

SPECIAL JOINT MEETING

SACRAMENTO CITY COUNCIL

MONDAY, JULY 6, 1987

2:00 p.m.

I HEREBY CALL a Special Meeting of the Sacramento City Council to meet jointly with the Sacramento County Board of Supervisors and the Sacramento Metropolitan Cable Television Commission on Monday, July 6, 1987, at 2:00 p.m. in the Sacramento County Board of Supervisors Chambers, First Floor, County Administration Building at 700 H Street, Sacramento, California, 95814.

The purpose of the Special Meeting will be to meet jointly with the Board of Supervisors of the County of Sacramento, and the members of the Sacramento Metropolitan Cable Television Commission and to conduct a public hearing to receive comment upon, deliberate and possibly enact an ordinance revising the current cable franchising program by providing for the construction and operation of cable television systems pursuant to the issuance to applicant operators of licenses for a prescribed period of time and subject to other terms and conditions, on a noncompetitive and non-discretionary basis.

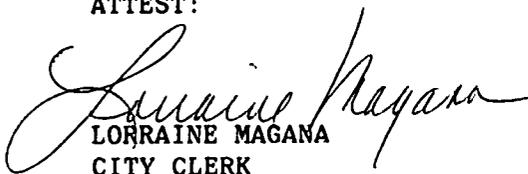
At the time, on the date, and at the place specified above, all members of the public and other persons or parties who may be interested in the matter described above are requested to appear and present their comments.

ISSUED: This 2nd day of July, 1987.



ANNE RUDIN
MAYOR

ATTEST:



LORRAINE MAGANA
CITY CLERK

M E M O R A N D U M

DATE: July 2, 1987

TO: Honorable Chairman and Members
Board of Supervisors
COUNTY OF SACRAMENTO

Honorable Mayor and Council Members
CITY OF SACRAMENTO

FROM: Brenton A. Bleier
LAW OFFICES OF BRENTON A. BLEIER
A Professional Corporation

SUBJ: Cable Licensing Ordinance

APPROVED
BY THE CITY COUNCIL

JUL 6 1987

OFFICE OF THE
CITY CLERK

Introduction.

As counsel to your Cable Television Commission, I have met extensively with all of your attorneys, including L. B. Elam, your County Counsel, James P. Jackson, your City Attorney, Michael Small, your trial counsel in the Pacific West federal case, and consulting attorneys who were retained by your respective jurisdictional attorneys to advise them on cable television matters. The contents of this Memorandum represent the fruits of the consensus views reached in those meetings.

Those meetings considered in detail the legal ramifications of the jury's determinations in the Pacific West federal case over the longer term. We have discussed these ramifications with you in closed session and will not reiterate those considerations here.

Policy Decision Presented.

Ultimately, your Bodies are presented in this proposed ordinance with the basic policy decision as to whether to continue to pursue a competitive franchise process as the

sole method of entry for proposed providers of cable television services.

The arguments for such a position are well known to you. Because you have received overwhelming evidence that cable television is a "natural monopoly", a competitive franchising procedure maximizes, to the greatest extent possible, the return to the community of a portion of the monopoly profits of the operator which will, under this view, continue to occur.

On the other hand, the arguments for abandoning your long held position by the adoption of the proposed licensing ordinance are of relatively recent vintage. For the most part, they stem from the adverse special verdicts returned by the jury in Pacific West federal case. While we continue to disagree with the jury's findings, they remain the verdicts of a unanimous jury after an exhaustive trial. Accordingly, we believe that they are entitled to great weight.

In view of these verdicts, there are at least three reasons that you should enact the proposed ordinance:

1. The jury's verdicts call into question many of the most important factual conclusions upon which the current franchising ordinance is based.
2. There is a reasonable possibility that Judge Schwartz could enter an injunction against the City and County in the Pacific West federal case as early as Tuesday which would have the effect of depriving the jurisdictions of any effective police power protections possibly for the indefinite future. The proposed ordinance would allow the jurisdictions to attempt to structure the entry of the plaintiff in that action and others.
3. To the extent that the current franchising procedure could be found to incur any liability for the City and County in any of the remaining actions brought by this plaintiff and others (and we continue to believe that there should be none), the enactment would tend to mitigate those damages.

Summary of Contents of Proposed Ordinance.

The proposed ordinance presented to you today attempts to retain those important public protections recognized by the federal Cable Act and the California cable statutes (except as specifically noted below). In essence, it provides as follows:

1. Licenses will provide for:
 - a. Payment of 5% of gross revenues as License Fees;
 - b. Performance bonding (100% during construction, lesser level after completion);
 - c. Miscellaneous police power regulations (privacy, anti-competitive conduct, removal, tree trimming, undergrounding, relocation, restoration of private property, permits and approvals, override capability, etc.);
 - d. Limited public access requirements (6 channels plus 30 Mhz upstream and down) [Note: Facilities and equipment are not required. See below.]; and
 - e. Enforcement mechanisms (auditing, "as built" plans, technical standards, isolated dwelling exception definition, reporting requirements, notice of completion procedure, gross revenue definitions, liability insurance requirements, etc.).
2. Applications for Licenses will contain:
 - a. The identity of the applicant;
 - b. Evidence of compliance with (including the payment of all fees) all zoning, building, and encroachment ordinances;
 - c. A map of the License Area identified by the applicant;
 - d. A small application fee;
 - e. A performance bond in the full amount of the construction cost of planned build; and
 - f. The applicant's schedule of construction, keyed to the map provided.
3. Licenses shall be issued by the Cable Television Commission unless:
 - a. The application is deficient; or
 - b. The applicant is in default of a previously

issued License.

Public Access Considerations.

Because we know of your Bodies' strong support for public access as an enhancement of First Amendment values, we have sought to assure the continuation of this important function under the License framework. As you know, the federal Cable Act does not allow the requirement of cash support for public, educational and government access ("PEG access" in the terminology of the Act) for licenses or franchises issued after the adoption of the Act, but does allow the requirement of channel space and facilities and equipment.

The proposed ordinance does require the provision of the same level of channel and spectrum space as your previous legislative determination of community need. It doe not require any specific level of facilities or equipment, even though such requirements are permissible under the Cable Act.

The reason for the omission is that the Cable Act is premised upon the type of competitive franchising procedure created by your franchise ordinance (and, understandably, the premise that cable television is a "natural monopoly"). There is simply no fair mechanism to impose equipment or facility requirements equitably upon Licensees when the number and scope of such Licenses are unknown and unpredictable.

It is my judgment that we can expect a few applications at the outset of relatively small geographic size, intended primarily for use as evidence by various plaintiffs in their lawsuits. Accordingly, any imposition of specific levels of facilities and equipment would either (1) have to be denominated in dollar terms (and is thus proscribed by the Cable Act) or (2) would run the risk of appearing arbitrary or unduly burdensome relative to the size of the License Area sought.

Effects of Proposed Ordinance Upon Initial Franchisee.

It is my judgment that neither the adoption of this ordinance nor the issuance of Licenses thereunder per se affects the current Initial Franchisee or its obligations under its Franchise. If other persons or entities should actually enter the business of providing cable television services in competition with the Initial Franchisee, some effect could occur.

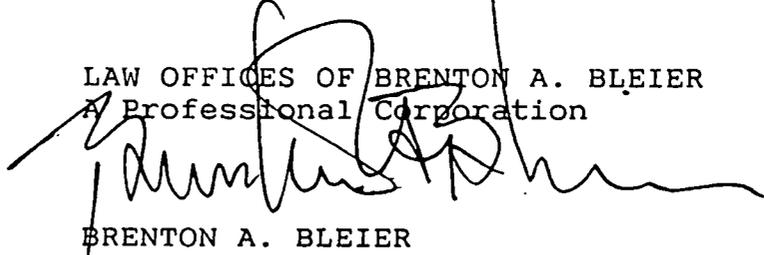
If such should actually occur, then the Initial

Franchisee is entitled to modification of its obligations to the extent necessary to eliminate a preference or burden (See Franchise Resolution VII.26.a). It is impossible to project, in the face of lack of likelihood of sustained competition, what the ultimate extent of such reduction should or would be.

Conclusion.

For all of the reasons stated herein, your attorneys recommend the adoption of the proposed licensing ordinance as an urgency matter.

LAW OFFICES OF BRENTON A. BLEIER
A Professional Corporation

A large, stylized handwritten signature in black ink, appearing to read 'Brenton A. Bleier', is written over the typed name and firm name.

BRENTON A. BLEIER

AN ORDINANCE ADDING CHAPTER 20.5 TO THE
SACRAMENTO CITY CODE RELATING TO
CABLE TELEVISION LICENSES AND AMENDING
CERTAIN SECTIONS OF CHAPTER 20 OF THE
SACRAMENTO CITY CODE

Ord. 87-079

APPROVED
BY THE CITY COUNCIL

JUL 6 1987.

OFFICE OF THE
CITY CLERK

The City Council of the City of Sacramento, State of California, does ordain as follows:

SECTION 1. Chapter 20.5, Section 20.5.010 through Section 20.5.712 are hereby added to Title 5 of the Sacramento City Code to read as follows:

"CHAPTER 20.5

CABLE TELEVISION LICENSING ORDINANCE

SUB-CHAPTER 1

GENERAL PROVISIONS

20.5.010 PURPOSES. The purposes of this Chapter include, but are not limited to, the promotion of the general welfare of the citizens of the City by:

- a. Establishing a plan for the licensing of cable television services within the County and the Cities;
- b. Establishing a regulatory framework for the administration of licenses in order to insure that the potential recreational, technical, educational, social, economic and other advantages of cable television will in fact inure to the benefit to the citizens of the County and the Cities;
- c. To provide for the equal and uniform provision of cable television services throughout the County and the Cities;
- d. To insure that Licensees have the requisite financial qualifications to promptly complete and operate the Cable Television System proposed to be constructed hereunder.
- e. To allow a mechanism whereby Licensees may provide certain limited types of cable television service with lesser public benefits and burdens than they would incur if they chose to obtain a Franchise pursuant to the provisions of Chapter 20.
- f. To regulate the operations of Licensees for the purpose of protecting and promoting the public health, peace, safety, and

welfare.

The provisions of this Section shall not be deemed to confer any right upon a Licensee which is not otherwise conferred by another express provision of this Chapter.

20.5.012 SCOPE OF APPLICATION OF CHAPTER. Licenses issued under the provisions of this Chapter confer only the rights to provide those cable television services which are protected under the provisions of the First Amendment of the United States Constitution and Article I, Section 2 of the California Constitution. Nothing contained herein shall be deemed to authorize a Licensee to provide any service or to engage in any business, and said Licensee is hereby prohibited from providing any such service or engaging in any such business, not accorded protections by the aforementioned provisions of the United States and California Constitutions.

20.5.014 DEFINITIONS. As used in this Chapter, the following terms, phrases, and words shall be ascribed the following meanings, unless the context indicate otherwise. The word "shall" is mandatory, and the word "may" is permissive. Words not defined herein shall be given their common and ordinary meanings, consistent with the context in which such words are used and the purposes of this Chapter.

a. "Cable Television Commission" shall mean the Sacramento Metropolitan Cable Television Commission, a joint powers agency of the County of Sacramento, the City of Sacramento, the City of Folsom, and the City of Galt, established pursuant to California Government Code section 6500 et seq. and pursuant to Chapter 20 of the Sacramento City Code.

b. "Cable Television System" shall mean a system of antennae, cables, wires, lines, towers, waveguides, or other conductors, converters, amplifiers, headend equipment, master controls, earth stations, equipment and facilities designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio, video and other forms of electronic or electrical signals within the County and the Cities.

c. "CCPA" shall mean the Cable Communications Policy Act of 1984 (47 USC 521 et seq.).

d. "County and the Cities" shall mean the County of Sacramento, the City of Sacramento, the City of Folsom, and the City of Galt.

e. "Encroachment Permit" shall mean a permit issued to a Licensee by the City of Sacramento pursuant to Division 2, Chapter 5.5 of the California Streets and Highways Code and Chapter ___ of the Sacramento City Code or by one or more of the Cities or the County.

f. "Gross Revenues" shall mean all cash, credits, property of

any kind or nature or other consideration derived directly or indirectly by a Licensee, its affiliates, subsidiaries, parents, and any other person or entity in which the Licensee has a financial interest or which has a financial interest in the Licensee, arising from or attributable to operation of the Cable Television System, including, but not limited to: (1) revenue from all charges for services provided to subscribers of entertainment and non-entertainment services (including Leased Access fees); (2) revenue from all charges for the insertion of commercial advertisements upon the Cable Television System; (3) revenue from all charges for the leased use of studios; (4) revenue from all charges for the installation, connection and reinstatement of equipment necessary for the utilization of the Cable Television System and the provision of Subscriber and other services; and (5) the sale, exchange or use or cablecast of any programming developed for community use or institutional users. "Gross Revenues" shall include, valued at retail price levels, the value of any goods, services, or other remuneration in non-monetary form received by the Licensee or others described above in consideration for performance by a Licensee or others described above of any advertising or other service in connection with the Cable Television System.

"Gross Revenues" shall not include (1) any taxes on services furnished by the Licensee which are imposed directly upon any Subscriber or User by the United States, State of California or local agency and collected by the Licensee on behalf of the government; (2) revenue received directly from the Licensee by an affiliate, subsidiary or parent of the Licensee or any other person or entity in which the Licensee has a financial interest or which has a financial interest in the Licensee, when the revenue received has already been included in reported Gross Revenues as received by the Licensee; and (3) revenue received by such an affiliate, subsidiary, parent, person or entity when the revenue received is from the sale of national advertising shown on programs distributed on a national basis by the affiliate, subsidiary, parent, person or entity and, but for this exception, that portion of the revenue attributable to broadcasts through the Cable Television System would be treated as Gross Revenues.

g. "Leased Access" shall mean the use on a fee-for-service basis of the Cable Television System by business enterprises (whether profit, nonprofit or governmental) to render services to the citizens of the County and the Cities and shall include without limitation all use pursuant to Section 612 of the CCPA.

h. "Licensee" shall mean a person or entity to whom a License to construct and operate a Cable Television System is issued pursuant to the provisions of this Chapter.

i. "Streets" shall mean the surface of and the space above and below any street, road, highway, freeway, utility right-of-way or any other easement which now or hereafter exists for the

20.5.026 COMMUNICATIONS WITH REGULATORY AGENCIES. Copies of all petitions, applications, communications, and reports submitted by a Licensee to the FCC or any other Federal or State regulatory commission or agency having jurisdiction in respect to any matters affecting construction or operation of a Cable Television System or services provided through such a system, shall be filed simultaneously with the Clerk of the Board of Directors of the Cable Television Commission. Copies of responses or any other communications from the regulatory agencies to a Licensee likewise shall be filed immediately on receipt with said Clerk.

20.5.028 LIMITATION OF ACTIONS. Except as otherwise expressly provided by this Chapter, any judicial proceeding, whether for the recovery of damages or otherwise, brought for the purpose of adjudicating the validity of any provision of this Chapter or amendments thereof shall be commenced not later than thirty (30) calendar days following the latter of: (1) the effective date of the provisions; or (2) the accrual of the cause of action. Any such judicial proceeding brought for the purpose of adjudicating the validity of any rule, order, regulation or determination which purports to have been made pursuant to the provisions of this Chapter shall be commenced not later than thirty (30) calendar days following the date of adoption, issuance or making of such rule, order, regulation or determination. No judicial proceeding shall be commenced in violation of the limitations prescribed by this Section.

The provisions of this Section shall not be applicable to any judicial proceeding for the recovery of damages or otherwise, commenced by the Cable Television Commission for breach or enforcement of the provisions of this Chapter or any regulation or determination purporting to have been issued thereunder.

20.5.030 POSSESSORY INTEREST TAXATION. The City hereby declares that as a result of this ordinance and any License issued pursuant hereto, a possessory interest subject to property taxation may be created and any such property interest may be subject to property taxation if it is created. The Licensee, as the party in whom the possessory interest will be vested, may be subject to the payment of property taxes levied upon such an interest.

SUB-CHAPTER 2

ISSUANCE OF LICENSES

20.5.100 APPLICATION FOR LICENSE. Applications for a License under the provisions of this Chapter shall be made to the Cable Television Commission upon a form as established from time to time for that purpose by the Commission.

20.5.102 CONTENTS OF APPLICATION. Applications for a License shall include at a minimum

- (a) a clear description of the identity of the applicant,

CABLE TELEVISION LICENSING ORDINANCE

including but not limited to the name of the applicant, the address of the applicant, the nature of business entity, evidence of the compliance of the business entity with all applicable law,

(b) evidence that the applicant has applied (including the payment of all applicable fees) to the applicable jurisdiction for an Encroachment Permit,

(c) evidence that all aspects of the applicant's Cable Television System comply with applicable zoning laws of the applicable jurisdiction,

(d) a map or maps of a scale of not less than one inch (1") equals one hundred feet (100') showing the precise geographic area for which applicant seeks a License ("License Area"),

(e) evidence that applicant has applied (including the payment of all applicable fees) to the applicable jurisdiction for building and electrical code review and approval of the plans and construction the entire Cable Television System within the License Area,

(f) evidence of financial responsibility in the form of a performance bond conforming to Section 20.5.600 of this Chapter,

(g) a non-refundable application fee equal to one quarter of one percent (.0025) of the principal penal amount of the initial performance bond established pursuant to Section 20.5.600 of this Chapter, or such lesser sum as may be established by the Cable Television Commission, to cover the costs of review, issuance and enforcement of Licenses issued pursuant to this Chapter, and

(h) a schedule of construction, as established by the applicant and reflected upon the map(s) provided pursuant to subpart (d) of this section 20.5.014, showing by a logical geographic progression which Streets within the License Area shall be constructed by the applicant within each calendar quarter during the period of construction.

20.5.104 ISSUANCE OF LICENSES. The Cable Television Commission shall issue all Licenses for which applications are received unless (1) the application shall fail to comply with the provisions of Section 20.5.102 above or (2) any License theretofore issued to any affiliate, subsidiary or parent of the Licensee or any other person or entity in which the Licensee has a financial interest or which has a financial interest in the Licensee shall be thereupon in default as to any provision of this Chapter or as to any provision of any License issued hereunder.

20.5.106 TERM OF LICENSE. The term of all Licenses issued pursuant to the provisions of this Chapter shall be five (5) years.

CABLE TELEVISION LICENSING ORDINANCE

108

20.5.106 UNIVERSAL SERVICE. Any Cable Television System licensed pursuant to the provisions of this Chapter shall provide equal and uniform cable television service, subject only to a reasonable construction schedule established by the applicant pursuant to Section 20.5.102 (i) above, to all Dwelling Units within the License Area defined by the applicant.

110

20.5.108 THE LICENSE AREA. The applicant shall define a License Area whose contour, so far as is possible, shall follow Streets. Within the perimeter of the contour, no Dwelling Units shall be excluded from service to provided to the License Area defined by the applicant, except pursuant to Section 20.5.302 of this Chapter.

SUB-CHAPTER 3

SYSTEM CAPABILITY AND STANDARDS

20.5.200 GENERAL CAPABILITY. Each Cable Television System shall, at minimum:

- a. Relay to subscriber terminals those broadcast signals required by the FCC;
- b. Distribute in color all television signals which it receives in color;
- c. Make available upon request by any subscribers receiving channels showing premium services and pay per view events, a lockout device which prevents the unauthorized viewing of such channels;
- d. Make available to subscribers, upon request, an RF switch (an A-B switch) permitting conversion from cable to antenna reception; and
- e. Have a present, activated capacity of four hundred fifty (450) megahertz with all amplifier cascades designed and spaced to accommodate conversion to five hundred fifty (550) megahertz capacity.

20.5.202 STANDBY POWER. Each Cable Television System shall include equipment capable of providing standby powering for headend, transportation and trunk amplifiers for a minimum of two (2) hours. The equipment shall be so constructed as to automatically notify the cable office when it is in operation and to automatically revert to the standby mode when the AC power returns. The system shall incorporate safeguards necessary to prevent injury to lineman resulting from a standby generator powering a "dead" utility line.

20.5.204 OVERRIDE CAPABILITY. Each Cable Television System shall include an "Emergency Alert Capability" which will permit the County and Cities, in times of emergency, to override by remote control alternatively the audio and video of all channels simultaneously. Each

CABLE TELEVISION LICENSING ORDINANCE

Cable Television System shall include the capability to broadcast from the City's headquarters for Civil Defense, Disaster and Emergency Services.

20.5.206 INTERCONNECTION. The Cable Television System shall be interconnected with other Cable Systems within the greater Sacramento metropolitan area so as to enable each system to carry and cablecast the public, educational, and governmental access programming of the other systems.

20.5.208 PLANS AND SPECIFICATIONS. Each application for a License shall include detailed plans and specifications for the Cable Television System which is proposed by the applicant. The System shall be constructed and installed by a Licensee in compliance with the plans and specifications contained in the application. Upon completion, the applicant shall file "as built" plans with the Cable Television Commission showing the detailed location of all underground cable plant and active electronics.

20.5.210 TECHNICAL STANDARDS. Each Licensee shall construct, install and maintain its Cable Television System in a manner consistent and in compliance with all applicable laws, ordinances, construction standards, governmental requirements, and technical standards equivalent to those established by the FCC. Each Licensee shall provide to the Cable Television Commission, upon request, written reports of the Licensee's annual proof of performance tests conducted pursuant to FCC standards and requirements.

a. Each Licensee shall at all times comply with the National Electrical Safety Code (National Bureau of Standards); National Electrical Code (National Bureau of Fire Underwriters); California Public utility Commission General Orders 95, 112-d and 128; Applicable FCC and other Federal, State and local regulations; and Codes and other ordinances of the County and Cities.

b. In any event, the Cable Television System shall not endanger or interfere with the safety of persons or property within the Sacramento Community or other areas where the Licensee may have equipment located.

c. All working facilities, conditions, and procedures, used or occurring during construction of the Cable Television System shall comply with the standards of the Occupational Safety and Health Administration.

d. Construction, installation and maintenance of the Cable Television System shall be performed in an orderly and workmanlike manner, and in close coordination with public and private utilities serving the Sacramento Community following accepted construction procedures and practices and working through existing committees and organizations.

e. All cable and wires shall be installed, where possible,

CABLE TELEVISION LICENSING ORDINANCE

parallel with electric and telephone lines, and multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering consideration.

f. Any antenna structure used in the Cable Television System shall comply with construction, marking and lighting of antennae structures, required by the United States Department of Transportation.

g. RF leakage shall be checked at reception locations for emergency radio services to prove no interference signal combinations are possible. Radiation shall be measured adjacent to any proposed aeronautical navigation or communication radio sites to prove no interference to air navigational reception.

20.5.212 PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS. Every Cable Television System licensed pursuant to the provisions of this Chapter shall provide not less than the following for public, educational and governmental access pursuant to the provisions of CCPA section 611 (47 USC 531):

(a) three (3) downstream video channels for public and community access;

(b) two (2) downstream video channels for educational access;

(c) one (1) downstream video channel for governmental access; and

(d) an additional thirty (30) megahertz of band width capacity (activated at all times for both upstream and downstream use) for educational access for video and/or data transmission.

20.5.214 SUPPORT FOR USE OF ACCESS. Nothing contained in this Chapter shall be construed to limit the authority of the Licensee to make payments in support of the use of public, educational and/or governmental. However, such payments are expressly not a requirement of any License granted hereunder and shall in no event be considered in the calculation of License Fees pursuant to Section 5.7200 et seq. below.

20.5.216 AVAILABILITY OF ACCESS FACILITIES. Use of facilities for public, educational and governmental access upon the Cable Television System pursuant to Section 20.5.212 above shall be made available, without rental, deposits, or any other charge whatsoever, for use twenty four (24) hours per day, seven (7) days a week in connection with the production of public, educational and/or governmental access programming cablecast upon the Cable Television System. A Licensee shall (1) allow all persons and entities desiring to cablecast public, educational and/or governmental access programming to produce programming upon and electronically interface directly with Cable Television System of Licensee so as to effectively cablecast the public, educational and/or governmental access programming, or, in the alternative, (2) establish such reasonable rules and procedures, designed to promote the utilization of such public, educational and/or governmental access

CABLE TELEVISION LICENSING ORDINANCE

programming and subject to the approval of the Cable Television Commission, which approval shall not be unreasonably withheld, whereby the Licensee shall accept and cablecast such public, educational and/or governmental access programming upon the Cable Television System as shall be provided to the Licensee by such persons and entities. A Licensee shall make all reasonable efforts to coordinate the cablecasting of public, educational and/or governmental access programming upon the Cable Television System at the same time and upon the same channel designations as such programming is cablecast upon other cable television systems within the Sacramento community.

SUB-CHAPTER 4

CONSTRUCTION REQUIREMENTS

20.5.300 DWELLING UNITS. As used in this Chapter, the term "Dwelling Units" means residential living facilities as distinguished from temporary lodging facilities such as hotel and motel rooms and dormitories, and includes single family residential units and individual apartments, condominium units, mobile homes within mobile home parks, and other multiple family residential units.

20.5.302 ISOLATED DWELLING EXCEPTION. Notwithstanding any other provision of this Chapter, a Licensee shall be excused from making cable television services available to a particular Dwelling Unit within a License Area if that Dwelling Unit is situated at least five hundred (500) feet from another Dwelling Unit and making service available to the Dwelling Unit would require an aerial or underground extension of cable in excess of five hundred (500) feet from an otherwise existing aerial or underground trunk cable. The sole purpose of this exception is to relieve a Licensee from providing service to an isolated Dwelling Unit within a License Area under circumstances wherein extension of the System would constitute an excessive burden, and occupants of only one Dwelling Unit within the area would be deprived of services as a result of the relief. A Licensee shall not be entitled to relief under this Section unless it shows that it would not have been reasonable to have located cable in such a manner as to be within the distance limitation prescribed by this Section.

20.5.304 DUTY TO REPORT. Commencing at the end of the first full calendar quarter following the issuance of a License pursuant to the provisions of this Chapter, and continuing every calendar quarter thereafter until the date cable television services are made available to one hundred (100%) percent of the Dwelling Units within each License Area, the Chief Executive Officer of the Licensee shall file with the Clerk of the Board of Directors of the Cable Television Commission a written declaration identifying the number and percentage of Dwelling Units in each License Area to which such services have been made available as of the last day of the quarter for which the declaration is made. Upon request the License shall make available to the Commission such maps, documents and other data as were used by the Licensee to compile the aforesaid declaration. Said quarterly declarations shall be filed not later than the first day of the second calendar month

CABLE TELEVISION LICENSING ORDINANCE

following the end of the quarter for which the report is filed.

20.5.306 COMPLETION. (a) A Final Order of Completion shall be issued by the Board of Directors of the Cable Television Commission when: (i) construction of the Cable Television System has been completed within the entirety of each License Area in compliance with construction standards and the design and other requirements of this Chapter; (ii) cable television services have been made available to one hundred (100%) percent of the Dwelling Units within each License Area; (iii) any and all studio facilities, equipment, channels and other services, resources or benefits required for public, educational, and governmental access purposes pursuant to the provisions of this Chapter have been completed and made available; (iv) complete and accurate "as built" plans pursuant to Section 20.5.208 have been filed by the Licensee with the Cable Television Commission; and (v) a Notice of Completion has been filed by the Licensee as hereinafter provided.

(b) For purposes of this Chapter, cable television service shall be deemed to be made available when cable television services are offered on a non-discriminatory basis for immediate provision to the owner or legal representative of the owner empowered to consent to use of the property of such individual Dwelling Units.

(c) For the purpose of determining compliance with the provisions of this Chapter and of determining completion under this Section, the total number of Dwelling Units within each License Area shall be deemed to be the actual number of Units available for occupancy as of a date forty-five (45) calendar days in advance of the date of filing by the Licensee of the Notice of Completion; provided that the Licensee files the Notice of Completion with a good faith belief that it has in fact achieved completion as of the date of filing.

(d) A Licensee who asserts completion shall file a written Notice of Completion with the Clerk of the Board of Directors of the Commission. The Notice of Completion shall state the total number of Dwelling Units available for occupancy within each License Area forty-five (45) calendar days in advance of the filing of the Notice, the total number of Dwelling Units to which cable television service have been made available within each License Area as of the date of filing, and shall otherwise certify completion as defined by the first paragraph in this Section. Neither the Notice of Completion nor the statements, assertions or certifications contained therein shall be deemed to be binding upon the Board of Directors of the Commission.

(e) During the period of construction of the Cable Television System of during the sixty (60) day period following filing of the Notice of Completion, all elements and components thereof, and all equipment and studio facilities required by the License Documents shall be subject to inspection by the Cable Television Commission employees or authorized agents or representatives thereof, for the purpose of determining whether the System and related facilities comply with the License and the provisions of this Chapter. The Licensee shall authorize such inspection and provide such information and cooperation as is required in order to permit an adequate investigation to determine the existence

CABLE TELEVISION LICENSING ORDINANCE

or nonexistence of such compliance.

20.5.308 EXCUSES FOR VIOLATIONS. Except as hereinafter provided, violation by a Licensee of any of the provisions of this Chapter caused by circumstances beyond the control of the Licensee shall constitute good and sufficient excuse and justification for such violations precluding the Licensee from being in breach of said provisions. The following are examples of acts or omissions by a Licensee or circumstances which shall be deemed not to be beyond the control of the Licensee and which shall not constitute excuses or justifications for violations:

a. The failure at any time by a Licensee or its officers, agents or employees to exercise diligence in planning, organizing, arranging for or prosecuting the work of construction and installation, or in taking any other action necessary to permit or facilitate the work or construction and installation;

b. Unanticipated cost increases or insufficiency of capital with which to take actions necessary to comply or facilitate compliance with any of the provisions of this Chapter;

c. Considerations relating to economy or cost efficiency, as respects acts or omissions by a Licensee;

d. Delays occasioned by the failure of a Licensee to diligently apply for and prosecute any request for a required certificate, approval or consent from the FCC;

e. Delays occasioned by seasonal changes in weather or climatic conditions, such as rain (exclusive of catastrophic conditions in the nature of "Acts of God"). (Rain delay shall not constitute an excuse of justification for violation except with respect to measurable precipitation occurring on more than fifty-nine (59) days during any period commencing July 1 and ending the next following June 30; and only if such is the proximate cause of the violation.);

f. Delays occasioned by the customary and usual time required to obtain approval to attach lines to poles owned by private or public utilities or in the attaching of cable to the poles; provided that if a Licensee submits all plans and documentation required by private or public utility in connection with the approval to attach lines to poles, any time consumed by such approval process which is longer than one hundred fifty (150) calendar days following the submission of all necessary plans and documentation shall be deemed to excuse the Licensee from any violations which are proximately caused by such delay in excess of one hundred fifty (150) calendar days.

g. Delays occasioned by the customary and usual time required to process and secure approvals under zoning ordinances of the County and Cities for the location of components of the Cable Television System and other installations associated therewith,

CABLE TELEVISION LICENSING ORDINANCE

given the nature of the approval required and magnitude of the project.

Notwithstanding the provisions of Subparagraph "a" through "f", inclusive, above, a Licensee shall not be excused from any violation of the provisions of this Chapter except for causes which are beyond the control of the Licensee, and except with respect violations which have not been contributed to or aggravated by acts or omissions by the Licensee.

Except as otherwise provided above, violations caused exclusively by acts or omissions by the County, the Cities, the Cable Television Commission or their officers, agents or employees shall constitute an excuse and justification for failure of a Licensee to comply with the provisions of this Chapter precluding a determination that the Licensee is in breach. However, violations as a result of such exclusive causes shall not be deemed to excuse the Licensee from other violations, shield the Licensee from a determination that it is in breach for violations, or bar any relief for damages or otherwise as a result of such breach.

20.5.310 EXAMPLES OF EXCUSES FOR VIOLATIONS. Examples of circumstances beyond the control of Licensee which excuse a Licensee from violation and being in breach of the provisions of this Chapter, when such violations are cause thereby, include the following: strikes, acts of public enemies; orders by military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; floods; civil disturbances; explosions; and partial or entire failure of utilities.

20.5.312 USE OF STREETS - INTERFERENCE. Each Cable Television System, including wires and appurtenances, shall be located and installed and maintained so that none of the facilities endanger or interfere with the lives or safety of persons, or interfere with any improvements the County, Cities or State of California may deem proper to make or unnecessarily hinder or obstruct the free use of the Streets or other public property. All transmission and distribution structures, lines and equipment erected or installed by a Licensee within the Sacramento Community shall be so located as to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the Streets or other public property.

20.5.314 PERMITS AND APPROVALS. During the term of each License, in advance of occupying, working upon or otherwise utilizing any street, the Licensee shall apply for and obtain any encroachment permit, license, authorization or other approval required by ordinances in force within the County and Cities, pay any fees and post any security required by such ordinances, and in the course of construction, installing, replacing, maintaining and repairing the Cable Television System shall comply with all applicable requirements of such ordinances and any terms or conditions of encroachment permits, licenses, authorizations or approvals issued thereunder.

The County and Cities shall be authorized to establish special fees payable by a Licensee to defray the costs incurred by the Department of Public Works of the respective agencies in supervising and regulating

CABLE TELEVISION LICENSING ORDINANCE

the installation of a Cable Television System within the Streets of the respective agencies. The respective Directors of Public Works of the County and Cities shall be authorized to formulate the purpose of promoting safety, reducing inconvenience to the public, and insuring adequate restoration and repair of the Streets, and a Licensee and its officers, agents, contractors and subcontractors shall comply with any and all such schedules.

20.5.316 RESTORATION OF STREETS AND PRIVATE PROPERTY. All disturbance by a Licensee of pavement, sidewalk, driveways, landscaping or other surfacing of Streets shall be restored, repaired or replaced by sidewalk, driveways, landscaping or other surfacing of Streets shall be restored, repaired or replaced by the Licensee at its sole cost in a manner approved by the Director of Public Works and in compliance with general applicable ordinances of the agency vested with jurisdiction thereover, and in as good condition as before the disturbance occurred.

To the extent practicable and reasonable, each Licensee shall accommodate the desires of any property owner respecting location within easements or rights-of-way traversing private land of the property owner of above ground boxes or appurtenances constituting a part of the Cable Television System. Any disturbance of landscaping, fencing or other improvements upon private property, including private property traversed by easements or rights-of-way utilized by a Licensee, shall, at the sole expense of the Licensee, be promptly repaired or restored (including replacement of such valuables as shrubbery and fencing) to the reasonable satisfaction of the property owner as soon as possible. Each Licensee shall, through authorized representatives, make a reasonable attempt to personally contact the occupants of all private property in advance of entering such property for the purpose of commencing any installation of elements of the System within easements or rights-of-way traversing such property. As used in this paragraph, the terms "easements" and "rights-of-way" do not include easements or rights-of-way for roadway purposes.

20.5.318 ERECTION OF POLES. No License shall be deemed to expressly or impliedly authorize the Licensee to construct or install poles or wire-holding structures within Streets for the purpose of placing cables, wires, lines or otherwise, without the written consent of the County or Cities within which the Street is situated. Such consent shall be given upon such terms and conditions as the Governing Body in its sole discretion may prescribe which shall include a requirement that the Licensee perform, at its sole expense, all tree trimming required to maintain the poles clear of obstructions.

With respect to any poles or wire-holding structures which a Licensee is authorized to construct and install within Streets, the county or Cities with jurisdiction over the Street or a public utility or public utility district serving the County or Cities may, if denied the privilege of utilizing such poles or wire-holding structures by the Licensee, apply for such permission to the Cable Television Commission. If the Commission finds that such use would enhance the public convenience and would not unduly interfere with the Licensee's operations, the Commission may authorize such use subject to such terms

CABLE TELEVISION LICENSING ORDINANCE

and conditions as it deems appropriate. Such authorization shall include the condition that the County, Cities, public utility or public utility district pay to the Licensee any and all actual and necessary costs incurred by the Licensee in permitting such use.

20.5.320 UNDERGROUNDING. Except as hereinafter provided, in all areas of the Sacramento Community where the cables, wires and other like facilities of a public utility or public utility district are placed underground, each Licensee shall construct and install its cables, wires and other facilities underground. Amplifier boxes and pedestal mounted terminal boxes may be placed above ground if existing technology reasonably requires, but shall be of such size and design and shall be so located as not to be unsightly or unsafe. In any area of the Sacramento Community where there are certain cables, wires and other like facilities of a public utility or public utility district underground and at least one operable cable, wire or like facility of a public utility or public utility district suspended above the ground from poles a Licensee may construct and install its cables, wires and other facilities from the same pole.

With respect to any cables, wires and other like facilities constructed and installed by a Licensee above ground, the Licensee shall, at its sole expense, reconstruct and reinstall such cables, wires or other facilities underground pursuant to any project under which the cables, wires or other like facilities of such utilities are placed underground within an area. The duty of a Licensee to underground shall arise only if all existing above ground like facilities of such utilities are placed underground.

20.5.322 RELOCATION. If during the term of a License the County, Cities, a public utility district, a public water district, a public sanitation district, a public drainage district or any other similar special public district elects to alter, repair, realign, abandon, improve, vacate, reroute or change the grade of any street or to replace, repair, install, maintain, or otherwise alter any above ground or underground cable, wire conduit, pipe, line, pole, wire-holding structure, structure, or other facility utilized for the provision of utility or other services or transportation of drainage, sewage or other liquids, the Licensee, shall, except as otherwise hereinafter provided, at its sole expense remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and any other facilities which it has installed. If such removal or relocation is required within subdivision in which all utility lines, including those for the Cable Television System were installed at the same time, the entities may decide among themselves who is to bear the cost of relocation; provided that neither the Cities nor County shall be liable to a Licensee for such costs. Regardless of who bears the costs, a Licensee shall take action to remove or relocate at such time or times as are directed by the agency or company undertaking the work. Reasonably advance written notice shall be mailed to the Licensee advising the Licensee of the date or dates removal or relocation is to be undertaken.

CABLE TELEVISION LICENSING ORDINANCE

20.5.324 TREE TRIMMING. The Licensee shall not, and shall prohibit any officer, agent, employee, contractor or subcontractor which it retains from removing or trimming any tree or portion thereof (either above, at or below ground level), which is located within a Street without the prior written approval of the Director of Public Works of the County or City in which the Street is located. Such consent may be given or withheld upon such terms and conditions as the Director of Public Works deems appropriate. Each Licensee shall be responsible for, shall indemnify, defend and hold harmless the County, Cities, Cable Television Commission, and their officers, agents and employees from and against any and all damages arising out of or resulting from the removal, trimming, mutilation of or any injury to any tree or trees proximately caused by the Licensee or its officers, agents, employees, contractors or subcontractors.

20.5.326 MOVEMENT OF BUILDINGS. Each Licensee shall, upon request by any person holding a building moving permit, license or other approval issued by the County, Cities or State of California, temporarily remove, raise or lower its wires to permit the movement of buildings. The expense of such removal, raising or lowering shall be paid by the person requesting same, and a Licensee shall be authorized to require such payment in advance. A Licensee shall be given not less than forty eight (48) hours oral or written notice to arrange for such temporary wire changes.

20.5.328 REMOVAL. Upon expiration or termination of a License, if the License is not renewed and if neither the Cable Television Commission nor an assignee purchase the Cable Television System, the Licensee may remove any underground cable from the Streets which has been installed in such a manner that it can be removed without trenching or other opening of the Streets along the extension of cable to be removed. The Licensee shall not remove any underground cable or conduit which requires trenching or other opening of the Streets along the extension of cable to be removed, except as hereinafter provided. The Licensee shall remove, at its sole cost and expense, any underground cable or conduit by trenching or opening of the Streets along the extension thereof or otherwise which is ordered to be removed by the Board of Directors of the Cable Television Commission based upon a determination, in the sole discretion of the Board, that removal is required in order to eliminate or prevent a hazardous condition or promote future utilization of the Streets for public purposes. Any order by the Board of Directors to remove cable or conduit shall be mailed to the Licensee not later than thirty (30) calendar days following the date of expiration of the License. A Licensee shall file written notice with the Clerk of the Board of Directors not later than thirty (30) calendar days following the date of expiration or termination of the License or its intention to remove cable intended to be removed and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the Director of Public Works of the County and Cities with jurisdiction over the Streets from which cable is to be removed. Removal shall be completed not later than twelve (12) months following the date of expiration or expiration of the License. Underground cable and conduit in the Streets which is not removed shall be deemed abandoned and title thereto shall be vested in

CABLE TELEVISION LICENSING ORDINANCE

the Cities and County within whose jurisdiction the cable or conduit is situated.

Upon expiration or termination of a License, if the License is not renewed and if neither the Commission nor an assignee purchase the System, the Licensee, at its sole expense, shall, unless relieved of the obligation by the County or Cities remove from the Streets all above ground elements of the Cable Television System, including but not limited to amplifier boxes, pedestal mounted terminal boxes, and cable attached to or suspended from poles, which are not purchased by the Commission or its assignee.

The Licensee shall apply for and obtain such encroachment permits, Licenses, authorizations or other approvals and pay such fees and deposit such security as required by applicable ordinance of the County or Cities in which the Streets are located, shall conduct and complete the work of removal in compliance with all such applicable ordinances, and shall restore the Streets to the same condition they were in before the work of removal commenced. The work of removal shall be completed not later than one (1) year following the date of expiration of the License.

20.5.330 ENFORCEMENT. Any Director of Public Works of the County or Cities who determines that within his or her jurisdiction a Licensee has committed an act or omission in violation of any of the provisions of Sections 20.5.312 through 20.5.328 shall be authorized to mail written notice of the violation to the Licensee.

Not later than seven (7) calendar days following the mailing of such notice the Licensee shall be authorized to file an appeal with the Clerk of the Governing Body of the County or Cities by whom the Director of Public Works is employed. The Licensee shall also file a copy of the notice in the office of the Director of Public Works. The Governing Body shall hear the appeal, and shall be authorized to do so at its earliest convenience. The Licensee shall be authorized to present oral and documentary evidence and cross-examine witnesses. Formal rules of evidence shall not be applicable.

If no appeal is filed and within ten (10) calendar days following mailing of the notice the Licensee has failed to correct the violation, or if an appeal is filed and within five (5) calendar days following mailing to the Licensee of an order by the Governing Body the Licensee has failed to correct the violation through assignment of such task to his or her subordinate personnel or delegation of authority to take such corrective action to a public utility, public district, contractor or other third party. In such event, the Licensee shall be liable for the full amount of any charges made for such corrective action, any salary and benefit costs of any public employees assigned to take such corrective action, and the costs of material, supplies and goods utilized in taking such corrective action.

The provision of this Section shall not be construed to fix the date of a breach by a Licensee of any of the provisions of this Chapter at the prescribed period following mailing of the notice of violation, or

CABLE TELEVISION LICENSING ORDINANCE

to prevent a determination that a Licensee has breached any of said Sections in advance either of the ten (10) days following the mailed notice or in advance of mailing of the notice or any communication pursuant to this Section to the Licensee. Nor shall the provisions of this Section be so construed as to relieve the Licensee from liability for any damages which may arise out of and be proximately caused by breach by a Licensee of any of the provisions of said provisions.

SUB-CHAPTER 5

SERVICES

20.5.400 SYSTEM OWNERSHIP. Legal and equitable title to the Cable Television System, including any and all studio facilities and production equipment provided for public, educational, and governmental access, and all channels of whatever kind or nature shall be vested in the Licensee.

20.5.402 SERVICES. Within a License Area services provided by a Licensee through its Cable Television System shall be offered uniformly upon nondiscriminatory terms to Subscribers and Users, and shall not differ based upon geographical location, income levels, racial or ethnic composition.

20.5.404 SUBSCRIBER ANTENNAS. No License shall remove or offer to remove any potential or existing Subscriber antenna, or provide any inducement for removal as a condition respecting the provision of service.

20.5.406 ANTI-COMPETITIVE PRACTICES. No License issued pursuant to the provisions of this Chapter shall be deemed to expressly or impliedly authorize the Licensee to utilize its Cable Television System to provide any service in such a manner as to unlawfully damage any business competitor or other third party or violate any statutes or regulations of the United States or State of California. Nor shall any Licensee, by act or omission, engage in any anti-competitive practice in violation of any statutes or regulations of the United States or State of California. The provisions of this Section shall be enforceable in courts of competent jurisdiction against a Licensee by any party who alleges injury as a result of an alleged violation thereof.

20.5.408 MAINTENANCE AND REPAIR. During the term of each License, the Licensee shall maintain its Cable Television System in good condition and repair, render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible.

20.5.410 DISCRIMINATION IN SERVICE PROHIBITED. No License shall deny service, deny access or otherwise discriminate against Subscribers, channel Users or general citizens on the basis of race, color, religion, national origin or sex.

20.5.412 PRIVACY. Each Licensee, and its officers, agents, employees, contractors and subcontractors, shall respect, refrain from invading, and take affirmative action to prevent violation of the privacy of subscribers served by the Cable Television System and others.

a. Neither the Licensee nor any other person, agency, or entity shall tap, or arrange for the tapping or monitoring of any cable, line, signal input device, or subscriber outlet or receiver for any purpose whatsoever, except that the Licensee may conduct tests of the functioning of the System where necessary in order to ensure proper maintenance of the System and to collect performance data for agencies regulating the quality of signals, and the Licensee may conduct System-wide or individually addressed "sweeps" for the sole purpose of verifying System integrity (including individual security system integrity), controlling return path transmissions, billing for pay services, or collecting aggregate data on viewing patterns by channel. "Tapping" shall mean observing a communications signal exchange where the observer is neither of the communicating parties, whether the exchange is observed by visual, aural or electronic means, for any purpose whatsoever. The provision of Interactive Services shall not be construed to be "tapping" or "monitoring" under this Subparagraph.

b. The Licensee shall not place in any private residence or in any institution any equipment capable of two-way communications without the written consent of the Subscriber, and shall not utilize the two-way communications capability of the System for Subscriber surveillance of any kind without the written consent of the Subscriber specifying how the data collected will be used and by whom. Tenants who occupy premises connected by the System shall be deemed to be Subscribers within the meaning of this Subparagraph regardless of who actually pays for the service. The written consents shall be, and shall show on their face that they are, revocable by the Subscriber at any time by written communication mailed by the Subscriber to the Licensee. No penalty shall be invoked for a Subscriber's failure to provide a written consent or for his or her revocation thereof, and all written consents shall so state on their face. The Licensee shall not make such written consent a condition precedent to receipt by a Subscriber of noninteractive service. The provisions of this subparagraph shall not be deemed to require consent as a condition precedent to System-wide or individually addressed "sweeps" for the sole purpose of verifying System integrity, controlling return-path transmissions, billing for pay services, or collecting aggregate data on viewing patterns by channel.

c. No cable, line, wire, amplifier, converter, or other piece of equipment associated with Cable Television System services shall be attached to any residence or other property of a citizen (except within Streets) without first securing the written permission of the owner or tenant of the property. If such permission is later revoked, whether by the original or

CABLE TELEVISION LICENSING ORDINANCE

subsequent owner or tenant, the Licensee shall remove forthwith all of the equipment and promptly restore the property to its original condition. The Licensee shall perform all installations in a workmanlike manner and shall be responsible for any damage to residences or other property caused by the installation.

d. No Licensee or officer, agent or employee thereof shall sell, or otherwise make available, lists of the names and addresses of its Subscribers, or any list which identifies, by name or otherwise individual subscriber viewing habits, to any person, agency, or entity for any purpose whatsoever; except that the Licensee shall, upon request, provide lists of names and addresses of its subscribers to authorized representatives of the Cable Television Commission when the Board of Directors of the Commission deems such information necessary for performance of the regulatory functions of the Commission. Names and addresses of Subscribers within the possession of the Commission shall not be subject to public inspection or review.

e. A Licensee may release the number of Subscribers but only as a total number and as a percentage of the potential Subscribers within the License Area. When indicating the number of Subscribers viewing a particular channel, a Licensee shall indicate only the total number of Subscribers viewing during the relevant time and, the percentage of all Subscribers which they represent, but not the identity of any Subscriber.

f. No polls or other two-way responses of Subscribers shall be conducted whether for commercial purposes, in connection with Community Use, or otherwise unless the program of which the poll is a part contains an explicit disclosure of the nature, purpose, and prospective use of the results of the poll. The License shall supervise and monitor all polls in which responses are received through the Cable Television System, and shall adopt and enforce measures which ensure that personally identifiable information concerning a Subscriber, including his or her viewing habits and response or responses to the inquiry or inquiries, is not received by any third party, including the party sponsoring the poll.

g. A Licensee shall not tabulate any test results, nor permit the use of the System of such tabulation, which would reveal the commercial product preferences or opinions of individual Subscribers, members of their families or their invitees, Licensees or employees, without advance written authorization by the Subscriber.

20.5.414 STANDARDS FOR SYSTEM QUALITY. After public hearings notice of which notice is properly given, the Board of Directors of the Cable Television Commission shall, from time to time, be authorized to enact technical standards applicable to the operation, maintenance, repair, replacement or functioning of a Cable Television System for the purpose of improving or maintaining quality of video or audio signals, freedom

from interference, reliability of service delivery, or other similar types of functional characteristics of the System. Each Licensee shall take such actions as are necessary to comply with such standards, and the failure to do so shall constitute a material violation and breach of the License.

20.5.416 AFFIRMATIVE ACTION. No Licensee shall discriminate in employment or selection of contractors or subcontractors on the basis of race, color, religion, national origin or sex (including marital status). Each Licensee shall strictly comply with the Equal Employment Opportunity Regulations promulgated by the FCC, and all applicable Federal and State statutes and regulations and ordinances of the County and Cities. Each Licensee shall establish as objectives the employment of a work force based upon merit and achievement of a racial balance within its work force consistent with that which pertains within the residential population of the Sacramento Community.

SUB-CHAPTER 6

LICENSE FEES

20.5.500

~~5.7200~~ LICENSE FEES. For the use of the Streets and for the purposes of providing revenue with which to defray the costs of regulation arising out of issuance of Licenses under this Chapter and promoting, assisting and financing public, educational, and governmental access programming, each Licensee shall pay License Fees in the amount prescribed by Section ~~5.7202~~ below.

20.5.502

20.5.502

~~5.7202~~ AMOUNT AND PAYMENT OF LICENSE FEES. During the term of each License, each Licensee shall pay to the Cable Television Commission an amount equal to five (5%) percent per year of the Licensee's annual Gross Revenue.

Said fees shall be paid quarterly not later than August 1, November 1, February 1, and May 1 for the preceding three month period ending, respectively, June 30, September 30, December 31, and March 31. Not later than the date of each payment, each Licensee shall file with the Clerk of the Board of Directors of the Cable Television Commission and with the Governing Bodies of the County and Cities a written statement signed under penalty of perjury by an officer of the Licensee which identifies in detail the sources and amounts of Gross Revenues received by a Licensee during the quarter for which payment is made.

No acceptance of any 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 which the Commission may have for further or additional sums payable under the provisions of this Section.

20.5.504

~~5.7204~~ INTEREST ON DELINQUENT LICENSE FEES. Any License Fees which remain unpaid after the dates specified in Section ~~5.7202~~ above shall be delinquent and shall thereafter accrue interest at the maximum legal rate until paid.

20.5.502

CABLE TELEVISION LICENSING ORDINANCE

20.5.506

~~5.7206~~ ACCOUNTING STANDARDS. Not less than annually, the Licensee shall provide the Cable Television Commission with a unqualified certification of an independent certified public accountant certifying the accuracy of the quarterly License Fee payments paid within the preceding twelve (12) months pursuant Section ~~5.7202~~ above. Said certification shall be prepared in accordance with generally accepted accounting standards as established by the Financial Accounting Standards Board (FASB).

20.5.508

~~5.7208~~ GROSS REVENUE CALCULATIONS. (a) For ^{20.5.502} purposes of the gross revenue calculations required by Section ~~5.7202~~ above, the phrase "financial interest" as used in Section 20.5.014(f) above shall include but not be limited to:

(1) Any contract in which the Licensee or any named owner thereof is to receive a percentage of the gross revenues and/or a percentage of the net income of the other party to the transaction by reason of the activities encompassed by said contract;

(2) Any debt relationship in which the Licensee or any named owner thereof as debtor borrows funds at a rate more advantageous than that generally available to similarly situated entities of similar credit worthiness;

(3) Any debt relationship in which the Licensee or any named owner thereof as creditor receives a rate of interest exceeding that which would otherwise be paid by a similarly situated debtor of similar credit worthiness;

(4) Any option or warrant to purchase the stock or other equity interest in an entity or entity related to an entity which generates revenues arising from or attributable to the operation of the system;

(5) Any debt relationship which has conversion privileges to a form of equity of the nature described in the preceding subsection.

20.5.502

(b) For purposes of the gross revenue calculation required by Section ~~5.7202~~ above, the phrase "arising from or attributable to operation of the cable television system" as used in Section 20.5.014(f) above shall include but not be limited to:

(1) Any activity, product or service which generates revenue of any type whatsoever and which is offered to the subscribers of the system by means of the system or any related service;

(2) Any activity, product or service which is revenue producing and is offered to the subscribers of the system by any medium other than the system including but not limited to direct mail and home delivery if the system's subscriber list or any portion thereof is utilized for purposes of solicitation;

(3) Any activity, product or service in the production or provision of which any of the assets of the system including but not limited to cable, production facilities, and administrative facilities, are included, unless reasonable consideration is paid to the system for such utilization;

(4) Any television programming or other services offered to the citizens of Sacramento County within the term of the License by any means of delivery whatsoever where such programming or services are or could be offered by means of the system.

20.5.510 AUDITING AND FINANCIAL RECORDS. The Auditor of the Cable Television Commission may, from time-to-time during the term of a License prescribe standards governing the nature, extent and type of accounting system and accounting procedures utilized by a Licensee and require changes in accounting standards or procedures utilized by a Licensee, for the purpose of promoting the efficient administration of the License Fee requirements of this Chapter. Any such standards shall be in writing, shall be filed with the Clerk of the Board of Directors of the Commission, and shall be mailed to the Licensee to whom directed. A Licensee shall promptly comply with all such standards.

During the term of each ^{20.5.502} License, the Cable Television Commission may, not more frequently than once each year, conduct an audit of the books, records and accounts of the Licensee for the purpose of determining whether the Licensee has paid License Fees in the amounts prescribed by Section ~~5.7202~~, above. The audit may be conducted by the Auditor of the Commission or by an independent certified public accounting firm retained by the Commission, and shall be conducted at the sole expense of the Commission. The party conducting the audit shall prepare a written report containing its findings, and the report shall be filed with the Clerk of the Board of Directors of the Commission, and mailed to the County, Cities and Licensee.

Each Licensee shall make available for inspection by authorized representatives of the Cable Television Commission, its books, accounts, and all other financial records at reasonable times and upon reasonable advance notice for the purpose of permitting exercise of the authorities conferred by this Section.

SUB-CHAPTER 7

BONDS AND INSURANCE

20.5.600 PERFORMANCE BOND. Each Licensee shall file with it application for a License, and at all times thereafter until the filing of a Final Notice of Completion pursuant to Section 20.5.306(a) of this Chapter, maintain in full force and effect, an acceptable corporate surety bond issued by a surety licensed therefor by the State of California in an amount equal to the greater of (a) the Licensee's estimate of the total cost of construction of the Cable Television System within the License Area, or (b) the sum of (i) the product of the number of miles of aerial plant (to the nearest one tenth (1/10) of a

CABLE TELEVISION LICENSING ORDINANCE

mile) in the License Area and Eighteen Thousand Dollars (\$18,000) and (ii) the product of the number of miles of underground plant (to the nearest one tenth (1/10) of a mile) in the License Area and Thirty Two Thousand Dollars (\$32,000), effective for the entire term of the License, and conditioned that in the event the Licensee shall fail to comply with any one or more of the provisions of the License Documents, whether or not the License is terminated, then there shall be recoverable jointly and severally from the principal and surety of such bond, any damages suffered by the County, Cities or Cable Television Commission as a result thereof, including but not limited to, the full amount of any liquidated damages, delinquent License Fees, compensation and costs of repairing or completing the Cable Television System, and compensation, and cost of removal or abandonment of property and repair of streets and other public or private improvements, up to the full amount of the bond; said condition to be a continuing obligation for the duration of the License and thereafter until the Licensee has satisfied all of its obligations which may have arisen from the acceptance of the License or from its exercise of any privileges thereunder.

Upon the issuance of a Final Order of Completion pursuant to Section 20.5.306(a) of this Chapter, the amount of the aforesaid corporate surety bond shall be reduced to an amount equal to Fifty Dollars (\$50) for each Dwelling Unit located within the License Area upon the date of the Notice of Final Completion and maintained at such an amount at all times thereafter during the operation of the Cable Television System.

Neither the provisions of this Section, any bond accepted pursuant thereto, nor any damages recovered thereunder shall be construed to excuse faithful performance by the Licensee or to limit the liability of the Licensee under the License or for damages, either to the full amount of the bond or otherwise. The bond shall contain a provision which prohibits cancellation by the surety during the term of the License, whether for failure to pay a premium or otherwise, without thirty (30) calendar days advance written notice mailed by the surety to the Clerk of the Board of Directors of the Cable Television Commission. The form of the bond and surety shall be subject to the approval by the Cable Television Commission.

20.5.602 INDEMNIFICATION BY LICENSEE. Each Licensee shall, at its sole expense, fully indemnify, defend and hold harmless the County, the Cities, the Cable Television Commission, and in their capacity as such, the officers, agents and employees thereof, from and against any and all claims, suits, actions, liability and judgments for damages or otherwise:

- a. For actual or alleged injury to persons or property, including loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed, in any way arising out of or through or alleged to arise out of or through the acts or omissions of the Licensee or its officers, agents, employees, or contractors or to which the Licensee's or its officers, agents, employees or contractors acts or omissions in any way contribute;

b. Arising out of or alleged to arise out of any claim for damages 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; and

c. Arising out of or alleged to arise out of Licensee's failure to comply with the provisions of any statute, regulation or ordinance of the United States, State of California or any local agency applicable to the Licensee in its business.

The indemnification and hold harmless provisions of this Section shall include those proscribed by Section 20.5.406.

Nothing herein shall be deemed to prevent the parties indemnified and held harmless herein from participating in the defense of any litigation by their own counsel at the Licensee's sole expense. Such participation shall not under any circumstances relieve the Licensee from its duty of defense against liability or of paying any judgment entered against such party.

20.5.604 LICENSEE INSURANCE. As a part of the indemnification provided by Section 20.5.602, above, but without limiting the foregoing, each Licensee shall file with the application, and at all times thereafter maintained in full force and effect at its sole expense, an acceptable policy or policies of liability insurance, including comprehensive general liability insurance products/completed operations liability, personal injury liability, owners and contractors protective liability, broad form property damage, contractual liability, automobile liability (owned; nonowned and hired automobiles), workers compensation and employer liability. The policy or policies shall name as primary insured the County, the Cities, the Cable Television Commission, and their capacity as such, their officers, agents and employees. The Licensee and said County, Cities, Commission and officers, agents and employees. The Licensee and said County, Cities, Commission and officers, agents and employees shall be named as coinsureds, and the policy or policies shall contain cross-liability endorsements. The policy or policies of insurance shall be in the minimum single limit amount of five million dollars (\$5,000,000.00) per occurrence. The insurance policy or policies shall contain contractual liability insurance naming the Licensee, and shall insure against the types of liabilities covered by the indemnification and hold harmless provisions of Section 20.5.602.

The insurer or insurers shall be authorized to write the required insurance, approved by the Insurance Commissioner of the State of California, and subject to the reasonable approval of the Cable Television Commission. The form and substance of the policy or policies of insurance shall also be subject to approval by the Cable Television Commission.

The policy or policies of insurance shall be maintained by the Licensee in full force and effect during the entire term of the License. Each policy of insurance shall contain a statement on its face that the

Licensee in full force and effect during the entire term of the License. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of the Licensee or for other reasons, except after thirty (30) calendar days advance written notice mailed by the insurer to the Clerk of the Board of Directors of the Sacramento Metropolitan Cable Television Commission, and that such notice shall be transmitted postage prepaid, with return receipt requested, and addressed to the Clerk at 1010 8th Street, Sacramento, California 95814.

20.5.606 WAIVER OF SUBROGATION. Each Licensee shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against the County, Cities, Cable Television Commission and in their capacities as such the officers, agents, and employees thereof in connection with any damage covered by any policy, whether for nonpayment or premium, or otherwise, and whether at the request of the Licensee or for other reasons, except after thirty (30) calendar days advance written notice mailed by the insurer to the Clerk of the Board of Directors of the Sacramento Metropolitan Cable Television Commission, and that such notice shall be transmitted postage prepaid, with return receipt requested, and addressed to the Clerk at 1010 8th Street, Sacramento, California 95814.

SUB-CHAPTER 8

TRANSFER AND TERMINATION

20.5.700 TRANSFERS PROHIBITED. No part or element of a Cable Television System or any other real or personal property which is a part of said Cable Television System shall be sold, transferred, assigned, mortgaged, pledged, leased, sublet or otherwise encumbered for any purpose whatsoever, nor shall title thereto, either legal or equitable, or any right or interest therein pass to or vest in any party without the prior written consent of the Cable Television Commission.

A License issued pursuant to the provisions of this Chapter shall not, either in whole or in part, be sold, transferred, assigned, mortgaged, pledged, leased, sublet, or otherwise encumbered for any purpose whatsoever; nor shall title thereto, either legal or equitable, or any right or interest therein, pass to or vest in any party.

Any such sale, transfer, assignment, mortgage, pledge, lease, sublease or other encumbrance of whatever kind or nature made in violation of the provisions of this Section shall be void.

20.5.702 CRIMES. Violation of the provisions of Section 20.5.412, shall constitute a misdemeanor. With the foregoing exception, violation of the provisions of this Chapter shall not constitute a misdemeanor, infraction or other crime.

CABLE TELEVISION LICENSING ORDINANCE

20.5.704 TERMINATION OF LICENSE. The following material breaches of the obligations of a Licensee under the License shall constitute grounds for termination of a License by the Cable Television Commission:

- a. Cumulative unexcused delay in excess of thirty (30) calendar days in completion of the Cable Television System in accordance with the construction schedule submitted pursuant to Section 20.5.102(i) above;
- b. Any violation of Section 20.5.700;
- c. The failure to make any disclosure of fact within the application for the License which is required by this Chapter, or the misrepresentation of such a fact in the application;
- d. The willful failure to make any payments required by Sections 20.5.502; or
- e. Any other act or omission by the Licensee which materially violates the terms, conditions or requirements of this Chapter or any order, directive, rule or regulation issued thereunder and which is not corrected or remedied within thirty (30) calendar days following mailing to the Licensee of written notice of the violation.

20.5.706 COMMENCEMENT OF TERMINATION PROCEEDINGS. The Board of Directors of the Cable Television Commission shall not determine that a License shall be terminated upon grounds identified by Section 20.5.704, above, until a hearing has been conducted upon the matter. Written notice of the time, date and place of the hearing shall be mailed to the Licensee and the Licensee's surety on the performance bond filed pursuant to Section 20.5.600 ~~below~~, not later than thirty (30) calendar days in advance of the date of commencement of the hearing. The notice shall state the reasons for the hearing, describe the basis for termination, and identify the terms, conditions or requirements with respect to which the breach has occurred.

The hearing may be conducted either by the Board of Directors of the Commission or, at the sole discretion of the Board, by a hearing officer appointed by the Board to conduct the hearing. Any such hearing officer shall be an attorney licensed to practice under the laws of the State of California.

The cost of providing quarters for the hearing, the compensation for the hearing officer, if any, and the per diem cost of any reporter retained to record the proceedings shall be borne by the Cable Television Commission. The costs incurred by the parties for attorneys fees, expert witness fees and other expenses shall be borne solely by the party incurring the costs.

20.5.708 CONDUCT OF HEARING. All witnesses testifying at the hearing concerning termination shall be sworn. Witnesses shall be subject to direct and cross-examination. However, formal rules of evidence applicable to the trial of civil or criminal proceedings in the trial

courts of this State shall not be applicable to the hearing. The provisions of the Administrative Procedure Act, commencing at Section 11500 of the California Government Code or any successor legislative enactment, shall not be applicable to any such hearing. The hearing may be continued from time to time.

If the hearing is conducted by a hearing officer, the officer shall, upon conclusion of the hearing, prepare a recommended decision which includes findings of fact and conclusions. The recommended decision shall be filed with the Clerk of the Board of Directors of the Commission and mailed to the parties not later than thirty (30) calendar days after conclusion of the hearing. Upon receipt of such a recommended decision, the Board of Directors may, without a hearing except as otherwise required below, either:

- a. Adopt the recommended decision, including findings of fact and conclusions submitted by the hearing officer;
- b. Adopt the findings of fact and conclusions contained in the recommended decision, modify the decision, and adopt the recommended decision as so revised;
- c. Based upon the record of the hearing, modify the findings of fact, conclusions or decisions, and adopt the recommended decision as so revised; or
- d. Reject the recommended decision and conduct a new hearing.

If the hearing is conducted by the Board of Directors of the Commission, upon conclusion of the hearing, the Board of Directors shall adopt a decision which includes findings of fact and conclusions.

If the decision by the Board of Directors is that there are grounds for termination of the license and that the license shall be terminated, the Board shall adopt a resolution which terminates the license and includes its decision. The effective date of termination shall be such date as is prescribed by the Board of Directors, within its sole discretion, in the resolution.

20.5.710 ALTERNATIVE REMEDIES. No provision of this Chapter shall be deemed to bar the right of the County, Cities or Cable Television Commission to seek or obtain judicial relief from a violation of any provision of the License Documents or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in said Chapter nor the exercise thereof shall be deemed to bar or otherwise limit the right of the County, Cities or Cable Television Commission to recover monetary damages (except where liquidated damages are otherwise prescribed) for such violation by the Licensee, or judicial enforcement of the Licensee's obligations by means of specific performance, injunction relief or mandate, or any other judicial remedy at law or in equity.

20.5.712 NON-ENFORCEMENT. A Licensee shall not be relieved of any obligation to comply with any of the provisions of the License Documents or any rule, regulation, requirement or directive promulgated thereunder by reason of any failure of the County, Cities, Cable Television Commission or their officers, agents or employees to enforce prompt compliance."

SECTION 2. Section 20.014 of Chapter 20 is hereby amended to read as follows:

" 20.014 FRANCHISE OR LICENSE REQUIRED. Except as otherwise provided by this Chapter, Streets within the Sacramento Community shall not be occupied by or used for a Cable Television System except under a franchise issued pursuant to the provisions of this Chapter or under a license issued pursuant to the provisions of Chapter 20.5 of this Code."

SECTION 3. Section 20.042 of Chapter of ^{20.5}~~5.5~~ is hereby amended to read as follows:

" 20.042 RESERVATION OF RIGHTS. The provisions of this Chapter shall not be so construed as to in any manner restrict or impair the power or authority of the Governing Bodies of the County or the Cities to issue cable television franchises and/or licenses within their jurisdictional boundaries."

SECTION 4. This is an urgency ordinance within the meaning of Section 25131 of the Government Code and ordinance for the immediate preservation of the public peace, health and safety within the meaning of Section 25123(d) of the Government Code, shall be passed immediately upon introduction, and shall take effect immediately. The facts constituting the urgency are as follows. The City, concurrently with the County of Sacramento, and the Cities of Folsom and Galt, has enacted, implemented and enforced a cable television franchising ordinance, as embodied in Chapter 20 of the Sacramento City Code.

That ordinance provides for the issuance of an initial, single, nonexclusive, communitywide franchise pursuant to a competitive selection process, and the issuance of additional franchises on a discretionary basis pursuant to competitive selection processes. Since issuance of the initial, nonexclusive franchise, other persons and entities have asserted an interest in constructing cable systems within the unincorporated area. No requests for proposals have been issued.

Decisions not to issue requests for proposals have rested, in large part, upon substantial evidence that cable television in the Sacramento market is a "natural monopoly", that competition between two cable operators serving the same subscriber base should not be expected to continue for longer than a brief time, that such competition would adversely impact the ability to enforce equal and uniform service to the entire community and would therefore adversely impact the interests of cable television consumers.

In an action entitled Pacific West Cable Company v. City of

CABLE TELEVISION LICENSING ORDINANCE

Sacramento, et al., in the Federal District Court for the Eastern District of California, Civil No. S-83-1034-MLS, a jury has recently determined, following a trial of more than three months and consideration of voluminous expert and other testimony, that cable television is not presently a "natural monopoly" within the Sacramento market. This finding tends to rebut evidence previously received and tends to suggest that cable television consumers may not be well-served by exclusive reliance upon the competitive franchising procedure.

If the cable television market in Sacramento should prove not to be a "natural monopoly", there would be an enormous potential advantage to cable television subscribers in the implementation of a licensing system for cable television resulting from reduced rates, and a serious economic detriment to consumers from noncompetitive rates. The rapidity with which the initial franchisee under the competitive franchising procedure is completing construction of its cable system makes it critically necessary to augment the current franchising ordinance with a licensing ordinance in order to insure that, if, notwithstanding the earlier evidence, cable television in Sacramento is not a "natural monopoly", such competition, to the extent possible, be made available at the earliest possible date.

On a motion by Council Member _____, seconded by Council Member _____, the foregoing ordinance was passed and adopted by the City Council of the City of Sacramento, State of California, at a special meeting thereof this _____ day of July, 1987, by the following vote, to wit:

AYES:
NOES:
ABSENT:

Mayor

ATTEST:

City Clerk



League of Women Voters of Sacramento

To: The Honorable Members of the Sacramento County
Board of Supervisors and City Council of Sacramento

Date: July 6, 1987

Re: Adoption of Cable Television Ordinance as Urgency Measure

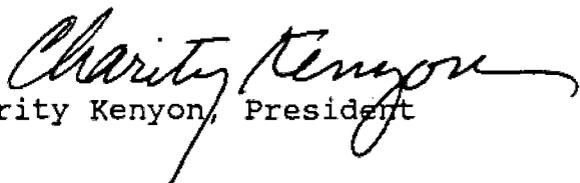
From: Charity Kenyon, President

Dear Elected Representatives:

The League of Women Voters, like other interested community organizations, has just learned of the hearing set for 2:00 p.m. today to adopt a new cable television ordinance as an urgency matter. We are still unaware of the text of any urgency language that may have been published with the ordinance or of any facts which prevented an earlier presentation of the ordinance with the ordinary publication procedure and opportunity for public input.

The proposed ordinance has obvious potential impacts not only on new applicants but on the privileges and duties of the existing franchisee and on the public, who are also intended beneficiaries of both the new and old ordinances. Without taking a position on the validity of the existing ordinance or on the merits of the pending litigation, we urge that you consider carefully not only your power to but the propriety of your adopting this particular ordinance without the opportunity of public input and debate, analysis and education.

Very truly yours,


Charity Kenyon, President

APPLICATION FOR CABLE TELEVISION LICENSE

Applicant's Name _____ Nature of Entity _____

Applicant's Address _____ City, State _____

The above-named Applicant hereby applies for a Cable Television License pursuant to the provisions of Chapter 5.75 of the Sacramento County Code and Chapter 20.5 of the Sacramento City Code ("the Cable Television Licensing Ordinance").

The above-named Applicant has attached hereto the following exhibits which are hereby incorporated herein by reference:

1. Evidence that the business entity has complied with all applicable law as to the business entity (business license, fictitious name registration, limited partnership certificate, certification of good standing as to corporation, etc.);
2. Evidence that the Applicant has applied for all applicable encroachment permits within the License Area (including receipts evidencing payment of necessary fees);
3. Evidence that all aspects of the Applicant's proposed system (including without limitation, headend sites and structures, TVRO sites and structures, satellite receiver dishes and stations) have been reviewed by appropriate zoning authorities and will comply with existing zoning law, including copies of all necessary special use permits;
4. A map or maps (scale not less than one inch (1") to one hundred feet (100')) showing the perimeters of the License Area selected by Licensee and showing by appropriate means the schedule of construction by geographical area by calendar quarter during the period of the building of the proposed system.
5. A performance bond complying with the provisions of section 5.75.600 et seq. of the Cable Licensing Ordinance and a calculation of the amount of said bond pursuant to the provisions of said sections.
6. A cashier's check payable to the Sacramento Metropolitan Cable Television Commission in an amount equal to one quarter of one percent (.0025) of the amount of the performance bond submitted herewith.

APPLICATION FOR CABLE TELEVISION LICENSE

7. A schedule of construction of the proposed system by logical geographical progression for each calendar quarter until full completion of the system within the License Area.

The Applicant understands that, upon submission of all of the foregoing information and in reliance thereon, the Cable Television Commission will issue a License to Applicant unless Applicant is in default under another License or Franchise previously issued to Applicant.

The foregoing is true and correct under penalty of perjury under the laws of the State of California.

Applicant:

By: _____

Its _____