

# SACRAMENTO METROPOLITAN

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## Cable Television Commission

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ROBERT E. SMITH  
EXECUTIVE DIRECTOR

November 9, 1983

ITEM 2

For Agenda of:  
November 16, 1983

To: Board of Supervisors  
City Council  
Cable Commission

From: Bob Smith, Executive Director  
Sacramento Metropolitan Cable Television Commission

Subject: .344 CONTRACTS AND VESTING

1. .344 Contracts.

Under Section 5.50.344 of the Ordinance, channel dedications, financial grants, equipment donations and other resource commitments made by the franchisee to community organizations must be embodied in written contracts between the Franchisee and the grantee organization. The Cable TV Ordinance provides that the governing bodies establish minimum terms and conditions of such contracts and prescribe specific requirements such as limitations upon the utilization of the resources and performance obligations. This provision ensures accountability of both parties of these subscriber funds which may not have been allocated by the cable company had it not been for the franchising process.

The City and County, pursuant to an August 27, 1982 amendment to Section 5.50.214 of the Ordinance, approved such .344 contract terms and conditions on December 1, 1982. A copy of the Action Summary is attached for your information. Staff would like to recommend the following changes to these Terms and Conditions be approved by the Commission:

- a. Copyright of programs. In the original Terms and Conditions, the Commission mandated that the copyright of produced materials be held by the Grantee. Staff recommends deleting reference to the Grantee holding the copyrights and that this matter be determined solely by the Grantee and the Franchisee.
- b. Record-Keeping Requirements. Staff is recommending the elimination of a detailed description of which equipment was utilized for production for each individual program. The Terms and Conditions currently require a detailed list of all the programs produced by the Grantee's equipment and staff feels this is sufficient information to determine equipment use.

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- c. Expenditure of Operating Funds. In the original Terms and Conditions, any changes in expenditures of funds had to be approved in writing prior to the expenditure by the franchisee. In response to numerous requests from the Grantees during the last negotiation process, staff is recommending that any changes in the annual expenditure of funds must be approved in writing by the Franchisee essentially eliminating the need to approve such changes in expenditure prior to the expenditure.
- d. Minor Wording Changes. Minor wording changes have been made to clarify the meaning of certain sections in the Terms and Conditions.

A copy of the Terms and Conditions approved by the Subcommittee last year incorporating the recommended changes is attached.

2. Vesting.

As outlined in Ordinance Section 5.50.504, the Board of Directors of the Cable Commission may in their sole discretion determine which, if any, of the institutional and nonentertainment services shown in the applicants' proposals shall be vested, i.e., that the applicant be required by contractual terms and conditions to provide those services described in the application. The determination of which services are vested is contained in each applicant's Draft Resolution. However, the Ordinance also requires that a public hearing be held to receive comments from members of the general public and special interest groups pertaining to issues such as consumer protection and anti-competitive practices as they relate to vesting of institutional services.

None of the applicants have offered any institutional services, but some have offered nonentertainment services vested in their Resolution. Unless otherwise specified in their Resolution, the services are described without the degree of specificity needed to allow the Commission to determine their impact on anti-competitive practices and consumer protection issues.

It is, therefore, staff's recommendation that:

- (1) You approve the changes outlined above to the Terms and Conditions of .344 Grantees and authorize that these minimum Terms and Conditions be attached to each applicant's Resolution.
- (2) None of the institutional or nonentertainment services offered by the applicants should be vested at this time, unless otherwise specified in their Draft Resolution.



BOB SMITH, Executive Director  
Sacramento Metropolitan Cable  
Television Commission

RES:ab

Attachments

A C T I O N   S U M M A R Y

A G E N D A  
JOINT SUB-COMMITTEE OF THE  
SACRAMENTO CITY COUNCIL AND COUNTY BOARD OF SUPERVISORS  
RELATING TO CABLE TELEVISION  
700 "H" STREET - SUITE 1450  
SACRAMENTO, CALIFORNIA 95814

WEDNESDAY

DECEMBER 1, 1982

1:00 P.M.

MEMBERS: Bill Bryan; Terry Kastanis; Lynn Robie; Ted Sheedy (All Present)

ITEM NO. 1: Status of Negotiations - Sub-Committee Action.

Committee Action: Affirmed a solid negotiating posture relative to joint and several liability negotiations with United Tribune Cable corporate parents.

ITEM NO. 2: Prevailing Rate Wage Study.

Committee Action: Approved for release the Prevailing Wage Rate RFP.

ITEM NO. 3: Public Hearing - Terms & Conditions of .344 Grantees.

Committee Action: Incorporated public testimony into the recommended .344 contract Terms and Conditions, and then approved them.

SUMMARY OF TERMS AND CONDITIONS FOR .344 GRANTEE CONTRACTS

1. Negotiable Terms and Conditions.

Terms agreeable to both the Franchisee and Grantee must be specified on these items during contract negotiation:

- a. Maintenance and repair of equipment
- b. Insurance for equipment
- c. Holder of copyright
- d. Restrictions on distribution and use of copyrighted material
- e. Quantifiable performance obligations
- f. Any other items mutually agreed to by the Franchisee and Grantee

2. Non-Negotiable Terms and Conditions.

These items must be included substantially as written:

- a. Franchisee ownership of equipment
- b. Reporting requirements (forms to be developed by Commission)
- c. Program liability
- d. Restrictions of commercial use of programs by Grantee and Franchisee
- e. Nondiscrimination in employment
- f. Conflict of interest provisions
- g. Indemnification of the Governing Bodies, the Commission, Franchisee and the Independent Body
- h. Commission named as third-party beneficiary

FRANCHISEE CONTRACT WITH .344 GRANTEE

TERMS AND CONDITIONS

November 16, 1983

The Franchisee shall execute a contract with those entities listed on page \_\_\_\_\_ of the Resolution as providing programming services for the Franchisee. Such a contract must list all specific resources granted by Franchisee over the life of the Franchise, what provision for use is required of GRANTEE, and the Terms and Conditions deemed necessary to ensure contract compliance.

At a minimum, the following Terms and Conditions must be included in such a Contract:

1. Allocation of Resources. Franchisee shall provide the resources listed pursuant to the timetable outlined in Exhibit A of this contract.
2. Maintenance of Equipment. (Franchisee or) GRANTEE shall be responsible for all maintenance and repair of production equipment granted to GRANTEE under Exhibit A of this contract. Preventative maintenance work will take place under the following schedule:

<u>Preventative Maintenance Action</u>	<u>Responsible Party</u>	<u>Date To Be Done</u>
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- b. (Franchisee or) GRANTEE will make the following provisions for emergency repair of equipment granted to GRANTEE:

3. Insurance for Equipment. (Franchisee or) GRANTEE agrees to maintain insurance upon all equipment granted to GRANTEE pursuant to this agreement. Said insurance shall include, at a minimum, insurance against loss or damage beyond user control, theft, or damage due to a natural catastrophe. Said policy shall name Franchisee as a named insured and shall be maintained by the (Franchisee or) GRANTEE throughout the life of this agreement.
4. Identification of Equipment. All equipment purchased pursuant to this agreement shall remain the property of Franchisee and shall be identified as such utilizing appropriate permanent marking in a prominent and conspicuous place upon said equipment. In its sole discretion, Franchisee may agree to convey title to the foregoing equipment to the Independent Body established pursuant to Section 5.50.334 of the Ordinance (hereinafter "Independent Body") or the Sacramento Metropolitan Cable Television Commission (hereinafter "the Commission"). In the event of such conveyance, all rights and privileges of the Franchisee relating to the performance provisions of this agreement and recovery of said equipment in the case of a failure of such a performance shall accrue to the Independent Body or the Commission.
5. Programming Requirements. Programs cablecast on any channel(s) granted to GRANTEE under Exhibit A of this contract or produced utilizing grant supplied shall be subject to the requirements outlined in Exhibit B.

6. Copyright of Programs.

a) The ownership and copyright of produced materials shall be held by \_\_\_\_\_ under the following provisions:

b) The Independent Body and the Franchisee reserve a nonexclusive license to use and reproduce without payment for noncommercial purposes any produced materials, including copyrighted material, arising out of grant activities. If requested, the GRANTEE shall be notified upon such use of materials, or products.

7. Programming Liability. Notwithstanding the numerical or topical requirements imposed on GRANTEE in Section 5 of this contract, GRANTEE shall take full responsibility for all programs cablecast on channel(s) \_\_\_\_\_ granted herein. GRANTEE agrees to indemnify and hold harmless the Franchisee, the Independent Body, the Commission, the County of Sacramento, and the municipalities of Sacramento, Folsom, and Galt from any and all claims or other injury (including reasonable costs of defending claims or litigations) arising from or in connection with claims or failure to comply with any applicable laws, rules, regulations, or other requirements of local, state, or federal authorities, for claims of libel, slander, invasion of privacy, or infringement of common law or statutory copyright, for breach of contractual or other injury or damage in law or equity which claims result from GRANTEE'S use of Franchisee's channel(s) and/or grant of production equipment.

8. Copyright Clearance. GRANTEE agrees to make all appropriate arrangements with and to obtain all clearances from broadcast stations, network sponsors, music licensing organizations' representatives, and without limitation from the foregoing, and all other persons as may be necessary to transmit its program material over the Franchisee's cable television system.

9. Programming Restrictions. GRANTEE will not produce or distribute any advertising material designed to promote the sale of commercial products or services, including advertising by and on behalf of candidates for public office. GRANTEE will not produce or distribute a lottery or any advertisement of or information concerning a lottery. GRANTEE will not produce or distribute any obscene material.

10. Program Log. If GRANTEE is a recipient of a channel, GRANTEE will maintain and provide copies of daily program logs for each channel under its jurisdiction. Such copies shall be forwarded by GRANTEE upon request of the Franchisee, the Independent Body or the Commission. Such program logs must contain, at a minimum, the following data elements:

- Title of program
- Length of program

- Time cablecast
- Producer of program
- Whether a repeat showing or original cablecast

11. Equipment Utilization. If GRANTEE is a recipient of production equipment, GRANTEE shall utilize the equipment purchased with funds provided by Franchisee pursuant to Exhibit A of this contract subject to the following restrictions:
  - a. GRANTEE shall only purchase equipment listed in Exhibit A of this contract or agreed upon in writing by the Franchisee prior to purchase.
  - b. GRANTEE shall submit detailed security provisions for the location that will hold production equipment purchased by GRANTEE. Such security provisions must be approved by the Franchisee in writing prior to the placing of equipment in location of GRANTEE.
  - c. GRANTEE shall utilize the production equipment solely for the purposes outlined in Exhibit B.
  - d. GRANTEE will not produce programs of a commercial nature, including those for a candidate of public office, or produce obscene programs.
  - e. If GRANTEE is a recipient of a Community Viewing Center as defined in the Resolution, GRANTEE shall utilize said Character Generator under the restrictions outlined in Exhibit B.
  - f. If GRANTEE is a recipient of a Community Character Generator as defined in the Resolution, GRANTEE shall utilize said Character Generator under the restrictions outlined in Exhibit B.
  - g. Possessor of equipment is liable for any and all equipment damaged, lost, stolen through its own neglect, oversight, or willful abuse. Possessor will replace all equipment determined to need replacement by the Franchisee because of Possessor's oversight, negligence or willful abuse.
12. Expenditure of Operating Funds. GRANTEE shall spend operating funds received from the Franchisee solely for the purposes listed in its annual budget and utilization plan. Any changes in the annual expenditure plan exceeding \_\_\_% must be approved by the Franchisee in writing.
13. Reports and Records Required by GRANTEE. GRANTEE shall maintain and submit copies upon request to the Franchisee, the Commission and the Independent Body of the following reports and records:

- a. Financial Records: GRANTEE shall maintain financial records and accounts consistent with generally accepted accounting principles and also shall provide for such fiscal control and fund accounting procedures as are necessary to assure proper disbursement and accounting for grant project funds. Financial records are subject to audit by the Franchisee, the Independent Body, or the Commission.
  
- b. Annual Budget and Utilization Plan. Thirty days prior to the fiscal year, GRANTEE shall submit a utilization plan outlining programs and activities planned for the fiscal year. Such a plan shall contain these minimum data elements and shall become an attachment to this contract:
  - Planned expenditure of operating funds
  - Other resources and sources used to meet performance obligations of this contract
  - Number of programs planned for production
  - Staff allocated to produce planned programs
  - Program acquisitions planned to borrow or purchase
  - Number and type of training programs in equipment use
  - Planned equipment purchases
  
- c. Quarterly Financial and Progress Reports: GRANTEE shall submit quarterly financial and progress reports on activities outlined in the Annual Budget and Utilization Plan. Such reports shall be in a form prescribed by the Commission and available upon request to the Franchisee, the Independent Body, and the Commission.
  
- d. Annual Year-End Financial Report and Evaluation. GRANTEE shall submit to the Franchisee, the Independent Body, and the Commission an Annual Year-End Report containing at minimum, the following data elements:
  - Complete financial transactions, subject to audit
  - Titles of programs produced
  - Titles of programs in progress
  - Staff allocated for program production
  - Program acquisitions
  - Equipment utilization report (see below)
  - Program logs and records
  - Training programs completed
  
- e. Equipment Utilization Records. GRANTEE shall maintain and provide copies of equipment utilization. Such records should contain at minimum the following data elements:
  - Type and name of equipment
  - Date purchased
  - Cost of purchase

- Maintenance schedule
- Emergency repairs of equipment
- Date of replacement
- Amount of replacement grant

14. Nondiscrimination in Employment, Service, or Programming.

- a. GRANTEE shall not discriminate against any employee, applicant for employment or subcontractor working on projects utilizing grant funds provided by the Franchisee on the basis of race, color, creed, national origin, sex, sexual preference, age, religious belief, political belief, economic status, or physical ability.
- b. All complaints alleging discrimination in the delivery of services by GRANTEE shall be resolved by the Independent Body's Board of Directors.

15. Indemnification. GRANTEE shall indemnify, defend, and hold harmless the Franchisee, the Commission, the Independent Body, the County of Sacramento, the Municipalities of Sacramento, Folsom, Galt, their officers, agents, and employees from and against any and all claims, losses, liabilities, or damage including payment of reasonable attorney's fees arising out of or resulting from the performance of this contract, causes in whole or in part of any negligent act or omission of GRANTEE or any employee of the Independent Body, regardless or whether caused in part by a party indemnified hereunder.

16. Status of GRANTEE.

- a. It is understood and agreed that GRANTEE is an independent contractor and that no relationship of employer-employee exists between the Independent Body, the Franchisee, the Commission, and the GRANTEE.
- b. If, in the performance of this Agreement, any third persons are employed by GRANTEE, such persons shall be entirely and exclusively under direction, supervision, and control of GRANTEE. All terms of employment, including hours, wages, working condition, discipline, hiring, and discharging or any other terms of employment or requirements of law, shall be determined by GRANTEE, and the Franchisee, the Independent Body, or the Commission shall have no right or authority over such persons or the terms of such employment.

17. Conflict of Interest. GRANTEE or any of GRANTEE'S officers, agents, and employees shall not have or acquire any interest, direct or indirect, in any entity receiving funding from GRANTEE in connection with the performance or services under this contract in any manner or degree with the performance of services under this contract.

18. Insurance. GRANTEE (or the Franchisee) shall maintain in force at all times during the performance of this agreement insurance covering its operations under this agreement. Types of insurance shall be subject to the conditions and specifications set forth in Exhibit B of this contract. Certificates evidencing the maintenance of GRANTEE'S (or Franchisee's) insurance shall be filed with the Franchisee, the Independent Body, and the Commission prior to the release of funds by the Independent Body to GRANTEE.
19. Assignment. This contract is not assignable by GRANTEE, in whole or in part, without express written consent of the Franchisee, the Independent Body, and the Commission.
20. Time. Time is of the essence of this contract.
21. Commission as Third Party Beneficiary. The parties hereto expressly declare that the intended purpose of this contract is to aid and benefit the Commission in the satisfaction of its purposes relating to the provision of community use programming on the system. Because the Commission is an intended beneficiary of this contract, the parties hereto expressly agree that it shall have a right to bring actions in its own name against either or both of the parties hereto to enforce provisions of this contract. It is further expressly agreed by the parties that this provision shall not operate to impose any obligations of any type whatsoever upon the Commission.
22. Programming Resources Pending Reallocation. If, for any reason, any of the contracts by which the Franchisee is obligated to make payments for community use programming or public access programming purposes is terminated, the Franchisee shall make such payments as would otherwise have been made under those contracts to the obligees, to the Commission as trustee of a fund to be devoted to community use and/or public access cable programming purposes. The resources thus appropriated and such future resources as would otherwise have accrued to the prior obligee, shall thereupon be allocated, in the sole discretion of the Commission, to a private nonprofit organization of suitable character and capability for the purpose of utilizing those funds. Upon such selection and reallocation by the Commission, the Franchisee shall enter into a contract with terms and conditions substantially similar to those contained in the contract with the prior obligee and required by this Resolution.

In making the foregoing selection and reallocation, the Commission shall attempt to give effect to the purpose of the community use programming originally underwritten by the Franchisee in the contract which was terminated, unless the Commission shall determine, in its sole discretion, that there exists no substantial need for that type of community use programming of other types and purposes.

Franchise Contract With .344 Grantee  
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In no event shall any funds allocated to the Commission as trustee pursuant to this Section accrue to the benefit of the Commission.

EXHIBIT A - FRANCHISEE ALLOCATION OF RESOURCES

1. Channel Allocations. Franchisee shall provide GRANTEE sole discretion over programs cablecast on the following channels:

Channel Number	Tier Located	Date Dedicated to GRANTEE
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Except as limited by Section 9 of this contract, GRANTEE shall have sole discretion to determine number of hours of channel operation, title of program cablecast, time of program cablecast, and any and all decisions relating to cablecasting programs on channels dedicated to GRANTEE listed above.

2. Production Equipment. Franchisee shall provide funding to GRANTEE to purchase the following list of equipment or equivalent list approved in writing by the Franchisee prior to purchase by GRANTEE. Such funding shall be released following the timetable listed below:

Equipment Description	Cost	Date Funds Available
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3. Replacement Equipment. Franchisee shall provide funding to GRANTEE to purchase the following list of replacement equipment or equivalent list approved in writing by the Franchisee prior to purchase by GRANTEE. Such funding shall be released according to the timetable listed below:

Equipment Description	Cost	Date Funds Available
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4. Operating Funds. Franchisee shall provide payments to GRANTEE in accordance with the following schedule:

Amount to Be Paid	Date of Payment	Restrictions of Use
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In those instances when annual payments are tied to a determination of annual Revenue, such determination shall be made by the Franchisee no later than 30 days after the start of the fiscal year money is to be awarded.

5. Staff. Franchisee shall provide the following staff persons under the employ of the Franchisee who will provide the following duties under the timetable listed below: (e.g. training, liaisons, etc.)

Title of Franchisee Staff	Duties	Date Hired
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6. Other Resources. Franchisee shall provide other resources as listed below pursuant to the timetable outlined:

EXHIBIT B - GRANTEE PERFORMANCE OBLIGATIONS

1. Programming Requirements.

- a. GRANTEE shall produce or provide not less than \_\_\_\_\_ total hours of programming dealing with topics reasonably related to \_\_\_\_\_ within the term of the annual utilization plan pursuant to which this grant is made.
- b. Of the foregoing hours not less than \_\_\_\_\_ shall be composed of programming which is nonautomated, which has not been previously broadcast or cablecast in the Sacramento market, and which has been produced by the GRANTEE pursuant to the annual utilization plan to which this grant is made.
- c. Further, of the foregoing hours not less than \_\_\_\_\_ hours shall be composed of programming which is nonautomated, which has not been previously broadcast or cablecast in the Sacramento market and which has been acquired or obtained in substantially its final form from a third party.
- d. Of the foregoing hours, GRANTEE shall produce and provide not less than \_\_\_\_\_ hours of automated programming containing local information of interest to cable viewers on topics reasonably related to \_\_\_\_\_ within the term of the annual utilization plan pursuant to which this grant is made.

2. Equipment Utilization.

- a. GRANTEE will establish the following policies to allow member organizations and their representatives to utilize the production equipment to produce programs pursuant to the purposes of this contract:
- b. If GRANTEE is a recipient of a Viewing Center, GRANTEE will make the Viewing Center available to the public between the hours of \_\_\_\_\_ and \_\_\_\_\_, \_\_\_\_\_ days/week at no charge, on a first-come, first-serve schedule basis.

Seating area surrounding the Viewing Center shall contain no less than \_\_\_\_\_ seats.

Viewing Center is subject to relocation by the Independent Body in conjunction with a recommendation by the Franchisee if less than \_\_\_\_\_ people utilize the Viewing Center per year. Viewing Center is subject to such relocation two years after placement in a location.

- c. If GRANTEE is a recipient of a Community Character Generator, GRANTEE shall operate said Character Generator under the following restrictions:

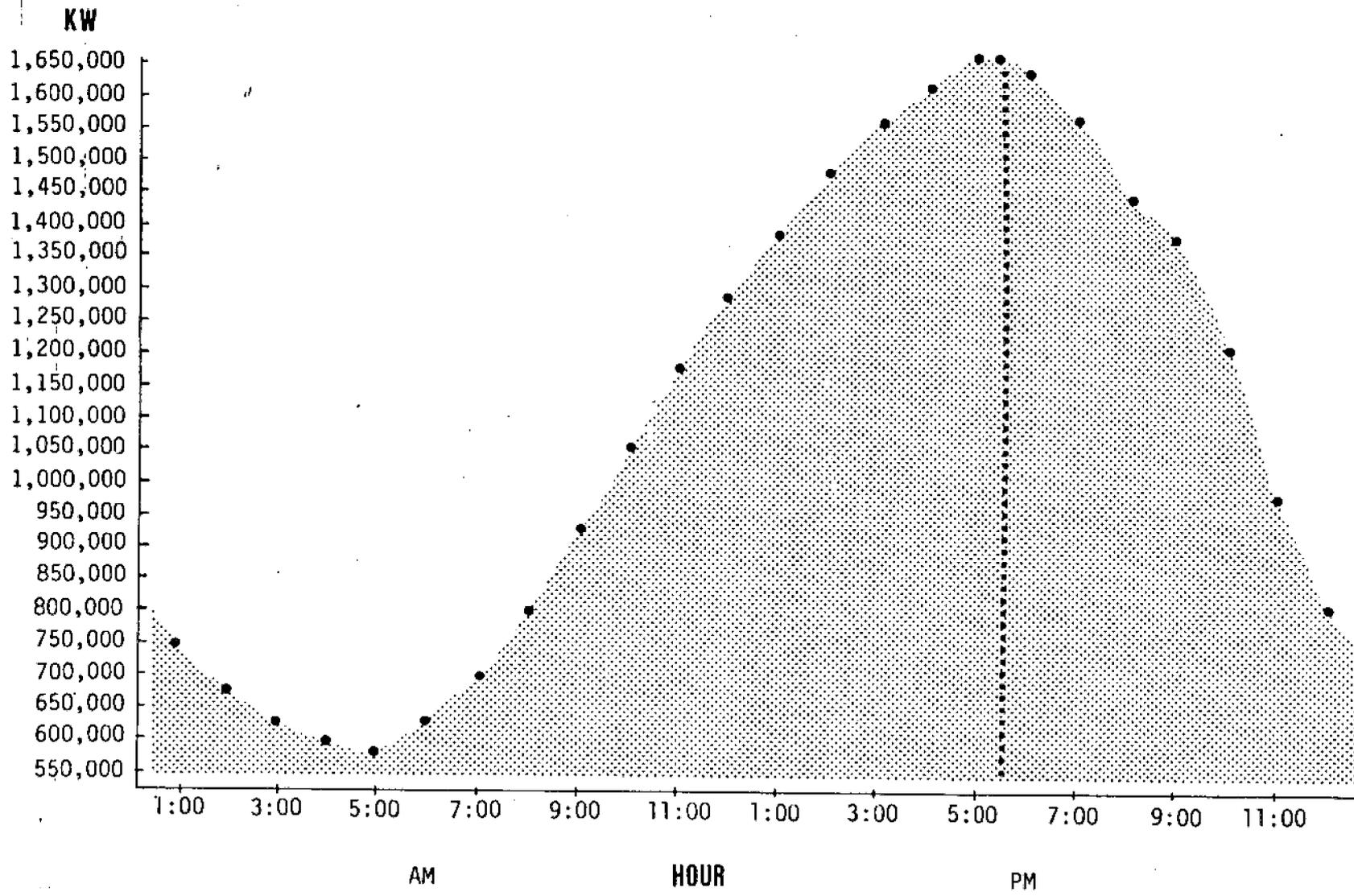
GRANTEE will operate Character Generator from the following location \_\_\_\_\_.

GRANTEE authorizes the following persons to operate Character Generators \_\_\_\_\_.

GRANTEE will program \_\_\_\_\_ nonrepeated messages per week, beginning year \_\_\_\_\_ increasing to \_\_\_\_\_ of nonrepeated messages per week in year(s) of Franchise.

# 1983 SYSTEM PEAK DAY

## AUGUST 16, 1983



# CONTRIBUTION TO SYSTEM PEAK

AUGUST 16, 1983

