

December 7, 2005

For City Council Meeting
of December 13, 2005

**Adoption of an Ordinance Relating to Cable, Video, and Telecommunications
Service Providers.**

Recommendation

1. Conduct the public hearing to solicit comments regarding the proposed ordinance.
2. Introduce the Ordinance and waive full reading

Background

The existing cable television regulatory ordinance was adopted by the City of Hermosa Beach in 1994. Over the years there have been changes in State and Federal laws regarding local regulation of cable television services. In addition, technological advances have impacted the industry and the regulations that apply.


Analysis

Attached is a proposed revised cable television regulatory ordinance. The ordinance is considerably different in format than the current ordinance. The emphasis in updating the ordinance was to reflect changes that have occurred in State and Federal regulations with regard to cable television services and the ability or authority of local governments to regulate cable services. Changes have also been made due to technological changes in the industry. The new ordinance also incorporates the Cable Television Consumer Protection Standards and the regulatory ordinance into one section of the Municipal Code. The current cable television service provider, Adelphia, will continue to operate under the existing chapters 5.16 and 5.17 as they now exist until a new cable television franchise renewal agreement becomes effective, at which time the new regulations would apply. Should the city approve a franchise agreement with Verizon Communications to provide subscription video services, the new ordinance would apply to that agreement. The draft franchise agreement with Verizon has been developed in consideration of this new ordinance.

Respectfully submitted:


Michael Earl
Personnel & Risk Management Director

Concur:


Stephen Burrell
City Manager

Brad Wohlenberg
City Attorney's Office

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF HERMOSA BEACH REGULATING CABLE, VIDEO, AND TELECOMMUNICATIONS SERVICE PROVIDERS, REDESIGNATING CHAPTERS 5.16 AND 5.17 OF TITLE 5 AS UNCODIFIED ORDINANCES, AND AMENDING TITLE 5 OF THE HERMOSA BEACH MUNICIPAL CODE BY ADDING A NEW CHAPTER 5.16

THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 5.16 of Title 5 of the Hermosa Beach Municipal Code, which is entitled "Cable Television Systems," and Chapter 5.17 of Title 5 of the Hermosa Beach Municipal Code, which is entitled "Cable Television Consumer Protection Standards," are redesignated as uncodified ordinances and are subject to repeal in accordance with the provisions of Section 3 of this ordinance.

Section 2. The Hermosa Beach Municipal Code is amended by adding to Title 5 a new Chapter 5.16 to read as follows:

"CHAPTER 5.16. CABLE, VIDEO, AND
TELECOMMUNICATIONS SERVICE
PROVIDERS

ARTICLE 1. GENERAL PROVISIONS

5.16.010 Title

This chapter is known and may be cited as the "Cable, Video, and Telecommunications Service Providers Ordinance" of the City of Hermosa Beach.

5.16.020 Purpose and Intent

A. The City Council finds and determines as follows:

1. The development of cable, video, and telecommunications services and systems may provide significant benefits for, and have substantial impacts upon, the residents of the City.

2. Because of the complex and rapidly changing technology associated with cable, video, and telecommunications services and systems, the public convenience, safety, and general welfare can best be served by the City's exercise of its regulatory powers.

3. This chapter adopts provisions that authorize the City to regulate cable, video, and telecommunications service providers to the extent authorized by federal and state law, including but not limited to the federal Cable Communications Policy Act of 1984, the federal Cable Television Consumer Protection and Competition Act of 1992, the federal Telecommunications Act of 1996, applicable regulations of the Federal Communications Commission, and applicable California statutes and regulations.

4. The cable, video, and telecommunications services that are addressed in this chapter include services provided by cable television systems, open video systems, master antenna television systems, satellite master antenna television systems, direct broadcast satellite systems, multichannel multipoint distribution systems, local multipoint distribution systems, and other providers of video programming, whatever their technology.

B. The purpose and intent of this chapter is to provide for the attainment of the following objectives:

1. To enable the City to discharge its public trust in a manner consistent with rapidly evolving federal and state regulatory policies, industry competition, and technological development.

2. To authorize and to manage reasonable access to the City's public rights-of-way and public property for cable, video, and telecommunications purposes on a competitively neutral and nondiscriminatory basis, and in a manner consistent with all applicable federal and state statutes and regulations.

3. To obtain fair and reasonable compensation for the City and its residents for authorizing the private use of the public rights-of-way and public property.

4. To promote competition in cable, video, and telecommunications services, minimize unnecessary local regulation of cable, video, and telecommunications service providers, and encourage the delivery of advanced and competitive cable, video, and telecommunications services on the broadest possible basis to local government and to the businesses, institutions, and residents of the City.

5. To establish clear local guidelines, standards, and time frames for the exercise of local authority with respect to the regulation of cable, video, and telecommunications service providers.

6. To encourage the deployment of advanced cable, video, and telecommunications infrastructure that satisfies local needs, delivers enhanced government services, and provides informed consumer choices in an evolving cable, video, and telecommunications marketplace.

7. To maintain and to enhance public, educational, and governmental programming opportunities that will enable the City to communicate with its residents and to provide them with alternate means of disseminating information.

5.16.030 Defined Terms and Phrases

Various terms and phrases used in this chapter are defined below in Section 5.16.170 of Article 5.

5.16.035 Suspension and Waiver of Application Fee Deposits

A. With regard to any application fee deposit for an initial franchise, or for the renewal of a franchise, or for the transfer or change in control of a franchise that is authorized by this Chapter 5.16, the City Manager may suspend that application fee deposit in accordance with this section.

B. The City Manager, in consultation with the City Attorney, will review all written information submitted by the applicant or franchisee in support of its contention that applicable law prohibits imposition of the application fee deposit provided for by this Chapter 5.16. If a determination is made that applicable law supports the contention of the applicant or franchisee, then the City Manager may suspend the imposition of the application fee deposit; provided, however, that such suspension must be ratified by the City Council within 30 days after the City Manager's determination, and, if ratified, the application fee deposit will be deemed to have been waived.

ARTICLE 2. CABLE TELEVISION SYSTEMS

5.16.040 Authority and Findings

A. In accordance with applicable federal and state law, the City is authorized to grant one or more nonexclusive franchises to construct, reconstruct, operate, and maintain cable television systems within the City limits.

C. The City Council finds that the development of cable television and related telecommunications services may provide significant benefits for, and substantial impacts upon, the residents of the City. Because of the complex and rapidly changing technology associated with cable television, the City Council further finds that the public convenience, safety, and general welfare can best be served by the exercise of the City's regulatory powers. This Article 2 is intended to specify the means for providing to the public the best possible cable television services, and every franchise issued in accordance with this Article 2 is intended to achieve this primary objective. It is the further intent of this Article 2 to adopt regulatory provisions that will enable the City to regulate cable television services to the maximum extent authorized by federal and state law.

5.16.050 Franchise Terms and Conditions

A. Franchise Purposes

A franchise granted by the City under the provisions of this Article 2 may authorize the Grantee to do the following:

1. To engage in the business of providing cable television services that are authorized by law and that the Grantee elects to provide to its subscribers within the designated franchise service area.

2. To erect, install, construct, repair, rebuild, reconstruct, replace, maintain, and retain, cable lines, related electronic equipment, supporting structures, appurtenances, and other property in connection with the operation of the cable system in, on, over, under, upon, along and across streets and public rights-of-way within the designated franchise service area.

3. To maintain and operate the franchise properties for the origination, reception, transmission, amplification, and distribution of television and radio signals, and for the delivery of cable services that are authorized by law.

B. Franchise Required

It is unlawful for any person to construct, install, or operate a cable television system within any street or public way in the City without first obtaining a franchise under the provisions of this Article 2.

C. Term of the Franchise

1. A franchise granted under this Article 2 will be for the term specified in the franchise agreement, commencing upon the effective date of the resolution adopted by the City Council that authorizes the franchise.

2. A franchise granted under this Article 2 may be renewed upon application by the Grantee in accordance with the then-applicable provisions of state and federal law and this Article 2.

D. Franchise Service Area

A franchise is effective within the territorial limits of the City, and within any area added to the City during the term of the franchise, unless otherwise specified in the resolution granting the franchise or in the franchise agreement.

E. Federal or State Jurisdiction

This Article 2 will be construed in a manner consistent with all applicable federal and state laws, and it applies to all franchises granted or renewed after the effective date of this Chapter 5.16, to the extent authorized by applicable law.

F. Franchise Non-Transferable

1. Grantee may not sell, transfer, lease, assign, sublet, or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation, or otherwise, the franchise or any of the rights or privileges therein granted, without the prior written consent of the City Council, which consent may not be unreasonably denied or delayed. Any attempt to sell, transfer, lease, assign, or otherwise dispose of the franchise without the written consent of the City Council is null and void. The granting of a security interest in any assets of the Grantee, or any mortgage or other hypothecation, will not be deemed a transfer for the purposes of this subsection.

2. The requirements of subsection (1) apply to any change in control of Grantee. The word "control" as used herein is not limited to the ownership of major stockholder or partnership interests, but includes actual working control in whatever manner exercised. If Grantee is a partnership or a corporation, prior authorization of the City Council is required where ownership or control of twenty-five percent (25%) or more of the partnership interests or of the voting stock of Grantee, or any company in the tier of companies controlling the Grantee, whether directly or indirectly, is acquired by a person or a group of persons acting in concert, none of whom, singularly or collectively, owns or controls those partnership interests or that voting stock of the Grantee, or of Grantee's upper tier of controlling companies, as of the effective date of the franchise.

3. Unless precluded by federal law, Grantee must give prior written notice to the City of any proposed foreclosure or judicial sale of all or a substantial part of the Grantee's franchise property. That notification will be considered by the City as notice that a change in control of ownership of the franchise will take

place, and the provisions of this paragraph that require the prior written consent of the City Council to that change in control of ownership will apply.

4. For the purpose of determining whether it will consent to an acquisition, transfer, or change in control, the City may inquire about the qualifications of the prospective transferee or controlling party, and Grantee must assist the City in that inquiry. In seeking the City's consent to any change of ownership or control, Grantee or the proposed transferee, or both, must complete Federal Communications Commission Form 394 or its equivalent. This application must be submitted to the City not less than 120 days prior to the proposed date of transfer. The transferee must establish that it possesses the legal, financial, and technical capability to remedy all then-existing defaults and deficiencies, and, during the remaining term of the franchise, to operate and maintain the cable system and to comply with all franchise requirements. If the legal, financial, and technical qualifications of the proposed transferee are determined to be satisfactory, then the City will consent to the transfer of the franchise.

5. Any financial institution holding a pledge of the Grantee's assets to secure the advance of money for the construction or operation of the franchise property has the right to notify the City that it, or a designee satisfactory to the City, will take control of and operate the cable television system upon Grantee's default in its financial obligations. Further, that financial institution must also submit a plan for such operation within 90 days after assuming control. The plan must ensure continued service and compliance with all franchise requirements during the period that the financial institution will exercise control over the system. The financial institution may not exercise control over the system for a period exceeding one year unless authorized by the City, in its sole discretion, and during that period of time it will have the right to petition the City to transfer the franchise to another Grantee.

6. Unless prohibited by applicable law, Grantee must reimburse the City for the City's reasonable review and processing expenses incurred in connection with any transfer or change in control of the franchise. These expenses may include, without limitation, costs of administrative review, financial, legal, and technical evaluation of the proposed transferee, consultants (including technical and legal experts and all costs incurred by these experts), notice and publication costs, and document preparation expenses. The total amount of these reimbursable expenses may be subject to maximum limits that are specified in the franchise agreement between the City and the Grantee. No reimbursement may be offset against any franchise fee payable to the City during the term of the franchise.

G. Geographical Coverage

1. Unless otherwise provided in the franchise agreement, Grantee must design, construct, and maintain the cable television system to have the capability to pass every dwelling unit and commercial building in the franchise service area, subject to any service-area line extension requirements or territorial restrictions set forth in the franchise agreement.

2. After service has been established by activating trunk or distribution cables for any service area, Grantee must provide standard installations to any requesting subscriber within that activated part of the service area within seven days from the date of request, or such longer time as may be requested by the subscriber, provided that the Grantee is able to secure on reasonable terms and conditions all rights-of-way and permits necessary to extend service to that subscriber

within that period. Standard installations are defined as installations that are located up to 125 feet from the existing distribution system and do not require trenching to serve.

H. Nonexclusive Franchise

Every franchise granted is nonexclusive. The City specifically reserves the right to grant, at any time, such additional franchises for a cable television system as it deems appropriate, subject to applicable state and federal law. If an additional franchise is proposed to be granted to a subsequent Grantee, a noticed public hearing must first be held if required under the provisions of Government Code § 53066.3.

I. Multiple Franchises

1. The City may grant any number of franchises, subject to applicable state and federal law. The City may limit the number of franchises granted, based upon, but not necessarily limited to, the requirements of applicable law and the following specific local considerations:

a. The capacity of the public rights-of-way to accommodate multiple cables in addition to the cables, conduits, and pipes of the existing utility systems, such as electrical power, telephone, gas, and sewerage.

b. The benefits that may accrue to subscribers as a result of cable system competition, such as lower rates and improved service.

c. The disadvantages that may result from cable system competition, such as the requirement for multiple pedestals on residents' property, and the disruption arising from numerous excavations within the public rights-of-way.

2. The City may require that any new Grantee be responsible for its own underground trenching and the associated costs if, in the City's opinion, the rights-of-way in any particular area cannot reasonably accommodate additional cables.

5.16.060 Franchise Applications and Renewal

A. Filing of Applications

Any person desiring an initial franchise for a cable television system must file an application with the City. An application fee deposit in an amount established by resolution of the City Council must accompany the application. That application fee deposit will cover all reasonably anticipated costs associated with reviewing and processing the application, including without limitation costs of administrative review, financial, legal, and technical evaluation of the applicant, consultants (including technical and legal experts and all costs reasonably incurred by those experts), notice and publication requirements, and document preparation expenses. If actual costs exceed the application fee deposit, the applicant must pay the difference to the City within 30 days following receipt of an itemized statement of those costs. If actual costs are less than the application fee deposit, the remaining balance will be refunded to the applicant.

B. Applications - Contents

An application for an initial franchise for a cable television system must contain, as applicable:

1. A statement describing the proposed franchise service area and an explanation whether this proposed service area is, or will be, a part of a larger regional cluster of franchise service areas.

2. A resume of the applicant's prior history, including the applicant's experience and expertise in the cable television industry.

3. A list of the partners, general and limited, of the applicant, if a partnership, or the percentage of stock owned or controlled by each stockholder, if a closely-held corporation. If the applicant is a publicly-owned partnership or corporation, each owner of 10 percent or more of the partnership interests, or of the issued and outstanding capital stock, must be identified. If the applicant is a limited liability company, the following information must be provided: the address of its principal executive office; the name and business or residence address of each member and of each holder of an economic interest in the limited liability company, together with the contribution and share in profits or losses of each member and holder of an economic interest; the name and business or residence address of any manager or managers and the chief executive officer, if any, appointed or elected in accordance with the articles of organization or operating agreement.

4. A list of officers, directors, and managing employees of the applicant, together with a description of the background and qualifications of each such person.

5. A statement concerning the number of people employed by the applicant, whether on a full-time or part-time basis.

6. The names and addresses of any parent or subsidiary of the applicant, or any other business entity owning or controlling applicant in whole or in part, or that is owned or controlled in whole or in part by the applicant.

7. Financial statements prepared in accordance with generally accepted accounting principles that demonstrate the applicant's financial ability to:

a. Construct, operate, maintain, and remove any new physical plant that is proposed to be constructed in the City.

b. Comply with the City's public, educational, and governmental access requirements.

c. Comply with the City's requirement that franchise fees be paid on the applicant's gross revenues derived from the operation of the cable system to provide cable services.

8. An accurate map showing the location of any existing telecommunications facilities in the City that the applicant intends to use, to purchase, or to lease.

9. A description of the cable services and any other services that will be offered by the applicant using existing or proposed facilities.

10. The proposed construction and service schedule, the proposed rate structure for cable services, and the proposed commitment to provide public, educational, and governmental access capacity, services, facilities, and equipment.

11. Any additional information that the City deems to be reasonably necessary to evaluate the applicant's qualifications.

C. Consideration of Initial Applications

1. Upon receipt of an application for an initial franchise, the City Manager or the City Manager's designee must prepare a report and make recommendations to the City Council concerning that application.

2. A public hearing will be noticed prior to any initial franchise grant, at a time and date approved by the City Council. Within 30 days after the close of the hearing, the City Council will make a decision, based upon the documents and testimony received at the hearing, whether the franchise should be granted, and, if granted, subject to what conditions. The City Council may grant one or more franchises, or may decline to grant any franchise.

D. Franchise Renewal

Franchise renewals will be processed in accordance with then-applicable law. The City and Grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the franchise. The City Council may authorize the renewal of a cable television franchise agreement by resolution.

5.16.070 Contents of Cable Television Franchise Agreements

A. The provisions of a franchise agreement for the operation of a cable television system may relate to or include, without limitation, the following subject matters:

1. The geographical area, duration, and nonexclusive nature of the franchise.
2. The applicable franchise fee to be paid to the City, including the percentage amount, the method of computation, and the time for payment.
3. Requirements relating to compliance with and implementation of state and federal laws and regulations pertaining to the operation of the cable television system.
4. Requirements relating to the construction, upgrade, or rebuild of the cable television system, as well as the provision of special services, such as outlets for public buildings, emergency alert capability, and parental control devices.
5. Requirements relating to the maintenance of a performance bond, a security fund, a letter of credit, or similar assurances to secure the performance of the Grantee's obligations under the franchise agreement.
6. Requirements relating to comprehensive liability insurance, workers' compensation insurance, and indemnification.

7. Requirements relating to consumer protection and customer service standards, which requirements may include, without limitation, compliance with Section 5.16.080, and the statutes, rules, and regulations referenced in that section.

8. Requirements relating to the Grantee's support of local cable usage, including the provision of public, educational, and governmental access channels, the coverage of public meetings and special events, and financial support for the required access channels.

9. Requirements relating to the Grantee's obligation to provide an institutional network, and channel capacity on that institutional network for educational or governmental use, subject to the City's rules and procedures for the use of such channel capacity and for compatibility with any telecommunications network that has been or may be developed by the City.

10. Requirements relating to construction, operation, and maintenance of the cable television system within the City's streets and public rights-of-way, including compliance with all applicable building codes and permit requirements of the City, the abandonment, removal, or relocation of facilities, and compliance with FCC technical standards.

11. Requirements relating to recordkeeping, accounting procedures, reporting, periodic audits, and performance reviews, the inspection of Grantee's books and records, and reimbursement for technical audits and franchise fee audits under specified circumstances.

12. Acts or omissions constituting material breaches of or defaults under the franchise agreement, and the applicable penalties or remedies for such breaches or defaults, including fines, penalties, liquidated damages, suspension, revocation, and termination.

13. Requirements relating to the sale, assignment, or other transfer or change in control of the franchise.

14. The Grantee's obligation to maintain continuity of service and to authorize, under certain specified circumstances, the City's operation and management of the cable system.

15. Such additional requirements, conditions, policies, and procedures as may be mutually agreed upon by the parties to the franchise agreement and that will, in the judgment of City staff and the City Council, best serve the public interest and protect the public health, welfare, and safety.

B. If there is any conflict or inconsistency between the provisions of a franchise agreement authorized by the City Council and provisions of this chapter, the provisions of the franchise agreement will control.

5.16.080 Consumer Protection and Service Standards

A. Operational Standards

1. Grantee must maintain the necessary facilities, equipment, and personnel to comply with the following consumer protection and service standards under normal operating conditions:

a. Sufficient toll-free telephone line capacity during normal business hours to ensure that telephone calls are answered promptly. Telephone answer time by a customer service representative, including wait time, may not exceed 30 seconds when the connection is made. If the call needs to be transferred, transfer time must not exceed 30 seconds.

b. Callers may not receive a busy signal more than three percent of the time, measured quarterly.

c. Emergency toll-free telephone line capacity on a 24-hour basis, including weekends and holidays. After normal business hours, the telephone calls may be answered by a service or an automated response system, including an answering machine. Calls received after normal business hours must be responded to by a trained company representative on the next business day.

d. A conveniently-located local business and service or payment office open during normal business hours at least eight hours daily on weekdays, and at least four hours weekly on evenings or weekends, and adequately staffed with trained customer service representatives to accept subscriber payments and to respond to service requests, inquiries, and complaints.

e. An emergency system maintenance and repair staff, capable of responding to and repairing major system malfunctions on a 24-hour per day basis.

f. A trained installation staff must provide service to any subscriber requiring a standard installation within seven days after receipt of a request, or such longer time as may be requested by the subscriber, in all areas where trunk and feeder cable have been activated.

g. The Grantee must schedule, within a specified four-hour time period Monday through Saturday (legal holidays excluded), all appointments with subscribers for installation of service, service calls, and other activities at the subscriber's location. The Grantee may schedule installation and service calls outside of normal business hours for the convenience of the subscriber. The Grantee may not cancel an appointment with a subscriber after the close of business on the business day prior to the scheduled appointment. If a Grantee representative is delayed in keeping an appointment with a subscriber and will not be able to honor the scheduled appointment, the subscriber must be contacted prior to the time of the scheduled appointment, and the appointment must be rescheduled, as necessary, at a time that is convenient for the subscriber. The Grantee must undertake appropriate quality control measures to ensure that the customer is satisfied with the work.

h. Subscribers who have experienced a late or a missed appointment due to the fault of the Grantee will receive either a free installation or a \$20 credit.

i. Upon a subscriber's request, the Grantee will arrange for pickup or replacement of converters or other equipment provided by the

Grantee at the subscriber's address within 14 days after the request is made if the subscriber is mobility-limited.

2. Under normal operating conditions, the standards of subparagraphs (a), (b), (c), (f) and (g) above must be met not less than ninety percent of the time, measured on a quarterly basis.

B. Service Standards

1. The Grantee will render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Except in emergency situations, scheduled interruptions will occur during a period of minimum use of the cable system, preferably between midnight and 6:00 a.m. Unless the scheduled interruption lasts for no more than two hours and occurs between midnight and 6:00 a.m. (in which event 24-hours prior notice must be given to the City), 48-hours prior notice must be given to subscribers.

2. The Grantee will maintain a repair force of technicians who will respond to subscriber requests for service within the following time frames:

a. For a system outage: Within two hours, including weekends, after receiving subscriber calls or requests for service that by number identify a system outage of sound or picture on one or more channels, affecting five or more subscribers to the system.

b. For an isolated outage: Within 24 hours, including weekends, after receiving requests for service identifying an isolated outage of sound or picture on one or more channels.

c. For inferior signal quality: No later than the following business day, excluding Sundays and holidays, after a request for service identifying a problem concerning picture or sound quality.

3. The Grantee will be deemed to have responded to a request for service under the provisions of this paragraph (B) when a technician arrives at the service location and begins work on a problem that cannot be corrected from a remote location. If a subscriber is not home when the technician arrives, the technician must leave written notification of arrival.

4. The Grantee may not charge for the repair or replacement of defective or malfunctioning equipment provided by the Grantee to subscribers, unless the defect or malfunction was caused by the subscriber.

5. The Grantee must determine the nature of the problem within 24 hours after commencing work and resolve all cable system related problems within three business days, unless technically infeasible.

C. Billing and Information Standards

1. Subscriber bills must be clear, concise, and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills also must clearly

delineate all activity during the billing period, including optional charges, rebates, and credits.

2. The first billing to a subscriber after a new installation or service change must be prorated based upon when the new or changed service commenced. Subscribers must not be charged a late fee or otherwise penalized for any failure attributable to the Grantee, including the failure to timely or correctly bill the subscriber.

3. In case of a billing dispute, the Grantee must respond in writing to a written complaint from a subscriber within 30 days after receiving the complaint at the office specified on the billing statement for receiving that complaint.

4. Upon request by a subscriber, credits or refunds must be provided by Grantee to subscribers who experience an outage, interruption, or disconnection of service of four or more consecutive hours, provided that such loss of service is neither caused by the subscriber nor attributable to scheduled repairs, maintenance, or construction in circumstances where Grantee has provided advance written notice to subscriber, and the loss of service does not exceed the time period specified by Grantee. For subscribers terminating service, credits or refunds must be issued promptly, but no later than 30 days after the return of any Grantee-supplied equipment.

5. The Grantee must provide written information on each of the following matters at the time of the installation of service, at least annually to all subscribers, and at any time upon request:

- a. Products and services offered.
- b. Prices and options for programming services and conditions of subscription to programming and other services.
- c. Installation and service maintenance policies.
- d. Instructions on the use of the cable service.
- e. Channel positions of programming carried on the system.
- f. Billing and complaint procedures, including the address and telephone number of the City's office designated for dealing with cable-related issues.
- g. Consumer protection and service standards and penalties for noncompliance.

6. Subscribers must be notified in writing of any changes in rates, programming services, or channel positions as soon as possible. Notice must be given to subscribers a minimum of 30 days in advance of those changes if the change is within the control of the Grantee. In addition, Grantee will endeavor to notify Grantor of those changes at least five working days before subscribers are notified.

7. The Grantee must maintain a public file containing all written notices provided to subscribers under these consumer protection and service standards and all published promotional offers made by Grantee to subscribers. These documents must be maintained for a minimum period of two years.

D. Verification of Compliance with Standards

1. Upon 30 days prior written notice, the City may require the Grantee to provide a written report demonstrating its compliance with any of the consumer service standards specified in this section. The Grantee must provide sufficient documentation to enable the City to verify compliance.

2. A repeated and verifiable pattern of noncompliance with the consumer protection and service standards of this section, after the Grantee's receipt of written notice and an opportunity to cure, may be deemed a material breach of the franchise agreement.

E. Subscriber Complaints and Disputes

1. The Grantee must establish written procedures for receiving, acting upon, and resolving subscriber complaints without intervention by the City. The written procedures must prescribe the manner in which a subscriber may submit a complaint, either orally or in writing, specifying the subscriber's grounds for dissatisfaction. The Grantee must file a copy of these procedures with the City. These procedures must include a requirement consistent with Section 5.16.080(C)(3).

2. Upon request, and subject to applicable law protecting subscriber privacy rights, the City has the right to review the Grantee's response to subscriber complaints.

3. All subscribers have the right to continue receiving service so long as their financial and other obligations to the Grantee are honored. If the Grantee elects to rebuild, modify, or sell the system, or if the City gives notice of intent to terminate or not to renew the franchise, the Grantee must act to ensure that all subscribers receive service while the franchise remains in force.

4. Upon a change of control of the Grantee, or if a new operator acquires the cable system, the original Grantee must cooperate with the City, the new Grantee, or the new operator in maintaining continuity of service to all subscribers. During that transition period, the Grantee is entitled to the revenues derived from its operation of the cable system.

F. Disconnection and Downgrades

1. A subscriber may terminate or downgrade service at any time, and the Grantee must promptly comply with the subscriber's request within seven days or at any later time requested by the subscriber. No period of notice prior to voluntary termination or downgrade of service may be required of subscribers. Grantee will impose no charges for the voluntary termination of all services unless a visit to the subscriber's premises is required to remove a converter box or other equipment or property owned by Grantee. Grantee may, in accordance with applicable law, charge a fee to downgrade service if a service call is required.

2. The Grantee may disconnect a subscriber's service in compliance with paragraphs (i), (j), and (k) of Section 53088.2 of the California Government Code. If service is disconnected for nonpayment of past due fees or charges, the Grantee must promptly reinstate service upon payment in full by the subscriber of all such fees and charges, including late charges.

3. Notwithstanding the requirements of subsection (2) above, the Grantee may immediately disconnect service to a subscriber if the subscriber is damaging or destroying the Grantee's cable system or equipment.

4. The Grantee may also disconnect service to a subscriber when service causes signal leakage exceeding federal limits. If service is disconnected, the Grantee will immediately resume service without charge upon the satisfactory correction of the signal leakage problem if the signal leakage problem is attributable to the Grantee.

5. The Grantee may also disconnect service in cases where customers are stealing service or have threatened Grantee's personnel with physical violence.

6. Upon termination of service to a subscriber, the Grantee will endeavor to remove its equipment from the subscriber's premises within 30 days.

G. Negative Option Billing Prohibited. No charge may be imposed for any service or equipment that the subscriber has not affirmatively selected. Payment of the regular monthly bill will not by itself constitute an affirmative selection.

H. Deposits. Grantee may require a reasonable, nondiscriminatory deposit on equipment provided to subscribers. Such deposits must be placed in an interest-bearing account. The deposit must be returned, with interest earned to the date of repayment, within 30 days after the equipment is returned to the Grantee.

I. Parental Control Option. Grantee must provide parental control devices at no charge to all subscribers who desire to block the video or audio portion of any pay channels providing adult programming that the subscriber finds objectionable. For other programming, such devices will be provided at a reasonable charge to the subscriber.

J. Additional Requirements

1. All officers, agents, and employees of the Grantee, or of its contractors or subcontractors, who, in the normal course of work come into contact with members of the public, or who require entry onto subscribers' premises, must display a photo-identification card. The Grantee must account for all identification cards at all times. All vehicles of the Grantee or its subcontractors must be clearly identified as vehicles engaged in providing services for the Grantee.

2. In addition to the consumer protection and service standards specified in this Section 5.16.080, the franchise agreement with a Grantee may require compliance with the following:

a. Federal statutes, and the rules, regulations, and orders of the Federal Communications Commission, including the following:

(i) The provisions of Section 76.630 of Title 47 of the Code of Federal Regulations, as it now exists or may later be amended, which relate to compatibility with consumer electronics equipment.

(ii) The provisions of Section 551 of Title 47, United States Code, as it now exists or may later be amended, which relate to the protection of subscriber privacy.

b. The provisions of California Government Code Sections 53054, et seq., entitled the "Cable Television and Video Provider Customer Service and Information Act."

c. The provisions of California Government Code Section 53088, et seq., entitled the "Video Customer Service Act."

d. The provisions of California Civil Code Section 1722(b)(1)-(6), which relate to service or repair transactions between cable television companies and their subscribers.

e. The provisions of California Penal Code Section 637.5, which relate to subscribers' rights to privacy protection.

3. If there is any conflict or inconsistency between a consumer protection and service standard specified in this Section 5.16.080, and a standard set forth in the statutes, rules, regulations, and orders that are referenced above in subsection (2), then the standard that is specified in this Section 5.16.080 will apply to the extent authorized by applicable law.

K. Penalties for Noncompliance

1. Purpose. The purpose of this paragraph is to authorize monetary penalties for the violation of the customer service standards established by this section in a manner consistent with the Video Customer Service Act (Government Code Sections 53088 et seq.) and pursuant to the City's inherent police powers. The imposition of penalties authorized by this paragraph (K) will not prevent the City or any other affected party from exercising any other remedy to the extent permitted by law.

2. Administration and Appeals.

a. The City Manager or the City Manager's designee is authorized to administer this paragraph (K). Decisions by the City Manager to assess monetary penalties against the Grantee must be in writing and must contain findings supporting the decisions. Decisions by the City Manager are final, unless appealed to the City Council.

b. If the Grantee or any interested person is aggrieved by a decision of the City Manager, the aggrieved party may, within 10 days of the written decision, appeal that decision in writing to the City Council. The appeal letter must be accompanied by the fee established by the City Council for processing the appeal. The City Council may affirm, modify, or reverse the decision of the City Manager.

c. Schedule of Penalties. The following schedule of monetary penalties may be assessed against the Grantee for the material breach of the provisions of the customer service standards set forth in this section, provided that the breach is within the reasonable control of the Grantee:

(i) For a first material breach: the maximum penalty is \$200 for each day of material breach, but not to exceed a cumulative total of \$600 for each occurrence of the material breach.

(ii) For a second material breach of the same nature within a 12-month period for which the City has provided notice and a penalty has been assessed, the maximum penalty is \$400 for each day of the material breach, but not to exceed a cumulative total of \$1200 for each occurrence of the material breach.

(iii) For a third or further material breach of the same nature within a 12-month period for which the City has provided notice and a penalty has been assessed, the maximum penalty is \$1000 for each day of the material breach, but not to exceed a cumulative total of \$3000 for each occurrence of the material breach.

(iv) The maximum penalties referenced above may be increased by any additional amount authorized by state law.

d. Judicial Remedy. This paragraph does not preclude any affected party from pursuing any judicial remedy available to that party without regard to this paragraph (K).

e. Notification of Breach. The City must give the Grantee written notice of any alleged breach of the consumer service standards and allow the Grantee at least 30 days, or such longer time as may be reasonably necessary to cure, from receipt of the notice to remedy the specified breach. For the purpose of assessing penalties, a material breach is deemed to have occurred for each day, following the expiration of the period for cure specified herein, that any breach has not been remedied by the Grantee, irrespective of the number of subscribers affected.

f. Limitations. With respect to any Grantee that operates under a franchise or license agreement with the City, any monetary penalties assessed under this paragraph (K) must be reduced dollar for dollar to the extent that any liquidated damage or penalty provision of the franchise or license agreement imposes a monetary obligation on the Grantee for the same customer service failure, and no other monetary damages may be assessed for that customer service failure.

ARTICLE 3. OPEN VIDEO SYSTEMS

5.16.090 Applicability

The provisions of this Article 3 apply to an open video system operator, as defined below in Section 5.16.170 of Article 5, that intends to deliver video programming to consumers in the City over an open video system.

5.16.100 Application Required

A. Before commencing the delivery of video programming services to consumers in the City over an open video system, the open video system operator must file an application with the City. That application must include or be accompanied by the following, as applicable:

1. The identity of the applicant, including all affiliates of the applicant.

2. Copies of FCC Form 1275, all "Notices of Intent" filed under 47 CFR 76.1503(b)(1), and the Order of the FCC, all of which relate to certification of the applicant to operate an open video system in the City in accordance with Section 653(a)(1) of the Communications Act and the FCC's rules.

3. The area or areas of the City that the applicant proposes to serve.

4. A description of the open video system services that will be offered by the applicant over its existing or proposed facilities.

5. A description of the transmission medium that will be used by the applicant to deliver the open video system services.

6. Information in sufficient detail to establish the applicant's technical qualifications, experience, and expertise regarding the ownership and operation of the open video system described in the application.

7. Financial statements prepared in accordance with generally accepted accounting principles that demonstrate the applicant's financial ability to:

a. Construct, operate, maintain and remove any new physical plant that is proposed to be constructed in the City.

b. Comply with the City's public, educational, and governmental access requirements as specified below in Section 5.16.120(B)(4).

c. Comply with the City's requirement that gross revenue fees be paid in the maximum amount authorized under federal law, as specified below in Section 5.16.120(B)(2).

8. An accurate map showing the location of any existing telecommunications facilities in the City that the applicant intends to use, to purchase, or to lease.

9. If the applicant's operation of the open video system will require the construction of new physical plant in the City, the following additional information must be provided:

a. A preliminary construction schedule and completion dates.

b. Preliminary engineering plans, specifications, and a network map of any new facilities to be constructed in the City, in sufficient detail to identify:

(i) The location and route requested for the applicant's proposed facilities.

(ii) The locations, if any, for interconnection with the facilities of other video and telecommunications service providers.

(iii) The specific structures, improvements, facilities, and obstructions, if any, that the applicant proposes to remove or relocate on a temporary or permanent basis.

d. The applicant's statement that, in constructing any new physical plant, the applicant will comply with all applicable ordinances, rules, and regulations of the City, including the payment of all required permit and processing fees.

10. The information and documentation that is required to be submitted to the City by a video provider, as specified below in paragraph (B) of Section 5.16.140.

11. Such additional information as may be requested by the City Manager to evaluate the applicant's qualifications.

12. An application fee deposit in an amount established by resolution of the City Council.

B. If any item of information specified above in paragraph (A) is determined under federal or state law to be unlawful, the City Manager is authorized to waive the requirement that such information be included in the application.

5.16.110 Review of the Application

Within 30 days after receipt of an application filed under Section 5.16.100 that is deemed to be complete, the City Manager will give written notice to the applicant of the City's intent to negotiate an agreement setting forth the terms and conditions under which the operation of the proposed open video system will be authorized by the City. The commencement of those negotiations will be on a date that is mutually acceptable to the City and to the applicant.

5.16.120 Agreement Required

A. No video programming services may be provided in the City by an open video system operator unless the operator and the City have executed a written agreement, which may be designated as a franchise, setting forth the terms and conditions under which the operation of the proposed open video system will be authorized by the City. That agreement may be authorized and approved by resolution of the City Council.

B. The agreement between the City and the open video system operator may contain terms and conditions that relate to the following subject matters, to

the extent that such terms, conditions, and subject matters are not preempted by federal law or regulations:

1. The nature, scope, and duration of the agreement, including provisions for its renewal or extension.

2. The obligation of the open video system operator to pay to the City, at specified times and in lieu of the franchise fees permitted under Section 622 of the Communications Act, fees on the gross revenue received by the operator, as authorized by 47 CFR 76.1511, in accordance with the following standards and procedures:

a. The amount of the fees on the gross revenue will be the maximum amount authorized by Section 653(c)(2)(B) of the Communications Act, which is the rate imposed by the City on the existing franchised cable operator.

b. The term "gross revenue" has the meaning set forth in 47 CFR 76.1511, and includes: (i) all gross revenue received by an open video system operator or its affiliates, including all revenue received from subscribers and all carriage revenue received from unaffiliated video programming providers; and (ii) all advertising revenue received by the operator or its affiliates in connection with the provision of video programming, where such revenue is included in the calculation of the cable franchise fee paid to the City by the incumbent franchised cable operator. The term "gross revenue" does not include revenue, such as subscriber or advertising revenue, collected by unaffiliated video programming providers.

3. The obligation of the open video system operator to comply with requirements relating to information collection and recordkeeping, accounting procedures, reporting, periodic audits, and inspection of records in order to ensure the accuracy of the fees on the gross revenue that are required to be paid as specified above in paragraph (B)(2).

4. The obligation of the open video system operator to meet the City's requirements with respect to public, educational, and governmental access channel capacity, services, facilities, and equipment, as provided for in 47 CFR 76.1505. In this regard, the following standards and procedures apply:

a. The open video system operator is subject to the same public, educational, and governmental access requirements that apply within the cable television franchise service area with which its system overlaps.

b. The open video system operator must ensure that all subscribers receive all public, educational, and governmental access channels within the franchise service area in which the City's subscribers are located.

c. The open video system operator may negotiate with the City to establish the operator's obligations with respect to public, educational, and governmental access channel capacity, services, facilities, and equipment. These negotiations may include the City's franchised cable operator if the City, the open video system operator, and the franchised cable operator so desire.

d. If the open video system operator and the City are unable to reach an agreement regarding the operator's obligations with respect to

public, educational, and governmental access channel capacity, services, facilities, and equipment within the City's jurisdiction, then the following obligations will be imposed:

(i) The open video system operator must satisfy the same public, educational, and governmental access obligations as the City's franchised cable operator by providing the same amount of channel capacity for public, educational, and governmental access and by matching the City's franchised cable operator's annual financial contributions in support of public, educational, and governmental access services, facilities, and equipment that are actually used by the City. For in-kind contributions, such as cameras or production studios, the open video system operator may satisfy its statutory obligation by negotiating mutually agreeable terms with the City's franchised cable operator, so that public, educational, and governmental access services to the City are improved or increased. If such terms cannot be agreed upon, the open video system operator must pay to the City the monetary equivalent of the franchised cable operator's depreciated in-kind contribution, or, in the case of facilities, the annual amortization value. Any matching contributions provided by the open video system operator must be used to fund activities arising under Section 611 of the Communications Act.

(ii) The City will impose upon the open video system operator the same rules and procedures that it imposes upon the franchised cable operator with regard to the open video system operator's use of channel capacity designated for public, educational, and governmental access use when that capacity is not being used for such purposes.

e. The City's franchised cable operator is required under federal law to permit the open video system operator to connect with its public, educational, and governmental access channel feeds. The open video system operator and the franchised cable operator may decide how to accomplish this connection, taking into consideration the physical and technical characteristics of the cable and the open video systems involved. If the franchised cable operator and the open video system operator cannot agree on how to accomplish the connection, the City has the right to decide. The City may require that the connection occur on City-owned property or on public rights-of-way.

f. All costs of connection to the franchised cable operator's public, educational, and governmental access channel feed must be borne by the open video system operator. These costs will be counted towards the open video system operator's matching financial contributions set forth above in subparagraph (d)(i).

g. The City will not impose upon the open video system operator any public, educational, or governmental access obligations that are greater than those imposed upon the franchised cable operator.

h. If there is no existing franchised cable operator, the provisions of 47 CFR 76.1505(d)(6) will be applicable in determining the obligations of the open video system operator.

i. The open video system operator must adjust its system to comply with new public, educational, and access obligations imposed on the City's franchised cable operator following a renewal of the cable television franchise; provided, however, that the open video system operator will not be required to displace other programmers using its open video system to accommodate public, educational, and

governmental access channels. The open video system operator must comply with those new public, educational, and governmental access obligations whenever additional capacity is or becomes available, whether it is due to increased channel capacity or to decreased demand for channel capacity.

5. If the City and the open video system operator cannot agree on the application of the FCC's rules regarding the open video system operator's obligations to provide public, educational, and governmental access under the provisions of subsection (4) set forth above, then either party may file a complaint with the FCC in accordance with the dispute resolution procedures set forth in 47 CFR 76.1514. No agreement will be executed by the City until the dispute has been finally resolved.

6. If the open video system operator intends to maintain an institutional network, as defined in Section 611(f) of the Communications Act, the City will require that educational and governmental access channels be designated on that institutional network to the same extent that those channels are designated on the institutional network of the City's franchised cable operator. In addition, to the extent authorized by federal law, the open video system operator may be required by the City to satisfy the same financial obligations and other requirements that are imposed upon the franchised cable operator to support data-transmission and related services that are provided by the institutional network.

7. The authority of an open video system operator to exercise editorial control over any public, educational, or governmental use of channel capacity will be restricted in accordance with the provisions of 47 CFR 76.1505(f).

8. The obligation of the open video system operator to comply with all applicable federal, state, and local statutes, ordinances, and regulations relating to customer service standards, including those referenced in Section 5.16.080 of Article 2 of this chapter.

9. If new physical plant is proposed to be constructed within the City, the obligation of the open video system operator to comply with the following rights-of-way use and management responsibilities that are also imposed by the City upon other video and telecommunications service providers in a nondiscriminatory and competitively neutral manner:

a. Compliance with all applicable City codes, including applications for excavation, encroachment, and construction permits, and the payment of all required permit and inspection fees.

b. The coordination of construction activities.

c. Compliance with established standards and procedures for constructing lines across private property.

d. Compliance with all applicable insurance and indemnification requirements.

e. The repair and resurfacing of construction-damaged streets.

f. Compliance with all public safety requirements that are applicable to cable television and telecommunications service providers using public property or public rights-of-way.

10. Acts or omissions constituting breaches or defaults of the agreement, and the applicable penalties, liquidated damages, and other remedies, including fines or the suspension, revocation, or termination of the agreement.

11. Requirements relating to the sale, assignment, or transfer of control of the open video system.

12. Requirements relating to the open video system operator's compliance with and implementation of state and federal laws, rules, and regulations pertaining to the operation of the open video system.

13. Such additional requirements, conditions, terms, policies, and procedures as may be mutually agreed upon by the City and the open video system operator and that will, in the judgment of the City Council, best serve the public interest and protect the public health, welfare, and safety.

ARTICLE 4. OTHER VIDEO AND TELECOMMUNICATIONS SERVICES AND SYSTEMS

5.16.130 Other Multichannel Video Programming Distributors

The term "cable system," as defined in federal law and as set forth below in Section 5.16.170 of Article 5, does not include a facility that serves subscribers without using any public rights-of-way. Consequently, the categories of multichannel video programming distributors identified below are not deemed to be "cable systems" and are therefore exempt from the City's franchise, lease, and license requirements and from certain other local regulatory provisions authorized by federal law, provided that their distribution or transmission facilities do not involve the use of the City's public rights-of-way.

A. Multichannel multipoint distribution service ("MMDS"), also known as "wireless cable," which typically involves the transmission by an FCC-licensed operator of numerous broadcast stations from a central location using line-of-sight technology.

B. Local multipoint distribution service ("LMDS"), another form of over-the-air wireless video service for which licenses are auctioned by the FCC, and which offers video programming, telephony, and data networking services.

C. Direct broadcast satellite ("DBS"), also referred to as "direct-to-home satellite services," which involves the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without the use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite. Local regulation of direct-to-home satellite services is further proscribed by the following federal statutory provisions:

1. 47 U.S.C. § 303(v) confers upon the FCC exclusive jurisdiction to regulate the provision of direct-to-home satellite services.

2. Section 602 of the Telecommunications Act of 1996 states that a provider of direct-to-home satellite service is exempt from the collection or remittance, or both, of any tax or fee imposed by any local taxing jurisdiction on direct-to-home satellite service. The terms "tax" and "fee" are defined by federal statute to mean any local sales tax, local use tax, local intangible tax, local income tax, business license tax, utility tax, privilege tax, gross receipts tax, excise tax, franchise fees, local telecommunications tax, or any other tax, license, or fee that is imposed for the privilege of doing business, regulating, or raising revenue for a local taxing jurisdiction.

5.16.140 Video Providers - Registration; Customer Service Standards

A. Unless the customer protection and service obligations of a video provider, as that term is defined in Section 5.16.170 of Article 5, are specified in a franchise, license, lease, or similar written agreement with the City, a video provider must comply with all applicable provisions of the following state statutes:

1. The Cable Television and Video Customer Service and Information Act (Government Code §§ 53054, et seq.).

2. The Video Customer Service Act (Government Code §§ 53088, et seq.).

B. All video providers that are operating in the City on the effective date of this Chapter 5.16, or that intend to operate in the City after the effective date of this chapter, and are not required under applicable law to operate under a franchise, license, lease, or similar written agreement with the City, must register with the City. The registration form must include or be accompanied by the following:

1. The video provider's name, address, and local telephone numbers.

2. The names of the officers of the video provider.

3. A copy of the video provider's written policies and procedures relating to customer service standards and the handling of customer complaints, as required by Government Code §§ 53054, et seq. These customer service standards must include, without limitation, standards regarding the following:

a. Installation, disconnection, service and repair obligations, employee identification, and service call response time and scheduling.

b. Customer telephone and office hours.

c. Procedures for billing, charges, refunds, and credits.

d. Procedures for termination of service.

e. Notice of the deletion of a programming service, a change in channel assignments, or an increase in rates.

f. Complaint procedures and procedures for bill dispute resolution.

g. The video provider's written acknowledgment of its obligation under Government Code §53055.1 to provide to new customers a notice describing the customer service standards specified above in subparagraphs (a) through (f) at the time of installation or when service is initiated. The notice must also include, in addition to all of the information described above in subparagraphs (a) through (f), all of the following:

(i) A listing of the services offered by the video provider that clearly describes all levels of service and the rates for each level of service.

(ii) The telephone number or numbers through which customers may subscribe to, change, or terminate service, request customer service, or seek general or billing information.

(iii) A description of the rights and remedies that the video provider may make available to its customers if the video provider does not materially meet its customer service standards.

h. The video provider's written commitment to distribute annually to its employees and customers, and to the City, a notice describing the customer service standards specified above in subparagraphs (a) through (f). This annual notice must include the report of the video provider on its performance in meeting its customer service standards, as required by Government Code § 53055.2.

4. Unless a video provider is exempt under federal law from its payment, a registration fee in an amount established by resolution of the City Council to cover the reasonable costs incurred by the City in reviewing and processing the registration form.

5. In addition to the registration fee specified above in subsection (4), the written commitment of the video provider to pay to the City, when due, all costs and expenses reasonably incurred by the City in resolving any disputes between the video provider and its subscribers, which dispute resolution is mandated by Government Code § 53088.2(o).

C. The customer service obligations imposed upon video providers by the Video Customer Service Act (Government Code §§53088 et seq.) consist of the following:

1. Every video provider must render reasonably efficient service, make repairs promptly, and interrupt service only as necessary.

2. All video provider personnel contacting subscribers or potential subscribers outside the office of the provider must be clearly identified as associated with the video provider.

3. At the time of installation, and annually thereafter, all video providers must provide to all customers a written notice of the programming offered, the prices for that programming, the provider's installation and customer service policies, and the name, address, and telephone number of the City's office that is designated for receiving complaints.

4. All video providers must have knowledgeable, qualified company representatives available to respond to customer telephone inquiries Monday through Friday, excluding holidays, during normal business hours.

5. All video providers must provide to customers a toll-free or local telephone number for installation, service, and complaint calls. These calls must be answered promptly by the video providers.

6. All video providers must render bills that are accurate and understandable.

7. All video providers must respond promptly to a complete outage in a customer's service. The response must occur within 24 hours of the reporting of that outage to the provider, except in those situations beyond the reasonable control of the video provider. A video provider will be deemed to respond to a complete outage when a company representative arrives at the outage location within 24 hours and begins to resolve the problem.

8. All video providers must provide a minimum of 30 days' written notice before increasing rates or deleting channels. All video providers must make every reasonable effort to submit the notice to the City in advance of its distribution to customers. The 30-day notice is waived if the increases in rates or deletion of channels are outside the control of the video provider. In those cases, the video provider must make reasonable efforts to provide customers with as much notice as possible.

9. All video providers must allow every residential customer who pays his or her bill directly to the video provider at least 15 days from the date the bill for services is mailed to the customer, to pay the listed charges unless otherwise agreed to pursuant to a residential rental agreement establishing tenancy. Customer payments must be posted promptly. No video provider may terminate residential service for nonpayment of a delinquent account unless the video provider furnishes notice of the delinquency and impending termination at least 15 days prior to the proposed termination. The notice must be mailed, postage prepaid, to the customer to whom the service is billed. Notice must not be mailed until the 16th day after the date the bill for services was mailed to the customer. The notice of delinquency and impending termination may be part of a billing statement. No video provider may assess a late fee any earlier than the 22nd day after the bill for service has been mailed.

10. Every notice of termination of service pursuant to the preceding subsection (9) must include all of the following information:

- a. The name and address of the customer whose account is delinquent.
- b. The amount of the delinquency.
- c. The date by which payment is required in order to avoid termination of service.
- d. The telephone number of a representative of the video provider who can provide additional information and handle complaints or initiate an investigation concerning the service and charges in question. Service may

only be terminated on days in which the customer can reach a representative of the video provider either in person or by telephone.

11. Any service terminated without good cause must be restored without charge for the service restoration. Good cause includes, but is not limited to, failure to pay, payment by check for which there are insufficient funds, theft of service, abuse of equipment or system personnel, or other similar subscriber actions.

12. All video providers must issue requested refund checks promptly, but no later than 45 days following the resolution of any dispute, and, if service is terminated, following the return of the equipment supplied by the video provider.

13. All video providers must issue security or customer deposit refund checks promptly, but no later than 45 days following the termination of service, less any deductions permitted by law.

14. Video providers must not disclose the name and address of a subscriber for commercial gain to be used in mailing lists or for other commercial purposes not reasonably related to the conduct of the businesses of the video providers or their affiliates, unless the video providers have provided to the subscriber a notice, separate or included in any other customer notice, that clearly and conspicuously describes the subscriber's ability to prohibit that disclosure. Video providers must provide an address and telephone number for a local subscriber to use without toll charge to prevent disclosure of the subscriber's name and address.

D. As authorized by Government Code §53088(q), the following schedule of penalties is adopted. These penalties may be imposed for the material breach by a video provider of the consumer protection and service standards that are set forth above in paragraph (C), provided that the breach is within the reasonable control of the video provider. These penalties are in addition to any other remedies authorized by this chapter or by any other law, and the City has discretion to elect the remedy that it will apply. The imposition of penalties authorized by this paragraph (D) will not prevent the City or any other affected party from exercising any other remedy to the extent permitted by law, including but not limited to any judicial remedy as provided below in subsection (2).

1. Schedule of Penalties.

a. For a first material breach: the maximum penalty is \$200 for each day of material breach, but not to exceed a cumulative total of \$600 for each occurrence of material breach, irrespective of the number of customers affected.

b. For a second material breach of the same nature for which a monetary penalty was previously assessed within the preceding 12-month period: the maximum penalty is \$400 per day, not to exceed a cumulative total of \$1,200 for each occurrence of the material breach, irrespective of the number of customers affected.

c. For a third or further material breach of the same nature for which a monetary penalty was previously assessed within the preceding 12-month period: the maximum penalty is \$1,000 per day, not to exceed a cumulative

total of \$3,000 for each occurrence of the material breach, irrespective of the number of customers affected.

d. For the failure of a video provider to distribute the annual notice required by Government Code 53055.1: the maximum penalty is \$500 for each year in which the notice is not distributed as required by state statute.

e. The maximum penalties referenced above may be increased by any additional amount authorized by state law.

2. Judicial Remedies Not Affected.

The imposition of penalties in accordance with the provisions of subsection (1) above does not preclude any affected party from pursuing any judicial remedy that is available to that party.

3. Administration, Notice, and Appeal.

a. The City Manager or the City Manager's designee is authorized to administer this paragraph (D). Decisions by the City Manager to assess penalties against a video provider must be in writing and must contain findings supporting the decisions. Decisions by the City Manager are final, unless appealed to the City Council.

b. If the video provider or any interested person is aggrieved by a decision of the City Manager, the aggrieved party may, within 10 days of the written decision, appeal that decision in writing to the City Council. The appeal letter must be accompanied by the fee established by the City Council for processing the appeal. The City Council may affirm, modify, or reverse the decision of the City Manager.

c. The imposition of monetary penalties under subsection (1) above is subject to the following requirements and limitations:

(i) The City must give the video provider written notice of any alleged material breach and must allow the video provider at least 30 days from receipt of that notice to remedy the breach.

(ii) For the purpose of assessing monetary penalties, a material breach will be deemed to have occurred for each day, following the expiration of the period for cure specified in subparagraph (i) above, that the material breach has not been remedied by the video provider, irrespective of the number of customers affected.

5.16.150 Antennas For Video and Telecommunications Services

Chapter 17.46 of Title 17 of this Code sets forth the City's regulatory requirements relating to the siting and construction of antennas, television aerials, satellite dishes, and similar devices that are commonly used in providing or receiving video and telecommunications services.

5.16.160 Telecommunications Service Provided By Telephone Corporations

A. The City Council finds and determines as follows:

1. The federal Telecommunications Act of 1996 preempts and declares invalid all state rules that restrict entry or limit competition in both local and long-distance telephone service.

2. The California Public Utilities Commission ("CPUC") is primarily responsible for the implementation of local telephone competition. The CPUC issues certificates of public convenience and necessity to new entrants that are qualified to provide competitive local telephone exchange services and related telecommunications service, whether using their own facilities or the facilities or services provided by other authorized telephone corporations.

3. Section 234(a) of the California Public Utilities Code defines a "telephone corporation" as "every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state."

4. Section 616 of the California Public Utilities Code provides that a telephone corporation "may condemn any property necessary for the construction and maintenance of its telephone line."

5. Section 2902 of the California Public Utilities Code authorizes municipal corporations to retain their powers of control to supervise and regulate the relationships between a public utility and the general public in matters affecting the health, convenience, and safety of the general public, including such matters as the use and repair of public streets by any public utility and the location of the poles, wires, mains, or conduits of any public utility on, under, or above any public streets.

6. Section 7901 of the California Public Utilities Code authorizes telephone and telegraph corporations to construct telephone or telegraph lines along and upon any public road or highway, along or across any of the waters or lands within this state, and to erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters.

7. Section 7901.1 of the California Public Utilities Code confirms the right of municipalities to exercise reasonable control over the time, place, and manner in which roads, highways, and waterways are accessed, which control must be applied to all entities in an equivalent manner. Nothing in Section 7901.1 adds to or subtracts from any existing authority that municipalities have with respect to the imposition of fees.

8. Section 50030 of the California Government Code provides that any permit fee imposed by a city for the placement, installation, repair, or upgrading of telecommunications facilities, such as lines, poles, or antennas, by a telephone corporation that has obtained all required authorizations from the CPUC and the FCC to provide telecommunications services, must not exceed the reasonable costs of providing the service for which the fee is charged, and must not be levied for general revenue purposes.

B. In recognition of and in compliance with the statutory authorizations and requirements set forth above in paragraph (A), the following regulatory provisions are applicable to a telephone corporation that desires to provide telecommunications service by means of facilities that are proposed to be constructed within the City's public rights-of-way:

1. The telephone corporation must apply for and obtain, as may be applicable, an excavation permit, an encroachment permit, or a building permit ("ministerial permit.")

2. In addition to the information required by this Code in connection with an application for a ministerial permit, a telephone corporation must submit to the City the following supplemental information:

a. A copy of the certificate of public convenience and necessity issued by the CPUC to the applicant, and a copy of the CPUC decision that authorizes the applicant to provide the telecommunications service for which the facilities are proposed to be constructed in the City's public rights-of-way. Any applicant that, prior to 1996, provided telecommunications service under administratively equivalent documentation issued by the CPUC may submit copies of that documentation in lieu of a certificate of public convenience and necessity.

b. If the applicant has obtained from the CPUC a certificate of public convenience and necessity to operate as a "competitive local carrier," the following additional requirements are applicable:

(i) As required by Decision No. 95-12-057 of the CPUC, the applicant must establish that it has filed with the City in a timely manner a quarterly report that describes the type of construction and the location of each construction project proposed to be undertaken in the City during the calendar quarter in which the application is filed, which information is sufficient to enable the City to coordinate multiple projects, as may be necessary.

(ii) If the applicant's proposed construction project will extend beyond the utility rights-of-way into undisturbed areas or other rights-of-way, the applicant must establish that it has filed a petition with the CPUC to amend its certificate of public convenience and necessity and that the proposed construction project has been subjected to a full-scale environmental analysis by the CPUC, as required by Decision No. 95-12-057 of the CPUC.

(iii) The applicant must inform the City whether its proposed construction project will be subject to any of the mitigation measures specified in the Negative Declaration ["Competitive Local Carriers (CLCs) Projects for Local Exchange Communication Service throughout California"] or to the Mitigation Monitoring Plan adopted in connection with Decision No. 95-12-057 of the CPUC. The City's issuance of a ministerial permit will be conditioned upon the applicant's compliance with all applicable mitigation measures and monitoring requirements imposed by the CPUC upon telephone corporations that are designated as "competitive local carriers."

C. In recognition of the fact that numerous excavations in the public rights-of-way diminish the useful life of the surface pavement, and for the purpose of mitigating the adverse impacts of numerous excavations on the quality and longevity

of public street maintenance within the City, the following policies and procedures are adopted:

1. The City Manager is directed to ensure that all public utilities, including telephone corporations, comply with all local design, construction, maintenance and safety standards that are contained within, or are related to, a ministerial permit that authorizes the construction of facilities within the public rights-of-way.

2. The City Manager is directed to coordinate the construction and installation of facilities by public utilities, including telephone corporations, in order to minimize the number of excavations in the public rights-of-way. In this regard, based upon projected plans for street construction or renovation projects, the City Manager is authorized to establish on a quarterly basis one or more construction time periods or "windows" for the installation of facilities within the public rights-of-way. Telephone corporations and other public utilities that submit applications for ministerial permits to construct facilities after a predetermined date may be required to delay such construction until the next quarterly "window" that is established by the City.

ARTICLE 5. DEFINITIONS

5.16.170 Defined Terms and Phrases

A. The words, terms, phrases, and their derivations set forth in this chapter have the meanings set forth below. Words used in the present tense include the future tense, and words in the singular include the plural number.

"Affiliate" means, when used in relation to any person, another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person. For purposes of this definition, the term "own" means to own an equity interest, or its equivalent, of 10 percent or more.

"Cable service" means the one-way transmission to subscribers of video programming, or other programming services, and subscriber interaction, if any, that is required for the selection or use of that video programming or other programming service. For the purposes of this definition, "video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station; and "other programming service" means information that a cable system operator makes available to all subscribers generally.

"Cable system," or "cable communications system" or "cable television system," means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service that includes video programming and that is provided to multiple subscribers within a community. The term "cable system" does not include:

- (i) a facility that serves only to retransmit the television signals of one or more television broadcast stations;
- (ii) a facility that serves subscribers without using any public right-of-way;
- (iii) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act,

except that such facility will be considered a cable system (other than for purposes specified in Section 621(c) of the Communications Act) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;

(iv) an open video system that complies with Section 653 of the Communications Act; or

(v) any facilities of an electric utility that are used solely for operating its electric utility system.

“Cable system operator” means any person or group of persons:

(i) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in that cable system; or

(ii) who otherwise controls or is responsible for, through any arrangement, the management and operation of that cable system.

“City” means the City of Hermosa Beach as represented by its City Council or by any delegate acting within the scope of its delegated authority.

“_____ CFR” means the Code of Federal Regulations. Thus, the citation of “47 CFR 80.1” refers to Title 47, part 80, section 1, of the Code of Federal Regulations.

“Communications Act” means the Communications Act of 1934 (47 U.S.C. §§ 151, *et seq.*), as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996.

“FCC” or “Federal Communications Commission” means the federal administrative agency, or any lawful successor, that is authorized to regulate telecommunications services and telecommunications service providers on a national level.

“Franchise” means an initial authorization, or the renewal of an initial authorization, granted by the City Council, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, or otherwise, that authorizes the construction or operation of a cable system or an open video system.

“Franchise fee” means any tax, fee or assessment of any kind that is authorized by state or federal law to be imposed by the City on a Grantee as compensation in the nature of rent for the Grantee’s use of the public rights-of-way. The term “franchise fee” does not include:

(i) Any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Grantees or their services);

(ii) Capital costs that are required by the franchise to be incurred by a Grantee for public, educational, or governmental access facilities;

(iii) Costs or charges that are incidental to the award or enforcement of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or

(iv) Any fee imposed under Title 17, United States Code.

“Franchise service area” or “service area” means the entire geographic area of the City as it is now constituted, or may in the future be constituted, unless otherwise specified in the resolution granting a franchise, or in a franchise agreement.

“Grantee” means any person that is awarded a franchise in accordance with this chapter, and that person’s lawful successor, transferee, or assignee.

“Gross annual cable service revenues” means, as applied to the Grantee of a cable television franchise, the annual gross revenues received by a Grantee from all operations of its cable television system to provide cable services within the City, excluding uncollected bad debt, refundable deposits, rebates or credits, and further excluding any sales, excise, or other taxes or charges that are required to be collected for direct pass-through to the local, state, or federal government. Revenues identified and collected from subscribers as franchise fees may not be excluded from a Grantee’s gross annual cable service revenues, unless otherwise provided by federal law.

“Multichannel video programming distributor” or “video programming distributor” means a person such as, but not limited to, a cable system operator, an open video system operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available multiple channels of video programming for purchase by subscribers or customers.

“Open video system” means a facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service, including video programming, and that is provided to multiple subscribers within the City, provided that the FCC has certified that such system is authorized to operate in the City and complies with 47 CFR 1500 *et seq.*, entitled “Open Video Systems.”

“Open video system operator” means any person or group of persons who provides cable service over an open video system and directly or through one or more affiliates owns a significant interest in that open video system, or otherwise controls or is responsible for the management and operation of that open video system.

“Person” means an individual, partnership, limited liability company, association, joint stock company, trust, corporation, or governmental entity.

“Public, educational or government access facilities” or “PEG access facilities,” means the total of the following:

(i) Channel capacity designated for noncommercial public, educational, or government use; and

(ii) Facilities and equipment for the use of that channel capacity.

“Subscriber” or “customer” or “consumer” means any person who, for any purpose, subscribes to the services provided by a multichannel video programming distributor and who pays the charges for those services.

“Street” or “public way” means each of the following that has been dedicated to the public and maintained under public authority or by others and is located within the City limits: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way, and similar public property that the City from time to time authorizes to be included within the definition of a street.

“Telecommunications” means the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.

“Telecommunications equipment” means equipment, other than customer premises equipment, used by a telecommunications service provider to provide telecommunications service, including software that is integral to that equipment.

“Telecommunications service” means the offering of telecommunications directly to the public for a fee, or to such classes of users as to be effectively available directly to the public, regardless of the equipment or facilities that are used.

“Telecommunications service provider” means any provider of telecommunications service.

“_____ U.S.C. § _____” means the United States Code. Thus, the citation of “47 U.S.C. § 153” refers to Title 47, section 153, of the United States Code.

“Video programming provider” means any person or group of persons who has the right under the federal copyright laws to select and to contract for the carriage of specific video programming on a cable system or an open video system.

“Video provider” means any person, company, or service that provides one or more channels of video programming to a residence, including a home, multi-family dwelling complex, congregate-living complex, condominium, apartment, or mobilehome, where some fee is paid for that service, whether directly or as included in dues or rental charges, and whether or not public rights-of-way are used in the delivery of that video programming. A “video provider” includes, without limitation, providers of cable television service, open video system service, master antenna television, satellite master antenna television, direct broadcast satellite, multipoint distribution services, and other providers of video programming, whatever their technology.

B. Unless otherwise expressly stated, words, terms, and phrases not defined in this Chapter 5.16 will be given their meaning as used in Title 47 of the United States Code, as amended, and, if not defined in that Code, their meaning as used in Title 47 of the Code of Federal Regulations.

ARTICLE 6. VIOLATIONS; SEVERABILITY

5.16.180 Violations; Enforcement

A. Any person who violates any provision of this chapter is guilty of a misdemeanor and is punishable as provided for in Chapter 1.01 of Title 1 of this Code.

B. The misdemeanor penalty specified above in paragraph (A) is not applicable to a violation of any provision of this chapter for which another sanction or penalty may be imposed under any franchise, license, lease, or similar written agreement between the City and a multichannel video programming distributor or telecommunications service provider.

C. The City may initiate a civil action in any court of competent jurisdiction to enjoin any violation of this chapter.

5.16.190 Severability

If any provision of this chapter is determined by any court of competent jurisdiction, or by any federal or state agency having jurisdiction over its subject matter, to be invalid and in conflict with any paramount federal or state law or regulation now or hereafter in effect, or is determined by that court or agency to require modification in order to conform to the requirements of that paramount law or regulation, then that provision will be deemed a separate, distinct, and independent part of this chapter, and such determination will not affect the validity and enforceability of any other provisions. If that paramount federal or state law or regulation is subsequently repealed or amended so that the provision of this chapter determined to be invalid or subject to modification is no longer in conflict with that law or regulation, then that provision will again become effective and will thereafter be binding on the City and any affected video or telecommunications service provider; provided, however, that the City must give the affected video or telecommunications service provider 30 days written notice of that change before requiring compliance with that provision, or such longer period of time as may reasonably be required for the video or telecommunications service provider to comply with that provision.”

Section 3. Notwithstanding any provisions to the contrary set forth in this ordinance, Chapter 5.16, entitled “Cable Television Systems,” and Chapter 5.17, entitled “Cable Television Consumer Protection Standards,” both of which were previously codified in Title 5 of the Municipal Code, will continue in full force and effect as uncodified ordinances of the City. These uncodified ordinances will continue to be applicable to the existing cable television franchise agreement between the City and its franchised cable operator, Century-TCI California, L.P., a Delaware limited partnership, dba Adelpia Communications Corporation, and they are subject to repeal by the City Council at such time as Century-TCI California, L.P., dba Adelpia Communications Corporation, executes an amendment to the existing cable television franchise agreement, or executes a cable television franchise renewal agreement, the terms of which subject the franchised cable operator to Chapter 5.16 of Title 5, as adopted by this ordinance.

Section 4. The City Clerk is directed to certify the adoption of this ordinance and to cause it to be published by title and summary.

PASSED, APPROVED, and ADOPTED this ____ day of _____,
2005.

Mayor

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Hermosa Beach at its meeting held the _____ day of _____, 2005, by the following vote:

Ayes:

Noes:

Absent:

Abstain:

APPROVED AS TO FORM:

CITY CLERK

CITY ATTORNEY