



SUITE 2500, 700 'H' ST., SACRAMENTO, CA 95814 • (916) 440-6661

ROBERT E. SMITH
EXECUTIVE DIRECTOR

September 1, 1983

For Cable Commission Meeting of:
September 7, 1983

To: Sacramento Metropolitan Cable Television Commission

From: Bob Smith, Executive Director

Subject: ORDINANCE CHANGES AND TIME EXTENSION REQUESTED BY APPLICANTS

Numerous telephone inquiries were made by applicants regarding the possibility of changes in the Ordinance to remove some ambiguities and make bidding easier. August 24, 1983 was established as the deadline for receipt of written requests for such changes including any desires for time extension which might be essential to submit a bid.

TIME EXTENSION.

The Greater Sacramento Cable Company was the only firm requesting a time extension. They requested 30 days to finalize arrangements with a unnamed multiple system operator (MSO) which, to date, they have been unable to accomplish.

Staff discussed this matter with all the other applicants, who indicated that they did not wish an extension. In fact, one cable company, Kaufman-Broad, indicated that they would rethink their position on whether to submit an application if a time extension was to be granted.

In reviewing this matter, staff has concluded that the risk associated with extending the filing deadline through October 21st and losing an existing competitor is greater than the loss of any potential new competition which might be gained by recommending a time extension.

It is, therefore, my recommendation that the filing deadline remain as established by the Board and City Council, which is September 20th at 4:00 p.m. Should the Commission concur with this request, staff does not feel it necessary to approach the Board or City Council regarding a reaffirmation of their existing position.

REQUESTED ORDINANCE CHANGES.

Attached for your review is a list of Ordinance changes indicating both the applicants' request as well as the recommended changes. All of these recommended changes, most of which were requested by American Television and Communications Corporation (ATC), are generally in favor of the franchisee, but are reasonable for both parties. While there are numerous minor changes, highlighted below are the five major revisions.

1) System Capacity

All the applicants noted that while the RFP requested a state-of-the-art system design, the Ordinance requires that they install three cables - two subscriber and one institutional. The applicants argued that new technological developments permit the same capacity as reflected by the Ordinance provision - 105 video channels with less hardware and at much less cost. After reviewing this matter, we have agreed that this Ordinance provision be a suggested minimum bid specification, but should an applicant submit some other system design and architecture, their bid would not be rejected.

2) Minimum Franchise Fees.

The Ordinance, as adopted on July 21, 1983, provides that the franchisee must advance to the Commission 120% of the Commission's budget up to a maximum amount equal to the average annual franchise fee due this jurisdiction during the life of the franchise. For instance, utilizing United Tribune's proforma, the average annual franchise fee could be as much as \$3.2 million per year.

The applicants stressed that this was an extraordinarily large amount of money to disburse in a very critical construction period, without the revenue generated by large numbers of subscribers. Staff has agreed to reduce the maximum to that the Commission can require in advance payment to \$800,000, reflecting the staff costs, engineering, and legal services, and the repayment of operating cash advances made by the City and County.

3) Transfer of Ownership.

The Ordinance presently provides that, should the Commission deny its consent to the transfer of the system to a new owner and the court subsequently determines that that denial of consent was arbitrary, the Commission could nonetheless purchase the system at an advantageous price. ATC has pointed out that, when considered in conjunction with the Commission's right to assign its purchase right, the net effect of such a provision would be to allow the Commission to profit from any prospective sale to the extent that the price for the system exceeded the Commission's purchase price. The applicants felt that this was unfair.

Therefore, staff has recommended that this requirement be deleted and the Ordinance modified to provide that while the applicant would have the burden of proving the qualifications of its transferee, the Commission's decision would be subject to a final, but limited, review by a court. In any event, the Commission would have no right to purchase the system in relation to a proposed transfer.

4) Construction Schedule.

Applicants have expressed concern regarding the remedies and breach provision associated with not completing construction within the 51-month period. They argue that a 63-month build period would give them comfort in the event they encountered unusual problems particularly since a significant amount of undergrounding is required within the Sacramento franchise area.

Since this 51-month estimate was originally negotiated among nine applicants, and because staff is relying on competitive pressures to produce the most efficient construction schedule, we do not object to altering this milestone for material breach. Therefore, we are concurring with the cable companies to extend the mandatory completion schedule to the sixty-third month.

5) Line Extension Policy.

Both ATC and Kaufman-Broad have identified approximately 300 miles of low density cable mileage (less than 40 dwelling units per mile) within the Imposed Service Area. The applicants are concerned that providing cable in these areas will artificially increase subscriber rates to the extent that cable services would be difficult to market. They have requested that the line extension policy included in our Ordinance, but applicable only to areas outside the Imposed Service Area, be made applicable within the Imposed Service Area. This density policy is typical of provisions of other franchises and staff concurs that some relief should be provided within the Imposed Area.

The proposed amendment provides two distinct types of density exemptions. The first allows the low density areas to be built within 12 months of completion of the non-designated low density areas. The second allows exemption on a permanent basis upon the declining of service by the subscribers in the area. As proposed by staff, the policy provides that the applicant must offer the service to each dwelling unit in the area, and if potential subscribers in the low density area agree they want cable services, and are willing to pay a specified portion of the installation costs, the cable company is required to provide the initial installation throughout the area. The company is also required to install the system in any area in which new dwellings raise its density above the minimum. Further, as each new subscriber in the neighborhood contracts for service, or upon new dwellings raising the density above the minimum within five years of installation, the company must rebate the installation cost to the subscribers who initially subsidized the extension.

The applicants will be required to submit with their applications a map which delineates the low density service areas so that the impact will be known during deliberations on the selection of a tentative selectee.

These five changes reflect the most significant of all the requests made by the cable companies. The remaining changes clarify ambiguity or represent minor word modifications which make it easier for the bidders to submit an application while at the same time, leaving the Ordinance provision intact.

If you approve these Ordinance changes, we intend to instruct the applicants to rely on them in preparing their applications. Should the participating jurisdictions fail to adopt them, we will permit the applicants to adjust their bids accordingly after the filing deadline.

It is my recommendation that:

- 1) You reaffirm the application deadline of September 20, 1983, at 4:00 p.m.; and
- 2) Recommend approve of the Ordinance changes as outlined in the staff report and Attachment I.


BOB SMITH, Executive Director
Sacramento Metropolitan Cable
Television Commission

RES:ab

Attachments

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SUMMARY OF ORDINANCE CHANGES

<u>General Description</u>	<u>Change Requests</u>	<u>Staff Recommendations</u>
1) 5.50.012m-Gross Revenue Definitions	Limits gross revenues to payments paid to the Franchisee or its in-market subsidiaries. Also, other language clarifications.	Agree with other language changes, but reject limit on gross revenues.
2) 5.50.048-Limitations	Changes language to make open-ended the period of time for commencing judicial proceedings.	Did not agree with open ended provision, but limited the commencement date of the provision, the accrual of the action or notice of administrative decisions and rulings.
3) 5.50.050-Changes in Law	Changes language, including requiring consultation with the franchisee in the event of changes in law have frustrated the compliance with the franchise documents.	Did not agree with language requested, but made some clarifying modifications.
4) 5.50.239-Renewal Terms	Staff initiated.	Requires continuation of at least the same terms, conditions and requirements at renewal as in the original franchise.
5) 5.50.246d-Valuation	Changes the definition of replacement value and adds the "acquisition of new subscribers" as part of the growing concern value definition; or alternatively to remove this section in its entirety.	Reject changing the replacement value definition, and accepts more specification of the going concern value definition.
6) 5.50.248-Valuation	Proposed new language to determine valuation of tangible assets, or alternatively to remove this section in its entirety.	Agreed with suggested language, but clarified valuation definitions so that all tangible assets are valued at replacement costs and all intangible assets at going concern value.

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| 7) 5.50.304-Cable Capacity | Request that existing language requiring 3 cables be modified to reflect 105 channels, thereby recognizing technological advances. | Changes existing requirements to guidelines, and allow applicants to bid any cable capacity or configuration without being disqualified. Places competitive perspective above complicated and technologically unsupported minimum requirements. |
| 8) 5.50.410-Construction | Extends the 50% construction deadline by 6 months and the 100% construction deadline by 12 months. | Concur because these are outside deadlines which may not mean actual construction schedule due to bid competition. This also may soften a franchise breach trigger slightly. |
| 9) 5.50.413-Low Density Exemption | Request that the low density standards currently applicable to areas outside the Imposed Area also apply to within the Imposed Area. | Establish a two part exemption policy. One to allow low density construction without penalty after completion of all other areas, and a second permanent exemption of low density when service is declined. |
| 10) 5.50.434-Utility Delays to Construction | Excuse delays caused by utilities. | Agree to excuse utility delays in excess of 150 days if all necessary plans and documentation are submitted by franchisee. |
| 11) 5.50.542-Evaluation Service | Sets evaluation public hearings at not less than every 3 years. (City Council and Board) | Pursuant to 7/19/83 instruction from Board and City Council. |
| 12) 5.50.552-Commission Powers | Recognizing, the existence of Government Code Section 53066.1 and limit regulatory powers to those expressly mentioned in document. | Concur with Government Code 53066 referenced, but reject limitation on Commission authority to the franchise document. |
| 13) 5.50.604 and 5.50.606-Advance Payment and Franchise Fees | Identifies possible conflict with SB 54 which limits advance payments to the Commission. | Raise limits of Ordinance to 120% of Commission Budget or \$800,000, and prescribes that should legislation prohibit advance fees, then a loan in an equivalent amount would be made. |

Summary of Ordinance Changes - Page 3

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| 14) 5.50.614-Increase in Franchise Fees | Changes limit of increase in franchise fees from 10% to that permissible under law. | Concur, except to specify maximum permissible. |
| 15) 5.50.616 and 5.50.620-Application Contents and Compliance with Proposal | Recognizes the Government Code Section 53066.1 allowing franchisee to be exempt from local rate regulation. | Concur, but restore Commission's power per the Ordinance for any change in law which would repeal or abridge the right of the franchisee to be exempted from local rate regulations. |
| 16) 5.50.758-Proposed Transfers | Requested elimination of purchase by Commission if consent wrongfully denied. | Sets "substantial evidence" test for judicial review of a transfer determination, and sets the burden of proof on the franchisee to provide clear and convincing evidence relative to established criteria. |
| 17) 5.50.240(c)-Authority to Purchase System | Delete. | Concur, covered elsewhere. |
| 18) 5.50.550-Community Programming | Delete. | Concur, eliminates ambiguity between the voluntary bidding of community programming and the requirement to "make it available." |
| 19) 5.50.760-Construction Delays | Delete. | Concur, covered elsewhere. |

5.50.012 DEFINITIONS.

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- m. "Gross Revenues" -- shall mean all cash, credits, property of any kind of nature or other consideration derived directly or indirectly by a Franchisee, its affiliates, subsidiaries, parent, and any other person or entity in which the Franchisee has a financial interest or which has a financial interest in the Franchisee, arising from or attributable to operation of the Cable Television System, including, but not limited to: (i) revenue from all charges for those services provided on the Subscriber Network and Institutional Network (including Leased Access fees); (ii) * revenue from all charges for the insertion of commercial advertisements upon the System; (iii) revenue from all charges for the leased use of studio (iv) revenue from all charges for the installation, connection and reinstatement of equipment necessary for the utilization of the System and the provision of subscriber and other services; and (v) 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 good, services or other remuneration in non-monetary form received by the Franchisee or others described above in consideration for performance by a Franchisee or others described above of any advertising or other service in connection with the Cable Television System.
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5.50.048 LIMITATIONS 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 or any provision of the other Franchise Documents 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, determination or arbitration award which purports to have been made pursuant to the provisions of this Chapter or of any of the other Franchise Documents shall be commenced not later than thirty (30) calendar days following date of adoption, issuance or making of such rule, order, regulation, determination or arbitration award or, as to the Franchisee, not later than thirty (30) calendar days following the giving and serving of notice of said adoption, issuance or making of such rule, regulation, determination or arbitration award pursuant to the provisions of Section 5.50.024 above. 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, whether for the recovery of damages or otherwise, commenced by the Cable Television Commission, County or Cities for breach or enforcement of the provisions of this Chapter or any regulation, determination or arbitration award purporting to have been issued thereunder.

5.50.050 CHANGES IN LAW. Should the State of California or any agency thereof, the United States or any Federal agency or any State or Federal Court require either the Cable Television Commission, County, Cities or a Franchisee to act in a manner which is inconsistent with any provisions of the Franchise Documents, the Board of Directors of the Cable Television Commission shall be authorized to determine whether a material provision of the Franchise Documents is affected in relation to the rights and benefits conferred by the Franchise Documents upon the Commission, County, Cities or the public. Upon such determination, the Franchise Documents shall be subject to modification or amendment to such extent as may be reasonably necessary to carry out the full intent and purposes thereof in relation to the rights and benefits of the Commission, County, Cities or the public and in relation to such State, Federal or judicial requirement. The Board of Directors of the Cable Television Commission may terminate a Franchise issued pursuant to the provisions of this Chapter if it determines after consultation with the Franchisee that substantial and material compliance with the Franchise Documents in relation to the rights or benefits of the Commission, County, Cities or the public has been frustrated by such a State, Federal or judicial requirement.

5.50.239 RENEWAL TERMS. In consideration of the granting of the initial CATV Franchise, the Franchisee agrees, by the filing of the Certificate of Acceptance, that, should the discretion of the Cable Television Commission under Section 5.50.226, above, to prescribe terms, conditions and requirements for any renewal of the Initial CATV Franchise be affected, restricted, abridged, limited or impaired in any manner whatsoever by any federal or state law, regulation or judicial decision, any renewal, extension or continuation of the Initial CATV Franchise shall nonetheless be upon not less than the same terms, conditions and requirements as those applicable to the Initial CATV Franchise, provided that, in any instance in which the Franchise Documents require the payment of a fixed monetary amount, said amount shall be increased for such renewal, extension or continuation period by a percentage equal to the percentage increase in the Consumer Price Index for all urban consumers published by the United States Department of Labor for the San Francisco-Oakland Bay Area over the period from the date of the Franchisee's application for the Initial CATV Franchise to the inception of the renewal, extension or continuation period.

5.50.246 VALUATION DEFINITIONS.

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- d. "Going Concern Value" -- shall mean the benefits that attach to the business as a result of its location within the Franchise Area, the Franchisee's reputation among Subscribers or potential Subscribers for dependability and quality of service, and any other circumstances resulting in probable retention of old Subscribers or acquisition of new Subscribers; provided that no value shall be assigned to either the franchise itself or any right, privilege or expectancy arising to the Franchisee out of the right to transact business under the franchise, and particularly no value shall be allowed for any increase in value arising out of any expectation of revenues from the Cable Television System beyond the termination date or expiration date of the franchise, whichever is sooner.

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5.50.248 VALUATION LIMITS. The property which is purchased shall be valued as follows:

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- b. In the event the right of purchase is exercised pursuant to * any contingency prescribed by * this Chapter other than those specified in Sub-paragraph "a", above, the value of * all tangible assets acquired shall be * the Replacement Cost * and * the value of * intangible assets acquired shall be the Going Concern Value;

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5.50.304 CABLE - CAPACITY. The provisions of this Section express the intention and desire of the Commission. Applicants shall be authorized but not required, to include within their applications cable capacities which comport with the provisions of this Section. An applicant who chooses to make a cable capacity proposal at variance with the provisions of this Section shall not be disqualified from bidding or consideration in selection of the Franchisee. It is expressly declared that the factors upon which selection will be based are so numerous and subjective as to make it impossible to know in advance the relative importance of a determination by an applicant to either make or not to make such a proposal in relation to other factors upon which award of a franchise will be based. The Cable Television System installed pursuant to the Initial CATV Franchise * should consist of not less than two (2) cables for the Subscriber Network, plus a third cable for the Institutional Network. Each of the three cables * should have a capacity of not less than thirty-five (35) channels.

The cables for the Subscriber Network * should be installed within Service Area and outside thereof in such a manner as to comply with the availability of service requirements established by Article 4-b. One of the cables for the Subscriber Network * should be fully operational as services are required to be made available pursuant to the provisions of Article 4-b. The second cable for the Subscriber Network * should be installed at the same time as the other two cables, but may be initially inoperable. The second cable for the Subscriber Network * should become operable by such date or within such time as is prescribed within the application submitted by the Franchisee or resolution offering the franchise.

The cable for the Institutional Network * should be fully operational as services are required to be made available pursuant to the provisions of Article 4-b. The cable for the Institutional Network may * be installed in all areas in which the Subscriber Network cables are installed. Within Service Areas applicable to a franchise, the cable for the Institutional Network * should pass such public and institutions, facilities and buildings as are prescribed by the request for proposals.

5.50.410 CONSTRUCTION SCHEDULE.

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- c. Make Basic Service and other services identified pursuant to the provisions of Section 5.50.504 in Article 4-c, below, available to at least fifty (50%) percent of all Dwelling Units within each Service Area not later than * forty three (43) months following the date of filing of the certificate of acceptance of the franchise pursuant to the provisions of Section 5.50.220 in Sub-Chapter 3; and

- d. Make Basic Service and other services identified pursuant to the provisions of Section 5.50.504 in Article 4-c, below, available to one hundred (100%) percent of all Dwelling Units within each Service Area not later than * sixty three (63) months following the date of filing of the certificate of acceptance of the franchise pursuant to the provisions of Section 5.50.220 in Sub-Chapter 3.

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5.50.413 LOW DENSITY EXEMPTION.

a. A Franchisee shall be eligible to claim an exemption under this Section if, and only if, it shall have filed with its application a map or maps, certified as true and correct by an officer of the Franchisee, setting forth clearly and distinctly those portions of the Imposed Service Area in which:

1. There exists less than forty (40) dwelling units per street mile or less than five (5) dwelling units within six hundred sixty (660) street feet; and
2. The Franchisee desires to retain the right to claim a low density exemption under this Section at a later date.

b. For purposes of determining compliance of the provisions of Section 5.50.410, above, and notwithstanding any other provision of this Chapter, a Franchisee shall be excused, upon application therefor to the Commission, from making basic service and other services identified pursuant to Section 5.50.504 available within the time limits specified in Section 5.50.410, above, to dwelling units within an area meeting both of the following criteria (hereinafter "affected area"):

1. There exists less than forty (40) dwelling units per street mile or less than five (5) dwelling units within six hundred sixty (660) street feet; and
2. The area is shown upon the map submitted pursuant to Subparagraph a hereof.

c. Notwithstanding the provisions of Subparagraph b above, a Franchisee shall make available basic service and other services identified pursuant to Section 5.50.504 to all dwelling units within an affected area not later than seventy-five (75) months after the filing of the Certificate of Acceptance to the Franchise.

d. For purposes of determining compliance with the provisions of Subparagraph "d" of Section 5.50.410, above, and of Section 5.50.416, below, and notwithstanding the provisions of Subparagraph c above, or any other provision of this Chapter, a Franchisee shall be excused from making basic service and other services identified pursuant to Section 5.50.504 available to dwelling units within an area meeting both of the following criteria (hereinafter "affected area"):

1. There exists less than forty (40) dwelling units per street mile or less than five (5) dwelling units within six hundred sixty (660) street feet; and

2. Each dwelling unit within said area shall have been offered and declined cable service at the Low Density Installation Cost, which shall be the lesser of:
- (a) The Franchisee's actual cost of installation of cable plant in the affected area multiplied by the difference between the total number of dwelling units within the affected area and the number of dwelling units evidencing a desire to contract for cable service, the product thereof divided by the total number of dwelling units within the affected area and the dividend thereof divided by the number of dwelling units within the affected area desiring to contract for cable services; or
 - (b) Fifty (50) percent of the Franchisee's actual cost of installation of cable plant in the affected area divided by the number of dwelling units in the affected area desiring to contract for cable services.

e. If, in response to the offer of service at the Low Density Installation Cost required by Subparagraph d 2. above, one or more dwelling units within the affected area shall contract for service the Franchisee shall have no exemption pursuant to Subparagraph d hereof and shall be required to comply with the provisions of Subparagraph c hereof.

f. If, pursuant to Subparagraph e above, one or more dwelling units within an affected area should contract for service and pay the Low Density Installation Cost calculated pursuant to Subparagraph d 2. above, and at any time thereafter, additional dwelling units shall contract for such cable service, the Low Density Installation Cost for such subsequent contracting dwelling units shall be recalculated pursuant to the formula set forth in Subparagraph d 2. above, utilizing the then-existing total number of dwelling units and the then-existing number of dwelling units contracting for cable service and a refund shall be paid thereupon to any existing subscriber who shall have paid a Low Density Installation Cost within the previous three (3) years in an amount equal to the amount by which the Low Density Installation Cost for the new subscriber exceeds the Low Density Installation Cost charge paid by the existing subscriber.

g. For any affected area in which the Franchisee claims an exemption pursuant to Subparagraph d hereof, the Franchisee shall obtain and retain at all times throughout the term of the Franchise evidence in a form satisfactory to the Commission of the offer and declination of service by the Franchisee to all of the dwelling units within the affected area upon the basis set forth in Subparagraph

d above.

h. For purposes of calculations under this Section, the "Franchisee's actual cost of installation of cable plant in the affected area" shall:

1. Include only direct labor expended and plant and equipment physically installed within the affected area;
2. Not include any indirect allocation, assignment or amortization of other costs or equipment;
3. Not include any costs related to any degree whatsoever with the provisions of service to areas other than the affected area, including but not limited to any cable or other equipment used in any part to transmit signals to any area beyond the affected area.

i. If a Franchisee should claim an exemption pursuant to Subparagraph d above, and thereafter during the term of the Franchise the density of dwelling units within the affected area should equal or exceed forty (40) dwelling units per street mile or five (5) dwelling units within six hundred sixty (660) street feet then the Franchisee shall, upon the application of one or more dwelling units within said affected area, be obligated to extend the system throughout the affected area and make available basic service and other services identified pursuant to Section 5.50.504, within six (6) months after the first request for cable service.

j. If a Franchisee shall install cable service within an affected area pursuant to the provisions of Subparagraph e above, and within five (5) years thereafter, the density of dwelling units within the affected area shall equal or exceed forty (40) dwelling units per street mile or five (5) dwelling units within six hundred sixty (660) street feet, the Franchisee shall thereupon refund all Low Density Installation Cost charges to the extent that said charges exceeded the normal installation charge in effect at the time of installation for non-low density areas of the system.

k. Notwithstanding any other provision of this Section, the system design and architecture shall, at all times during the term of the Franchise, be capable of serving the entire Imposed Service Area.

5.50.434

- 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 Franchisee 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 Franchisee from any violations which are proximately caused by such delay in excess of One Hundred Fifty (150) calendar days.

5.50.542 EVALUATION SESSIONS. Upon request by either a Franchisee or the Cable Television Commission and, in any event, not less frequently than thirty (30) calendar days following the third, sixth, ninth, * twelfth, fifteenth and eighteenth years' anniversary dates following the date of filing of the Certificate of Acceptance of each franchise, the Franchisee and the Commission shall conduct evaluation sessions. The evaluation sessions shall be conducted during public hearings held by the Board of Directors or an advisory or other committee appointed by the Board of Directors of the Commission, notice of which has been given in the manner prescribed by Section 5.50.024 in Sub-chapter 1, above. Topics discussed at such sessions may include services, application of new technologies, system performance, services provided, programming offered, customers complaints, privacy of Franchisee or Commission rules and regulations; and shall include any topic which the Franchisee, the Commission or members of the public request be discussed.

5.50.552 COMMISSION POWERS. Except as otherwise expressly provided in * the Franchise Documents and in Section 53066.1 of the Government Code, the Board of Directors of the Cable Television Commission shall be authorized to regulate all Cable Television System operations and services provided by a Franchisee for the purpose of promoting and protecting the public convenience, health, safety and welfare. The Board of Directors of the Commission may exercise regulatory powers conferred herein by the enactment, from time to time, of rules and regulations, after a public hearing by the Board or an advisory committee appointed by the Board, notice of which is given in the manner prescribed by Section 5.50.024 in Sub-Chapter 1, above. The rule making powers of the Board of Directors shall include, but not be limited to, the authority to interpret, clarify, make specific and apply the provisions of Section 5.50.500 through this Section, inclusive, and to enact rules and regulations which impose specific duties or prohibitions for the purpose of implementing the duties, responsibilities and restrictions set forth in said Sections. Each Franchisee shall comply with all such rules and regulations.

5.50.604 MINIMUM ADVANCE PAYMENT. From and after the date of filing of a certificate of acceptance of a franchise pursuant to the provisions of Section 5.50.220 in Sub-Chapter 3, above, the Franchisee shall pay to the Cable Television Commission an annual amount equal to the lesser of the following: (i) one hundred twenty (120%) percent times each annual budget of the Commission; or (ii) a minimum annual amount of Eight Hundred * Thousand Dollars (\$800,000) *. Said annual amount shall be paid by the Franchisee in equal quarterly installments (prorated for the first quarter if a franchise is issued in the middle of a quarter) at the times and for the periods prescribed by Section 5.50.602, above. At the commencement of the first full fiscal year following issuance of a franchise and at the commencement of each fiscal year thereafter, said minimum annual amount of Eight Hundred * Thousand Dollars (\$800,000) shall be increased by a percentage equal to the annual percentage increase in the Consumer Price Index for all urban consumers published by the United States Department of Labor for the San Francisco-Oakland Bay Area for the twelve month period ending June 30 immediately preceding the commencement of the fiscal year for which adjustment is to be made.

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5.50.606 FUTURE LAWS. Neither the County nor Cities have or expect in the foreseeable future to receive sufficient funds with which to defray the costs of administering and regulating cable television franchises within the Sacramento Community. The ability to finance such costs through franchise fees pursuant to the provisions of Section 5.50.602 and 5.50.604, above, constitutes a material inducement to initiate a cable television program within the Sacramento Community, because neither the County nor Cities would be willing to reduce or eliminate other public programs in order to make public funds available with which to defray the costs of administering and regulating the cable television program.

Therefore, should any future law or regulation limit or prevent the Cable Television Commission from imposing a franchise fee in the amount provided for herein, *** each Franchisee shall *** cooperate with the Cable Television Commission in filing and supporting a request to obtain any possible waiver or permission to pay the full amounts provided for herein, and, to the extent such future law or regulation permits a Franchisee discretion to make the limitation or prohibition applicable or inapplicable, each Franchisee shall elect to make the limitation or prohibition inapplicable.

Should any future law or regulation limit or prevent the Franchisee from paying the minimum advance fee required by Section 5.50.604 above, the Franchisee, by the filing of the Certificate of Acceptance hereto, agrees to make a non-interest bearing loan to the Commission annually in an amount equal to the amount by which a minimum advance payment calculated pursuant to the provisions of Section 5.50.604 above would have exceeded amounts reasonably anticipated to be due to the Commission within the ensuing year pursuant to Section 5.50.602 above, which loan shall be repaid in subsequent years to the extent that the amount paid as Franchise fees by the Franchisee pursuant to the provisions of Section 5.50.602 exceeds an amount equal to an amount which would have been paid as a minimum advance payment under Section 5.50.604 above in such subsequent years had such payments been permitted.

The failure of the Commission to receive the fees or the loans prescribed by this Article shall be deemed to constitute a substantial and material failure to comply with the Franchise Documents within the meaning of Section 5.50.050 in Sub-Chapter 1, above.

5.50.614 INCREASE IN FRANCHISE FEES - ARBITRATION.

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The arbitration panel shall authorize an increase in the franchise fees by an amount which the panel finds is justified by actual (including past uncompensated) or proposed costs incurred by the Commission, County and Cities or administering each franchise issued pursuant to the provisions of this Chapter and promoting, assisting and financing any types of Community Use proposed pursuant to the provisions of Sections 5.50.332 through 5.50.340 in Article 4-a or provided pursuant to Section 5.50.548 in Article 4-c, provided that the annual franchisee fee shall under no circumstances exceed * the maximum permissible percentage per year of a Franchisee's annual Gross Revenues under applicable federal or state law. In the event more than one (1) franchise is issued pursuant to the provisions of this Chapter, the arbitration panel shall establish such an amount with respect to each Franchisee. Any increase or increases ordered by the arbitration panel shall be deemed to amend the provisions of Section 5.50.602, above, respecting the amount of the fees. The County and Cities shall be authorized to amend Section 5.50.602, above, by increasing the franchise fees by any amounts authorized under the decision of the arbitration panel.

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5.50.616 APPLICATION CONTENTS.

...

The County and Cities recognize the right of a Franchisee to propose the provisions of minimal services at specified rates pursuant to the provisions of this section through Section 5.50.624 below, and nonetheless subsequently elect to be exempt from local rate regulation or to unilaterally adjust its rates in strict compliance with the provisions of Section 53066.1 of the Government Code, provided that if, for any reason, the right of the Franchisee to elect exemption from rate regulation shall hereafter be abridged or repealed, the full regulatory authority of the Commission shall thereupon be restored pro tanto.

5.50.620 COMPLIANCE WITH PROPOSAL. A Franchisee who has referred to and incorporated in its application the provisions of Sections 5.50.622 and 5.50.624, below, shall comply with the provisions of said Sections during the term of the franchise.
*

If a franchise is issued to an applicant who has referred to and incorporated the provisions of said Sections in its application, the receipt by such applicant at any time during the term of the franchise of rates or charges which are inconsistent with the provisions of said Sections, unless in strict compliance with the provisions of Section 53066.1 of the Government Code, shall be deemed to constitute a substantial and material failure to comply with the Franchise Documents within the meaning of Section 5.50.050 in Sub-Chapter 1.

If, at any time hereafter, the right of the Franchisee to elect exemption under Government Code Section 53066.1 or other federal or state law shall be abridged or repealed in any manner, the Commission's full regulatory authority shall thereupon be restored pro tanto.

5.50.758 DETERMINATION OF PROPOSED TRANSFERS.

...

The Board of Directors of the Commission shall schedule a public hearing to determine whether consent required by the provisions of Sections 5.50.754 or 5.50.756, above, will be given. Notice of the hearing shall be given in the manner prescribed by Section 5.50.024 in Sub-Chapter 1, above. The hearing shall be commenced not later than sixty (60) calendar days following filing of the notice of the Franchisee pursuant to this Section. At the conclusion of the hearing the Board shall determine whether consent will be given.

*

In the hearing to determine whether consent will be given the Franchisee (proposed transferor) shall have the burden of proving by clear and convincing evidence each of the following factors.

- a. That the reputation, responsibility, integrity and reliability of the party or parties to whom the transfer is contemplated and of the directors, officers, employees, and agents thereof is equal to that of the parties obligated under the Franchise Documents;
- b. That the financial capability and capacity of the party or parties to whom the transfer is contemplated is equal to that of the parties obligated under the Franchise Documents;
- c. That * the terms, conditions or other circumstances of the transfer are not likely to result in an increase in the rates or charges for services;
- d. That * at the time of the transfer the Franchisee is in compliance with the terms, conditions and requirements of the Franchise Documents and any rules, regulations or determinations promulgated thereunder;
- e. That * installation of the Cable Television System has been completed in the manner and within the times prescribed by Section 5.50.410 in Article 4-b of Sub-Chapter 4 (In the absence of extraordinary circumstances, a transfer shall not be approved in advance of such completion.); and

- *
g. That * the transaction would not detrimentally affect the public interest.

The determination by the Board of Directors as to whether to give such consent shall be vested within the sole discretion of the Board, but shall be based exclusively upon the factors prescribed above. Such consent may be given upon maintenance or operation of the Cable Television System, services to be provided, rates and charges for services, management of the franchise business and other requirements relating to the franchise, as the Board of Directors, in its sole discretion, may order.

*

In the event the Board does not consent and the Franchisee seeks judicial review of the Board's decision, the Franchisee agrees, by filing of the Certificate of Acceptance, that the decision of the Board shall be upheld by a trial or appellate court if there is any substantial evidence supporting the decision of the Board as to any of the prescribed factors above.

As to Section 5.50.240 delete Sub-paragraph c.

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Delete Section 5.50.550 in its entirety.

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Delete Section 5.50.760 in its entirety.