the subscriber:

- a. How to use the cable service;

- b. Installation and service maintenance policies;
- c. The products and services offered;
- d. Prices and service options;
- e. Channel positions of programming carried on the system;
- f. The franchisee's procedures for the receipt and resolution of customer complaints, the franchisee's address and telephone number to which complaints may be reported, and the hours of operation;
- g. The telephone number and address of the city's office and as required by county ordinance, the county's office designated to handle cable television complaints and inquiries shall be printed on the back of the bill;
- h. The availability of a "lock-out" device;
- i. The franchisee's information, collection, and disclosure policies for the protection of a subscriber's privacy.

(2) In addition, each franchisee shall provide written notice in its monthly billing, at the request of the city, of any city meeting regarding requests or applications by the franchisee for renewal, transfer or modification of its license or change in services, rates or charges to subscribers. The city shall make such a request in writing, no less than forty-five (45) days prior to the mailing of any billing by the franchisee. Such notices shall be made at the franchisee's expense and that expense shall not be considered part of the franchise fee assessed pursuant to this article and shall not be regarded as a franchise fee, as the term is defined in section 622 of the Communications Act, 47 U.S.C. section 542.

(3) The franchisee's bills will be clear, concise and understandable.

(4) Refund checks will be issued promptly, but no later than the earlier of thirty (30) days or the customer's next billing cycle following the resolution of a refund request, or the return of the equipment supplied by the franchisee if service is terminated.

(5) Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(6) A franchisee shall provide subscribers and the city council with at least thirty (30) days' advance written notice of any changes in rates, charges, channel lineup, or initiations or discontinuations or changes of service or services offered over the cable system whenever practicable.

(o) A franchisee shall provide a pro-rated twenty-four-hour credit to the subscriber's account for any period of eight (8) hours or more within a twenty-four-hour period during which a subscriber experienced an

outage of service or substantial impairment of service, whether due to a system malfunction or other cause.

(p) Billing.

(1) The franchisee's first billing statement after a new installation or service change shall be pro-rated as appropriate and shall reflect any security deposit.

(2) The franchisee's billing statement must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(3) The franchisee's billing statement must show a specific due date not earlier than ten (10) days after the date of the beginning of the service period. Any balance not received within ten (10) days after the due date may be assessed an administrative charge. However, in no event shall administrative charges for an overdue balance accumulated against any individual subscriber exceed twenty-five dollars (\$25.00). The charge will appear on the following month's billing statement.

a. Any administrative charge applied to unpaid bills shall be subject to regulation by the city consistent with applicable law.

b. Subscribers shall not be charged an administrative fee, a late fee or otherwise penalized for any failure by the franchisee, its employees, or contractors, including failure to timely or correctly bill the subscriber, or failure to properly credit the subscriber for a payment timely made.

(4) The franchisee must notify the subscriber that he or she can remit payment in person at the franchisee's office in the city and inform the subscriber of the address of that office.

(q) A franchisee may not substantially alter the service being provided to a subscriber (including by re-tiering, restructuring a tier or otherwise) without the express permission of such subscriber, unless it complies with this subsection.

(1) If a franchisee wishes to alter the service being provided to a subscriber (including by re-tiering, restructuring a tier or otherwise) in such a way that the subscriber will no longer be able to obtain the same package of services, then the franchisee must provide the subscriber with thirty (30) days' notice of such alteration, explain the substance and the full effect of the alteration, and provide the subscriber the right within the thirty-day period following notice, to opt to receive any combination of services offered by the franchisee.

(2) Except as provided herein, or under applicable federal or state law, no charge may be made for any service or product which the subscriber has not affirmatively indicated, in a manner separate and apart from payment of the regular monthly bill, that he or she wishes to receive.

(r) The franchisee shall certify in writing to the city on January 1 and July 1 of each year based upon internal due diligence by the franchisee that to the best of franchisee's knowledge it is in substantial compliance

with the standards set forth in this section 5.5-18. At the request of the city, the franchisee shall submit such documentation, as may be required, to demonstrate franchisee's compliance with this section 5.5-18. This documentation shall be submitted within forty-five (45) days of the franchisee's receipt of the city's request.

(s) Responsibility for the administration of this article and any franchise granted hereunder and for the resolution of all complaints against a franchisee regarding the quality of service, equipment malfunctions, and related matters, including the authority to order refunds or fees, is hereby delegated to the mayor (who can in turn designate to a city employee), who is empowered, among other things, to settle, or compromise any controversy arising from operations of the franchisee, either on behalf of the city, the franchisee or any subscriber, in accordance with the best interests of the public. In cases where requests for service have been ignored or in cases where the service provided is unsatisfactory for whatever reason, the mayor or his/her designee shall have the power to require the franchisee to provide service if in the opinion of the mayor or his/her designee such request for service is reasonable. Provided, that any person aggrieved by a decision of the mayor or his/her designee, including the franchisee, may appeal the matter to the city council for hearing and determination. The city council may accept, reject or modify the decision of the mayor or his/her designee. No adjustment, settlement, or compromise, whether instituted by the mayor, his/her designees, or by the city council shall be contrary to the provisions of this article or any franchise agreement issued pursuant to this article, and neither the mayor or his/her designee nor the city council, in the adjustment, settlement, or compromise of any controversy shall have the right or authority to add to, modify or delete any provision of this article or of the franchise, or to interfere with any rights of subscribers or any franchisee under applicable federal, or state law or private contract.

- (t)(1) In addition to the powers delegated in section 5.5-18(s) above, the mayor or his/her designee shall have the authority to order refunds from a franchisee to individual cable television subscribers who have submitted a written complaint to the city and to assess fines against a franchisee for any violation of this article or any franchise issued pursuant to this article, which fines will be paid to the city.
- (2) In ordering refunds to cable television subscribers, the mayor or his/her designee shall be governed by the schedule set out below in which the refund indicated is expressed as a percentage of the subscriber's monthly bill. The refunds listed are to be made on a per violation basis with each day of a continuing violation constituting a separate violation. The refund ordered by the mayor or his/her designee pursuant to this section 5.5-.18(t)(1) shall not exceed one hundred (100) percent of a subscriber's monthly bill, unless a violation has continued at least thirty (30) days from the date first reported to the franchisee.

SCHEDULE OF REFUNDS TO SUBSCRIBERS

Single Violation of: Maximum Refund

		(Percent of subscriber's monthly bill)
(a)	Failure to comply with section 5.5-18(b), hereof	10
(b)	Failure to comply with the telephone availability requirements of Section 5.5-18(c) and (d), hereof	10

(c)	Failure to comply with the repair and installation requirements of section 5.5-18(f), hereof	50
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- (3) In assessing fines against a franchisee, the mayor or his/her designee shall be governed by the schedule set out below. The fines listed are to be assessed on a per violation basis with each day of a continuing violation constituting a separate violation.

SCHEDULE OF FINES

*Single Violation of:
Maximum
Fines*

- a. Section 5.5-18(a), hereof \$100.00
- b. Section 5.5-18(b), hereof 300.00
- c. Section 5.5-18(c), hereof 300.00
- d. Section 5.5-18(d), hereof 300.00
- e. Section 5.5-18(e) and (f), hereof 300.00
- f. Section 5.5-18 (h), hereof 100.00
- g. Section 5.5-18(i), hereof 500.00
- h. Section 5.5-18(j), hereof 200.00
- i. Section 5.5-18(k), hereof 100.00
- j. Section 5.5-18(l), hereof 500.00
- k. Section 5.5-18(m), here- of 500.00
- l. Section 5.5-18(n)(1)a--i, hereof 100.00
- m. Section 5.5-18(n)(1)k, hereof 500.00
- n. Section 5.5-18(n)(2), hereof 500.00
- o. Section 5.5-18(n)(3)--(5), hereof 200.00

p. Section 5.5-18(p) and (q), hereof 200.00

q. Section 5.5-18(r), hereof 500.00

- (4) Prior to ordering a refund and/or assessing a fine, the mayor or his/her designee shall mail the franchisee written notice by certified or registered mail of the proposed refund and/or fine, specifying the violation at issue. The franchisee shall have thirty (30) days from the date of receipt of the written notice to file a written response to the mayor's or his/her designee's notice advising the city as to whether the violation has been cured. The franchisee's written response shall be signed by management level personnel of franchisee and all statements contained therein will be regarded as material representations to the city.
- (5) Prior to ordering a refund and/or assessing a fine, the mayor or his/her designee shall consider any justification or mitigating factor advanced in franchisee's written response, including but not limited to rebates or credits to the subscriber or a cure of the violation. The mayor or his/her designee may, after consideration of the response of the franchisee, waive or reduce any proposed refund or fine. In the case of a complaint from a single subscriber or a violation of this article or any franchise issued pursuant to this article in which only a single subscriber has been affected, the mayor or his/her designee may not assess any fine if the franchisee has reasonably resolved the complaint or cured the violation within a reasonable time frame not to exceed three (3) days. However, such subscriber may be entitled to a credit/refund as provided herein.
- (6) Subsequent to the notice of proposed refund and/or fine to franchisee and consideration of the franchisee's response, if any, the mayor or his/her designee may issue an assessment of refund or fine. The refund and/or fine shall be paid within thirty (30) days of written notice to the franchisee. This refund and/or fine shall constitute liquidated damages to the subscriber and city for the violation and the city may enforce payment of the refund or fine in any court having jurisdiction, and the franchisee shall pay the city's costs and legal fees in any such enforcement action. It is the intent of the city to determine fines/refunds as a reasonable estimate of the damages suffered by the city and/or its subscribers, whether actual or potential, and may include without limitation, increased costs of administration and other damages difficult to measure.
- (7) The franchisee may appeal any decision of the mayor or his/her designee directly to the city council within thirty (30) days of notice of the decision to the franchisee.
- (8) Any person who intentionally files a false complaint against a franchisee shall be subject to a fine in the amount of fifty dollars (\$50.00) for the first violation and one hundred dollars (\$100.00) for each subsequent violation.
- (9) Intentional misrepresentation by a franchisee in any response to a notice of proposed refund and/or fine shall be grounds for license revocation.

(u) In addition to complying with the customer service standards set forth in this article or in any franchise issued pursuant to this article, a franchisee shall comply with all customer service standards applicable to cable systems of the FCC and any other applicable federal, state or county law concerning customer service standards, consumer protection, and unfair or deceptive trade practices.

(v) The city expressly reserves the right to consider violations of the customer service requirements in evaluating any renewal, modification or transfers of any franchise agreement.
(Ord. No. 2139, § 2, 10-8-97)

Sec. 5.5-19. Subscriber privacy.

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

(b) Unless otherwise permitted by federal or state law, neither the franchise nor its agents or employees shall, without the prior and specific written authorization of the subscriber involved, sell, or otherwise make available for commercial purposes the names, addresses or telephone numbers of any subscriber or subscribers, or any information which identifies the individual viewing habits of any subscriber or subscribers.
(Ord. No. 2139, § 2, 10-8-97)

Sec. 5.5-20. Discrimination prohibited.

(a) No franchisee may in its rates or charges, or in the availability of the services or facilities of its system, or in any other respect, make or grant undue preferences or advantages to any subscriber, potential subscriber, or group of subscribers or potential subscribers, nor subject any such persons or group of persons to any undue prejudice or any disadvantage. A franchisee shall not deny, delay, or otherwise burden service or discriminate against subscribers or users on the basis of age, race, creed, religion, color, sex, handicap, national origin, marital status, or political affiliation, except for discounts for senior citizens, the economically disadvantaged or handicapped that are applied in a uniform and consistent manner. A franchisee may also offer bulk discounts to multiple dwelling buildings to the extent such discounts are otherwise permissible by law.

(b) A franchisee shall not deny cable service to any potential subscriber because of the income of the residents of the area in which the subscriber resides.

(c) A franchisee shall not refuse to employ, nor discharge from employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment because of age, race, creed, religion, color, sex, disability, national origin, marital status, or political affiliation. The franchisee shall comply with federal, state and local laws and regulations governing equal employment opportunities, as the same may be from time to time amended.
(Ord. No. 2139, § 2, 10-8-97)

Sec. 5.5-21. Use of streets.

(a) Any pavements, sidewalks, curbing or other paved area taken up or any excavations made by a franchisee shall be done under the supervision and direction of the city under permits issued for work by the proper officials of the city, and shall be done in such manner as to give the least inconvenience to the

inhabitants of the city. A franchisee shall, at its own cost and expense, and in a manner approved by the city, replace and restore any such pavements, sidewalks, curbing or other paved areas in as good a condition as before the work involving such disturbance was done, and shall also prepare, maintain and provide to the city engineer full and complete plats, maps and records showing the exact locations of its facilities located within the public streets, ways, and easements of the city. These maps shall be available to the city engineer.

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

(c) A franchisee shall, on the request of any person holding a building moving permit issued by the city, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting same, and the franchisee shall have the authority to require such payment in advance, except in the case where the requesting person is the city, in which case no such payment shall be required. The franchisee shall be given not less than five (5) calendar days' advance notice to arrange for such temporary wire changes.

(d) A franchisee shall upon notice to the city of not less than seven (7) days, emergency situations excepted, have the authority to trim the trees or other natural growth upon and overhanging the streets so as to prevent the branches of such trees from coming in contact with the wires, cables and other equipment of the franchisee, except that, at the option of the city, such trimming may be done by it or under its supervision and direction at the expense of the franchisee.

(e) A franchisee shall use, with the owner's permission, existing underground conduits (if applicable) or overhead utility facilities whenever feasible. Copies of agreements between a franchisee and third party for use of conduits or other facilities shall be filed with the city provided that the franchisee shall have the right to redact proprietary and confidential information in such agreements as it pertains to financial arrangements between the parties.

(f) All wires, cable lines, and other transmission lines, equipment and structures shall be installed and located to cause minimum interference with the rights and convenience of property owners. The city may issue such rules and regulations concerning the installation and maintenance of a cable system installed in, on, or over the streets, as may be consistent with this article and the franchise agreement.

(g) All safety practices required by law shall be used during construction, maintenance and repair of a cable system. A franchisee shall not place facilities, equipment or fixtures where they will interfere with any gas, electric, telephone, water, sewer or other utility facilities, or obstruct or hinder in any manner the various utilities serving the residents of the city of their use of any street or any other public right-of-way.

(h) A franchisee shall, at all times:

(1) Install and maintain its wires, cables, fixtures and other equipment in accordance with the requirements of the city's building code and electrical safety ordinances and any other applicable

building or electrical safety code, and in such manner that they will not interfere with any installations of the city.

- (2) Keep and maintain in a safe, suitable, substantial condition, and in good order and repair, all structures, lines, equipment, and connections in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of the city, wherever situated or located.

- (i) On streets where electrical or telephone utility wiring is located underground, either at the time of initial construction of a cable system or at any time thereafter, a franchisee's cable shall also be located underground at the franchisee's expense only if the utilities in the area are also required to relocate their facilities underground at their expense or at such time other utilities elect to locate underground; provided, however, that if cable television service is already underground, replacement or additions to such service, or overbuild service, will also be made underground, unless the city governing body issues an exception for a particular place in view of existing site conditions. Between a street and a subscriber's residence, a franchisee's cable must be located underground if both electrical and telephone utility wiring are located underground, unless the cable service is required to be installed underground under the prior sentence. The city shall encourage, to the extent feasible, that the public utility and the franchisee cooperate in opening up trenches and making such trenches available to all parties with the understanding that the costs of opening and refilling of such trenches would be shared equally by all users of such trenches.

- (j) In the event the use of any part of a 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 without complying with the requirements of this article or a franchise agreement, or the franchise has been terminated, canceled or expired, the franchisee, within thirty (30) days after written notice by the city, shall commence removal from the streets of all such property as the city may require.

- (k) The city may extend the time for the removal of the franchisee's equipment and facilities for a period not to exceed one hundred eighty (180) days, and thereafter such equipment and facilities may be deemed abandoned.

- (l) In the event of such removal or abandonment, the franchisee shall restore the area to as good a condition as prior to such removal or abandonment.
(Ord. No. 2139, § 2, 10-8-97)

Sec. 5.5-22. Enforcement remedies.

- (a) In addition to any other remedies available at law or equity or provided herein under section 5.5-18, the city may apply any one or combination of the following remedies in the event a franchisee violates this article, its franchise agreement, applicable state or federal law, or applicable local law or order:

- (1) Impose liquidated damages in such amount, whether on a per diem, per incident, or other measure of violation, as provided in the franchise agreement. Payment of liquidated damages by the franchisee will not relieve the franchisee of its obligation to comply with the franchise agreement and the requirements of this article.
 - (2) Revoke the franchise pursuant to the procedures specified in section 5.5-25 hereof.

(3) In addition to or instead of any other remedy, the city may seek legal or equitable relief from any court of competent jurisdiction.

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

(c) Failure of the city to enforce any requirements of a franchise agreement or this article shall not constitute a waiver of the city's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

(d) In any proceeding wherein there exists an issue with respect to a franchisee's performance of its obligations pursuant to this article, the franchisee has, throughout any such proceedings and appeals thereof, the burden of proving that such franchisee is in compliance with the terms of the article. The city council may find a franchisee that does not demonstrate compliance with the terms and conditions of this article in default and apply any one or combination of the remedies otherwise authorized by this article.

(e) Notwithstanding anything to the contrary, and notwithstanding being subjected to a fine or refund requirement, the franchisee shall be obligated to cure any violation of this article or of any franchise agreement granted hereto within thirty (30) days after receipt of notice from the city of the alleged violation. If the alleged violation is not cured within such period, the city may exercise all rights and remedies available pursuant to this article, or applicable law, or the franchise agreement.
(Ord. No. 2139, § 2, 10-8-97)

Sec. 5.5-23. Renewal of franchise.

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

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

a. The application shall comply with the requirements of section 5.5-8 hereof and provide the specific information requested in the notice. If the franchisee does not submit a renewal application by the date specified in the city's notice to the franchisee given pursuant to this subsection, the franchisee will be deemed not to be seeking renewal of its franchise.

b. Upon receipt of the renewal application, the city shall publish notice of its receipt and

make copies available to the public. The city, following prior public notice, may hold one (1) or more public hearings on the renewal application.

- (2) In the event a public hearing on the renewal application is held, or in the event that the city council considers the renewal application without a public hearing, the city council will either:
 - a. Pass a resolution agreeing to renew the franchise, subject to the negotiation of a franchise agreement satisfactory to the city and the franchisee; or
 - b. Pass a resolution that makes a preliminary assessment that the franchise should not be renewed.
- (3) If a preliminary assessment is made that a franchise should not be renewed, at the request of the franchisee or on its own initiative, the city will commence a proceeding in accordance with section 626(c) of the Communications Act, 47 U.S.C. § 546(c) to address the issues set forth in section 626(c)(1)(A) through (D) of the Communications Act, 47 U.S.C. § 546(c)(1)(A) through (D). Any denial of a proposal for renewal that has been submitted in compliance with subsection (b) of § 546 shall be based on one (1) or more adverse findings made with respect to the factors described in § 546(c)(1)(A) through (D), pursuant to the record of proceedings under § 546(c). The city shall not base a denial of renewal on a failure to substantially comply with the material terms of the franchise under § 546(c)(1)(A) or on events considered under § 546(c)(1)(B) unless the city has provided the franchisee with notice and opportunity to cure, or in any case in which it is documented that the city has waived its right to object, or the franchisee gives written notice of a failure or inability to cure and the city fails to object within a reasonable time after receipt of such notice.
- (4) Any request to initiate a renewal process or proposal for renewal not submitted within the time period set forth in section 626(a) of the Communications Act, 47 U.S.C. § 546(a), shall be deemed an informal proposal for renewal and shall be governed in accordance with section 626(h) of the Communications Act, 47 U.S.C. § 546(h). The city may hold one (1) or more public hearings or implement other procedures under which comments from the public on an informal proposal for renewal may be received. Following such public hearings or other procedures, the city council shall determine whether the franchise should be renewed and the terms and conditions of any renewal.
- (5) If the city council grants a renewal application, the city and the franchisee shall agree on the terms of a franchise agreement, pursuant to the procedures specified in subsections 5.5-9(e) through (h) of this article, before such renewal becomes effective.
- (6) If renewal of a franchise is lawfully denied, the city may acquire ownership of the cable system or effect a transfer of ownership of the system or effect a transfer to another person upon approval of the city council. Any such acquisition or transfer shall be at fair market value, determined on the basis of the cable system valued as a going concern but with no value allocated to the franchise itself. The city may not acquire ownership of the system while an appeal of a denial for renewal is pending in any court pursuant to § 546(e).

- (7) If renewal of a franchise is lawfully denied and no appeal to a court is pending, and the city does not purchase the cable system or approve or effect a transfer of the cable system to another person, the city may require the former franchisee to remove its facilities and equipment at the former franchisee's expense. If the former franchisee fails to do so within a reasonable period of time, the city may have the removal done at the former franchisee's and/or surety's expense.

(Ord. No. 2139, § 2, 10-8-97)

Sec. 5.5-24. Transfers.

- (a) No transfer of a franchise shall occur without prior approval of the city.

(b) An application for a transfer of a franchise shall meet the requirements of section 5.5-8 hereof, and provide complete information on the proposed transaction, including details on the legal, financial, technical and other qualifications of the transferee, and on the potential impact of the transfer on subscriber rates and service. Except in the case of a pro forma transfer, the application shall provide, at a minimum, the information required in subsections 5.5-8(e)(1) through (5) with respect to the proposed transferee. The information required in subsections 5.5-8(e)(6) through (13) shall also be provided whenever the proposed transferee expects material changes to occur in those areas.

(c) An application for approval of a pro forma transfer of a franchise shall be considered granted on the sixty-first calendar day following the filing of such application with the city unless, prior to that date, the city notifies the franchisee to the contrary. An application for approval of a pro forma transfer of a franchise shall clearly identify the application as such, describe the proposed transaction, and explain why the applicant believes the transfer is pro forma. Unless otherwise requested by the city within thirty (30) calendar days of the filing of an application for a pro forma transfer, the applicant shall be required only to provide the information required in subsections 5.5-8(e)(1) and (3) with respect to the proposed transferee.

(d) In making a determination on whether to grant an application for a transfer of a franchise, the city council shall consider the legal, financial, and technical of the transferee to operate the system; whether the incumbent cable operator is in substantial compliance with the material terms of its franchise agreement and this article and, if not, the proposed transferee's commitment to cure such noncompliance; and whether operation by the transferee would adversely affect cable services to subscribers, or otherwise be contrary to the public interest.

(e) No application for a transfer of a franchise shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of this article and the franchise agreement, and that it will assume the obligations and liabilities of the previous franchisee under this article and the franchise agreement as they exist prior to the time of the transfer and going forward.

(f) Approval by the city of a transfer of a franchise does not constitute a waiver or release of any of the rights of the city under this article or the franchise agreement, whether arising before or after the date of the transfer.

(Ord. No. 2139, § 2, 10-8-97)

Sec. 5.5-25. Revocation or termination of franchise.

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

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

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

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

(d) In the event of foreclosure or other judicial sale of any of the facilities, equipment or property of a franchisee, the city may revoke the franchise, following a public hearing before the city council, by serving notice upon the franchisee and the successful bidder at the sale, in which event the franchise and all rights and privileges of the franchise will be revoked and will terminate thirty (30) calendar days after serving such notice, unless:

- (1) The city has approved the transfer of the franchise to the successful bidder; and
- (2) The successful bidder has covenanted and agreed with the city to assume and be bound by the terms and conditions of the franchise agreement and this article .

(e) If the city revokes a franchise, or if for any other reason a franchisee abandons, terminates or fails to operate or maintain service to its subscribers for a period of six (6) months, the following procedures and rights are effective:

- (1) The city may require the former franchisee to remove its facilities and equipment at the former franchisee's expense. If the former franchisee fails to do so within a reasonable period of time, the city may have the removal done at the former franchisee's and/or surety's expense.
- (2) The city, by resolution of the city council, may acquire ownership, or effect a transfer, of the cable system at an equitable price.
- (3) If a cable system is abandoned by a franchisee, the city may sell, assign or transfer all or part of the assets of the system.

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

(g) No franchisee will construct or activate a system upgrade in any community served by the same system more than (6) six months prior to activating the upgrade for all subscribers within the city, without prior authorization from the city. However, a cable operator granted a franchise prior to the effective date of this article may be exempt from this provision solely with respect to any rebuild currently in progress. Such exempt status shall be for a period no longer than eighteen (18) months from the effective date hereof. A franchisee's obligation pursuant to this section, shall not be applicable to an upgrade or services made available on a test basis to less than twenty (20) percent of subscribers.

(h) Except as provided in subsection (f), no adverse action against a franchisee may be taken by the city pursuant to this section except after a noticed public hearing at which the franchisee is given an opportunity to participate.

(Ord. No. 2139, § 2, 10-8-97)

Sec. 5.5-26. Continuity of service mandatory.

(a) It is the right of all subscribers to receive all available services requested from the franchisee as long as their financial and other obligations to the franchisee are satisfied.

(b) In the event of a termination or transfer of a franchise for whatever reason, the franchisee shall ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances. The franchisee shall cooperate with the city to operate the system for a temporary period following termination or transfer as necessary to maintain continuity of service to all subscribers. The temporary period will not exceed six (6) months without the franchisee's written consent. During such period the cable system shall be operated under such terms and conditions as the city and the franchisee may agree, or such other terms and conditions that will continue, to the extent possible, the same level of service to subscribers and that will provide reasonable compensation to the cable operator.

(c) In the event a franchisee fails to operate the system for seven (7) consecutive days without prior approval of the city or without just cause, the city may, at its option, operate the system or designate an operator until such time as the franchisee restores service under conditions acceptable to the city or until a permanent

operator is selected. If the city is required to fulfill this obligation for the franchisee, the franchisee shall reimburse the city for all costs or damages resulting from the franchisee's failure to perform that are in excess of the revenues from the system received by the city. Additionally, the franchisee will cooperate with the city to allow city employees and/or city agents free access to the franchisee's facilities and premises for purposes of continuing system operation.
(Ord. No. 2139, § 2, 10-8-97)

Sec. 5.5-27. Rates.

(a) Nothing in this article shall prohibit the city from regulating rates for cable services to the full extent permitted by law.

(b) Any rate or charge established for cable television service, equipment, repair and installation shall be reasonable to the public. Upon written request from the city or its agent franchise shall provide all requested data, records and documentation to show the reasonableness of the rates or to comply with FCC guidelines. Where such information is designated proprietary and confidential, it shall not be copied or removed or otherwise subject to public inspection, to the extent the city is permitted to protect such information from public inspection under applicable law.

(c) Subject to the city's regulation of rates as permitted under applicable state and federal law, should a franchise desire to change any rate or charge, it shall submit a written proposal for the amounts and effective date of such change to the mayor or his/her designee who shall evaluate the proposal in a manner consistent with Federal Communications Commission cable television rate regulation standards or other applicable law in effect at the time and report this evaluation to the city council. The mayor's or his/her designee's report shall be placed before the city council at a duly noticed public hearing. The city will provide written notice of the public hearing to the franchise no later than five (5) days prior to the public hearing. The city may require the franchisee to notify each subscriber, by placing an announcement of not less than one quarter page in a newspaper of general circulation and/or via the cable system, of the proposed rate change and the date and time of the public hearing, with such notice commencing no later than forty-eight (48) hours prior to time of the public hearing. At such hearing, the franchisee and members of the public will be given an opportunity to present their respective views on the proposed rates. Upon conclusion of the public hearing, the city council shall decide the matter by majority vote and adopt a resolution approving, disapproving, or modifying the proposed rate changes and providing such further relief as is appropriate and authorized by Federal Communications Commission rate regulation standards. The resolution shall set forth complete findings of fact and conclusions regarding all of the basic elements considered in the city council's determination.
(Ord. No. 2139, § 2, 10-8-97)

Sec. 5.5-28. Performance evaluation.

The city will conduct periodic performance evaluations of a franchisee as the city determines is necessary. A franchisee shall cooperate with these evaluations reasonably and in good faith. If the city implements a survey of cable subscribers in connection with a performance evaluation, the city may require a franchisee to distribute the city's questionnaire to its subscribers at the city's expense. Upon request and upon reimbursement of the city's copying costs, the franchisee may receive copies of all responses.
(Ord. No. 2139, § 2, 10-8-97)

Sec. 5.5-29. Administration.

(a) The mayor, either directly or through a duly appointed designee, shall have the responsibility for overseeing the day-to-day administration of this article and franchise agreements. The mayor shall be empowered to take all administrative actions on behalf of the city, except for those actions specified in this article that are reserved to the city council. The mayor may recommend that the commission take certain actions with respect to the franchisee. The mayor shall keep the commission apprised of developments in cable and provide the commission with assistance, advice and recommendations as appropriate.

(b) Subject to federal and state law, the city council shall have the sole authority to regulate rates for cable services, grant franchises, authorize the entering into of franchise agreements, modify franchise agreements, renew or deny renewal of franchises, revoke franchises, and authorize the transfer of a franchise. (Ord. No. 2139, § 2, 10-8-97)

Sec. 5.5-30. Force majeure.

In the event a franchisee's performance of or compliance with any of the provisions of this article or the franchisee's franchise agreement is prevented by a cause or event not within the franchisee's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof; provided, however, that the franchisee uses all practicable means to expeditiously cure or correct any such inability to perform or comply. For purposes of this article and any franchise agreement granted or renewed hereunder, causes or events not within a franchisee's control shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court. Causes or events within franchisee's control, and thus not falling within this section, shall include, without limitation, franchisee's financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of the franchisee's directors, officers, employees, contractors or agents. (Ord. No. 2139, § 2, 10-8-97)

Sec. 5.5-31. Applicability.

(a) This article shall be applicable to all cable franchises granted or renewed after its effective date, and shall apply to all cable franchises granted prior to the effective date of this article, to the full extent permitted by state and federal law.

(b) Any cable franchisee whose franchise agreement predates the effective date of this article shall notify the city in writing within sixty (60) calendar days of the passage of this article, or any subsequent amendment thereof, of:

- (1) Any provision which it believes should not be applicable to it by reason of the pre-existing franchise agreement or the continuing applicability of the prior article; and
- (2) The reason for each such claim of nonapplicability.

(c) Failure to notify the city as provided in subsection (b) of this section shall constitute a waiver of any right to object.

(Ord. No. 2139, § 2, 10-8-97)

Sec. 5.5-32. Municipal cable system ownership authorized.

(a) To the full extent permitted by law, the city may acquire, construct, own, and/or operate a cable system.

(b) Nothing in this article shall be construed to limit in any way the ability or authority of the city to acquire, construct, own, and/or operate a cable system to the full extent permitted by law.

(Ord. No. 2139, § 2, 10-8-97)

Sec. 5.5-33. Reservation of rights.

(a) The city reserves the right to amend this article as it shall find necessary in the lawful exercise of its police powers.

(b) Any additional regulations adopted by the city shall be incorporated into this article and complied with by all franchisees within thirty (30) days of the date of adoption of such additional regulations unless imposition of such regulations would be otherwise prohibited by applicable law.

(c) The city reserves the right to exercise the power of eminent domain to acquire the property of franchisee's cable system, consistent with applicable federal and state law. Notwithstanding anything to the contrary, this section shall not enlarge or restrict the city's exercise of eminent domain except to the extent provided by applicable law.

(d) The city shall at all times have the right, upon reasonable notice and during normal business hours, to examine records and to inspect a franchisee's facilities to the extent needed to monitor a franchisee's compliance with and performance under this article and the franchisee's franchise agreement.

(Ord. No. 2139, § 2, 10-8-97)

Secs. 5.5-34--5.5-50. Reserved.

ARTICLE II.

TELECOMMUNICATIONS FACILITIES

Sec. 5.5-51. Definitions.

[As used in this article, the following words and terms shall have the meaning ascribed thereto:]

Antenna means a device capable of transmitting or receiving electromagnetic signals.

Wireless personal telecommunications services antenna tower means a monopole or lattice structure, of free standing or guyed design, to support or contain one (1) or more wireless personal telecommunications service antenna and their appurtenances. The removal of an existing Florida Power & Light pole, Southern Bell telephone pole or other utility pole, and the substitution therefor of a longer or taller pole for the purpose of

installing a wireless personal telecommunications services antenna and reinstalling the pre-existing utility facilities thereon is an installation of a "wireless personal telecommunications services antenna tower".

Wireless personal telecommunications service shall mean the transmission for hire of information in analog or digital format including but not limited to voice, paging, facsimile, etc.

Wireless personal telecommunications services antenna shall mean an antenna used in the provision of over the air wireless personal telecommunications services. This is the only type of antenna regulated by this article.

(Ord. No. 2131, § 1, 8-13-97)

Sec. 5.5-52. Application for approval of wireless personal telecommunications services antenna tower.

(a) Any applicant which wishes to license a city site must first contact the city special projects coordinator to discuss what is desired and whether there are any available city sites which can meet the applicant's needs. The special projects coordinator may, if necessary, request direction from the city governing body whether or not the city wishes to license land that the city owns or controls for the applicant's purpose. Regardless of the outcome, the applicant will need to comply with the rest of the requirements of this section.

(b) The applicant must file an application for a "wireless personal telecommunications services antenna tower permit" from the city building and zoning department, and establish a cost recovery account. All applications shall be reviewed and processed through the city cost recovery system, and shall require the city special projects coordinator's review and signoff.

(c) Each site, and a plan showing proposed landscaping and the elevation drawings of the wireless personal telecommunications services antenna tower, the wireless personal telecommunications services antennas proposed thereon, and any appurtenant facilities, shall be clearly identified by the applicant and filed with the city building and zoning department for review. A copy of the application shall be given to the city special projects coordinator by the applicant immediately upon filing the application with the building and zoning department.

(d) The applicant shall provide evidence of the status of title to the proposed wireless personal telecommunications services antenna tower site, in form required by the legal department, to assure the city that all necessary owners, easement holders, tenants, and other interested parties have consented to the application. This evidence must be approved prior to the requisite permit being issued.

(e) The applicant shall certify that the wireless personal telecommunications services antennas proposed for the wireless personal telecommunications services antenna tower will be made continually compliant with all present and future promulgated safety laws, rules, and regulations concerning electromagnetic frequency emissions standards, or similar safety standards for other communications media transmissions, and shall acknowledge the city's ability to require immediate removal of any wireless personal telecommunications services antenna which does not meet such safety rules and regulations. This enforceable certification shall be in form approved by the legal department and shall be binding on the applicant's successors in interest. The certification shall enable the city to recover its costs and attorney's fees if litigation is necessary to enforce the certification.

(f) The applicant shall also certify that any wireless personal telecommunications services antennas proposed for the wireless personal telecommunications services antenna tower will not interfere with public safety communications, and further, will not unreasonably interfere with the reception or transmission of television, radio, microwave, telephone, digital, or similar communications signals or receipt of signals of nearby residential or business residents. This enforceable certification shall be in form approved by the legal department and shall be binding on the applicant's successors in interest. The certification shall enable the city to recover its costs and attorney's fees if litigation is necessary to enforce the certification. The city may, as a condition for approval of the permit, require frequency relocation agreements.

(g) The applicant shall state in the wireless personal telecommunications services antenna tower permit application that it will, as a condition of issuance of the permit, accommodate wireless personal telecommunications services antenna facilities of other providers, on a nondiscriminatory basis, to avoid duplication of the erection of such wireless personal telecommunications services antenna towers throughout the city, or if not, the reasons, based upon verifiable objective data, why it cannot do so. Unless the city governing body makes an express waiver, the applicant shall make an enforceable certification that it shall permit co-use of its wireless personal telecommunications services antenna tower. This enforceable certification shall be in form approved by the legal department and shall be binding on the applicant's successors in interest. The certification shall enable the city to recover its costs and attorney's fees if litigation is necessary to enforce the certification. Unreasonable refusal to permit co-use shall constitute a violation of this article and may result in the city revoking the wireless personal telecommunications services antenna tower approval and seeking a mandatory injunction to compel the wireless personal telecommunications services antenna tower's removal in addition to all other remedies available to the city for violations of its Code of Ordinances, which remedies are hereby incorporated by reference.

(Ord. No. 2131, § 2, 8-13-97)

Sec. 5.5-53. Application review procedure.

(a) Any applicant which wishes to license a city site shall first contact the city special projects coordinator to discuss what is desired and whether there are any available city sites which can meet the applicant's needs. The special projects coordinator may, if necessary, request direction from the city governing body whether or not the city wishes to license land that the city owns or controls for the applicant's purpose. Regardless of the outcome, the applicant will need to comply with the rest of the requirements of this section.

(b) An application for a wireless personal telecommunications services antenna tower permit shall be submitted to the Building and Zoning department, with a copy being given by the applicant to the city special projects coordinator.

(c) When the application is complete, it shall be scheduled for consideration at the next available city review committee meeting.

(d) After consideration of the city review committee, the application shall be submitted to the governing body of the city for review. The governing body of the city shall review these applications in accordance with its quasi-judicial procedures.

(e) When the governing body of the city considers an application for a wireless personal telecommunications services antenna tower permit, the city clerk shall give notice of the meeting by first class

mail to the owners of property, as their names and addresses are disclosed by the most recent county ad valorem real property tax roll, within three hundred (300) feet of the property for which the wireless personal telecommunications services antenna tower permit is sought. This notice shall be placed in the mail at least fourteen (14) calendar days before the meeting. In addition, the city clerk shall post the agenda for the meeting at which the wireless personal telecommunications services antenna tower permit is to be considered for at least three (3) business days prior to the meeting. In addition, city personnel shall erect, at least five (5) days before the city council meeting, a double-faced four-foot (4) by four-foot (4) sign with large lettering upon the property in accordance with subsection 27-11(c)(2) of the Code of Ordinances of the City of Plantation. (Ord. No. 2131, § 3, 8-13-97)

Sec. 5.5-54. Substantive review criteria.

- (a) Siting preferences:
 - (1) The city will encourage the location of wireless personal telecommunications services antenna tower sites on public property consistent with the intent of the congressional legislation on this subject. Accordingly, the city shall consider when evaluating whether to approve an application for a wireless personal telecommunications services antenna tower permit whether there is suitable public property near the proposed site which would physically accommodate the wireless personal telecommunications services antenna tower without unreasonably compromising the wireless personal telecommunications services antenna tower's signal reception or transmitting capability or unreasonably compromising the communication provider system's capability, and without significantly increasing any negative wireless personal telecommunications services antenna tower secondary effects of aesthetics or likelihood of property damage in the event of wireless personal telecommunications services antenna tower failure. The city shall consider the character of the property surrounding the public property in deciding whether to approve the application.
 - (2) If a wireless personal telecommunications services antenna tower cannot be located on public property without unreasonably compromising the wireless personal telecommunications services antenna tower's signal reception or transmission capability or unreasonably compromising the communication provider system's capability, the city will next consider sites in industrial zoned districts, sites in business or office zoned districts, or sites in community facility zoned districts which are not subject to governmental ownership or use.
 - (3) If a wireless personal telecommunications services antenna tower cannot be located on candidate sites within site preference class 1 or 2 above without unreasonably compromising the communication provider system's capability, the city will next consider sites in multifamily zoned property.
 - (4) If a wireless personal telecommunications services antenna tower cannot be located on candidate sites within site preference class 1, 2, or 3 above without unreasonably compromising the communication provider system's capability, the city will consider single-family zoned property for wireless personal telecommunications services antenna tower sites.

The governing body of the city may require opinions from suitable engineers or other learned

professionals or experts when evaluating siting preferences and may defer considering applications for up to ninety (90) days to permit good faith negotiations to occur between an applicant and a property owner of a preferred site class.

(b) "Unreasonably compromising the wireless personal telecommunications services antenna tower's signal reception or transmission capability" means that the provider will not be able to provide significantly needed but not required (for required, see subsection (c) below) communications coverage to areas within the city. It will be presumed that if a proposed site is within one-half mile of an existing wireless personal telecommunications services antenna tower that can reasonably accommodate the applicant's wireless personal telecommunications services antenna, a denial of the application would not result in an unreasonable compromise to the wireless personal telecommunications services antenna tower's reception or transmission capability. This presumption is rebuttable.

(c) "Unreasonably compromising the communication provider system's capability" means that without the wireless personal telecommunications services antenna tower being approved, the communication provider is in violation of the built-out or coverage requirements it must satisfy (if any) in order to retain its Federal Communications Commission license; or, that without the wireless personal telecommunications services antenna tower being approved, the communication provider cannot provide any form of service to the area within the city which would have been served by a wireless personal telecommunications services antenna tower being approved such that an effective barrier to entry or any service results; or, that the denial of the application for the wireless personal telecommunications services antenna tower permit would, pursuant to the congressional legislation or agency rule then in effect or the case or agency decisions interpreting same, likely not be permissible (the governing body of the city may defer action on the application for a time reasonable to obtain a legal opinion).

(d) The applicant must to the fullest extent practicable, demonstrate to the city that the wireless personal telecommunications services antenna tower will be screened from view by landscaping, existing natural vegetation or buildings, or otherwise aesthetically designed to blend into and harmonize with the area or location surrounding the wireless personal telecommunications services antenna tower site. The city shall be able to deny wireless personal telecommunications services antenna tower designs that are more visually obtrusive than other designs capable of delivering comparable service, it being critically important that the design be as visually unobtrusive as possible. The city may also limit the height of a proposed wireless personal telecommunications services antenna tower, in instances where height is not needed to provide co-use capacity, where the city determines that such height is in excess of that needed for coverage, or where the wireless personal telecommunications services antenna tower is in or near property having a low preference for siting purposes.

(e) The applicant must further establish that the wireless personal telecommunications services antenna tower is safely installed, mounted, anchored and braced to withstand hurricane-force winds and otherwise conform with all South Florida Building Code and all applicable life safety requirements.

(f) The wireless personal telecommunications services antenna tower shall be located to minimize the likelihood of injury to property or to people in the event of tower failure.

(g) No signals, lights, or illumination shall be permitted on any wireless personal telecommunications services antenna tower unless required by the Federal Communications Commission or

Federal Aviation Administration. Finally, no commercial advertising shall be allowed on a wireless personal telecommunications services antenna tower.

(Ord. No. 2131, § 4, 8-13-97)

Sec. 5.5-55. Antenna installation.

(a) The installation of wireless personal telecommunications services antennas on wireless personal telecommunications services antenna towers need not be reviewed by the governing body of the city and may be approved by the building and zoning department without a wireless personal telecommunications antenna permit if the wireless personal telecommunications services antenna was previously planned for and approved when the wireless personal telecommunications services antenna tower was approved (i.e., if a wireless personal telecommunications services antenna tower was constructed with the thought that it would have three (3) wireless personal telecommunications services antennas of a certain kind and the wireless personal telecommunications services antenna is of that kind and within that number). In addition, a wireless personal telecommunications services antenna permit is not required in the event an existing, approved antenna is damaged and replaced (or replaced as part of a maintenance schedule) with the same type of antenna or an antenna of a smaller, less visible design; however, after such replacement, the building and zoning director shall be notified as soon as possible so that he may determine whether South Florida Building Code permits or inspections are necessary.

Except as provided above, the installation of wireless personal telecommunications services antennas must receive a wireless personal telecommunications permit. Applications to install a wireless personal telecommunications antenna on a wireless personal telecommunications services antenna tower, or on other structures in four (4) stories or more in height, may be approved by the plans adjustment committee. In the event the plans adjustment committee does not approve an application for a wireless personal telecommunications services antenna permit, or in the event the plans adjustment committee does not have jurisdiction to approve the application because the structure is less than four (4) stories in height, the application shall be presented to the governing body of the city for review, and shall be advertised and evaluated in accordance with sections 5.5-52, 5.5-53, 5.5-54, and 5.5-56 of this article (as if such matter was an installation of a wireless personal telecommunications services antenna tower) in addition to this section.

(b) Regardless of whether it is to be presented to the plans adjustment committee, an application for a "wireless personal telecommunications services antenna permit" shall be received in form equivalent to wireless personal telecommunications services antenna towers, shall comply with the requirements of section 5.5-52 of this article, and a copy of the application shall be given by the applicant to the city special projects coordinator.

(c) No signals, lights, or illumination shall be permitted on a wireless personal telecommunications services antenna unless required by the Federal Communications Commission or Federal Aviation Administration, and no commercial advertising shall be allowed on any wireless personal telecommunications services antenna.

(d) The wireless personal telecommunications services antenna must be designed to be as visually unobtrusive as possible and stealth designs shall be encouraged. The wireless personal telecommunications services antenna must be anchored on the wireless personal telecommunications services antenna tower or to the structure, and the installation must satisfy all requirements of the South Florida Building Code; and

(e) The building and zoning department must be advised by the legal department that all requisite owners of the site have consented to the application for a wireless personal telecommunications services antenna permit before the permit is issued.

(Ord. No. 2131, § 5, 8-13-97)

Sec. 5.5-56. Waivers.

The governing body of the city shall be able to issue waivers to the requirements of this article in accordance with the measurable standards and criteria of section 27-699 of the Code of Ordinances of the City of Plantation.

(Ord. No. 2131, § 6, 8-13-97)