

CHAPTER 28

COMMUNITY ANTENNA TELEVISION FRANCHISE REGULATORY ORDINANCE

28.01 SHORT TITLE

This Ordinance shall be known as the Cable Franchise Regulatory Ordinance.

28.02 PURPOSE

The purpose of this Ordinance is to set forth an application procedure for a Cable Communications (CATV) System, which is hereby defined to be a system that provides television programs to various household and building through a cable from a community antenna, and to provide also for the following: the payment of costs incurred by the City of Lapeer in connection with various CATV matters; to establish franchise fees to be paid to the City of Lapeer by a CATV franchisee; to regulate rates charged by a franchisee to the extent permitted by law; to impose liquidated damages upon a franchisee pursuant to this Ordinance; to establish a Lapeer Cable Advisor Board and the duties and functions thereof; to adopt provisions for the protection of consumers of CATV services.

28.03 FRANCHISE REQUIRED

It shall be unlawful to commence or engage in the construction or operation of a CATV System in the City of Lapeer without a franchise or other permission of the City following expiration of a franchise.

EFFECTIVE DATE OF AMENDMENT: September 29, 1999.

28.04 APPLICATION FOR FRANCHISE

Any person may file an application for a franchise. Prospective applicants will be expected to be aware of any restrictions on their eligibility that are or may be imposed by this ordinance or by the Federal Communications Commission (FCC).

- A. Application shall be in writing and shall contain, but not be limited to, the following information:
 - 1. Name, address, and form of business of the applicant. If the applicant is a partnership or joint venture, the application shall give the names and addresses of each participant and all details relating to their joint venture and partnership. If the applicant or any of the partners or participants in a joint venture is a corporation, the application shall show the names and addresses of its officers, directors, and stockholders owning more than 5% of the outstanding stock as measured by its book value. Data required as to one's corporation participation in a joint venture shall be submitted for each participant. In case where corporate stock is held by another corporation, a parent, affiliate or subsidiary, the same details as to participants in the parent affiliate or subsidiary corporation shall be require. The principal officers and

places of business of each such corporation shall be included on the application.

2. A description of the CATV System proposed to be installed and operated, including such detail as may permit a proper evaluation of the merits of the proposal. The description shall contain detail as to capability of the components which the applicant proposes to utilize, including such features as two-way capability, switching, terminal facilities, use of antennae, the provision of services not required by this Ordinance but which may be indicative of the applicant's intent and desire to serve the public.
3. A description of the applicant's plans for cable casting.
4. Copies of any agreements which the applicant has with any other person relating to the prospective CATV operation.
5. Current certified audited financial statements of the applicant, including individual statements for each participant in any joint venture. The rendering of the financial statements shall be in such form as will clearly reveal the extent of the applicant's CATV operations, including investment in CATV facilities, revenues and expenses of operations.
6. A proposed financial plan for the applicant's proposed operation indicating potential and probable sources of capital.
7. An engineering plan, indicating a schedule for the commencement of construction and commencement of operations, and a completion timetable.
8. A listing of all CATV Systems owned by the applicant or in which the applicant has a substantial interest, including joint ventures, and minority financial interest exceeding 5%. The list shall contain statements regarding each system, as to its location, number of homes presently in the territory being served or to be served, the number of homes passed and the current number of subscribers, gross revenues and expenses attributable to CATV operation for the most recent twelve month period for which such data are available. Accompanying the list shall be the name and address of each local regulatory authority. The listing of such Systems shall be construed as authority for the Commission to make inquiry as to the ability and responsibility of the applicant and its officers.

- B.** The application shall include a declaration by the applicant that the application is true and complete.
- C.** The application shall include a declaration that the applicant agrees to comply with this Ordinance.
- D.** The application shall also contain the statement by the applicant that he will, upon proper request by the City, provide such other facts as may serve to reflect upon the materiality of the application, the quality, character and ability of the applicant, its affiliates, parents or subsidiaries.

28.05 PAYMENT OF COSTS

An applicant or franchisee requesting a new franchise, transfer of an existing franchise, and/or an extension or renewal of an existing franchise, shall pay all costs and expenses, including actual attorney fees and the fees of technical and other consultants, incurred by the City of Lapeer in connection with such franchise application, transfer, and/or extension or renewal.

28.06 REGULATION OF RATES

All cable franchises initially awarded or extended or renewed shall be subject to regulation of the franchisee's rates charged to users of the CATV System to maximum extent permitted by law from time to time and all such franchises shall expressly so provide, or shall be deemed to so provide, and may contain such additional provision as the City may deem appropriate to implement the provisions hereof.

28.07 FRANCHISE FEE

As compensation for the use of the City's streets, public ways and places, and other facilities, for the City's costs of establishing and conducting the regulatory activities required by virtue of a franchise, and for related factors, a franchisee shall pay to the City five (5%) percent of a franchisee's gross revenues attributable to operations and activities of a franchisee within the City of Lapeer. The franchise fee payment shall be in addition to any tax or other payment owed or payable by a franchisee to the City.

- A.** For purposes of this Ordinance and any franchise granted pursuant hereto, "Gross Revenues" shall mean all revenues derived directly or indirectly by a franchisee, its affiliates, subsidiaries, parent companies and/or any person or entity in which a franchisee has a financial interest, from or in connection with the operations or activities of a cable communications franchise authorized by the City of Lapeer. Gross revenues shall include, but shall not be limited to, basic subscriber fees, pay cable fees, installation and reconnection fees, leased access channel fees converter

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fees, and advertising revenues. Gross revenues shall not include any tax on services furnished by a franchisee, imposed directly upon any subscriber or user by any governmental unit, and collected by a franchisee on behalf of such governmental unit.

- B.** Except as may otherwise be provided in the franchise agreement, payment of franchise fees shall be made monthly at the City Treasurer's office. Each payment shall be accompanied by a financial statement in a standard form approved by the City Treasurer, setting forth the basis for the computation and specifically showing the gross revenues of the Franchisee during the preceding month, together with such other relevant matters as may be required by the City.

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1. Each payment and accompanying financial statement shall be filed in the City Treasurer's office within thirty (30) days after the last day of the month for which the payment is due.

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2. A franchisee shall file, within one hundred twenty (120) days of the close of each franchise year (or franchisee's fiscal year if permitted by the City) and annual report prepared and audited by a certified public accountant, including, but not limited to, the annual gross revenues attributable to a franchisee's cable communications operations and activities within the City of Lapeer, as well as any other items of information as may be required by this Ordinance, as not or hereafter amended, and/or other provisions of the franchise. The City may extend the one hundred twenty-- (120) day period for good cause upon request of a franchisee.

3. The City shall have the right to inspect a franchisee's financial records and the rights of audit and recomputation of any amounts payable under this Ordinance and the franchise; provided, however, that such audit shall take place within thirty-six (36) months from the filing of any report being subjected to the audit. Any additional amount due the City as a result of the audit shall be paid within thirty (30) days following written notice to the franchisee by the City, which notice shall include a copy of the audit report if the same has not previously been furnished to the franchisee. In addition to any other remedy or sanction available to the City, the cost of the city's audit shall be borne by the franchisee if it is properly determined that the franchisee's payment to the City for the period audited is increased by five (5%) percent or more if the amount paid by the franchisee was intentionally understated.

4. In the event that any franchisee payment or recomputed amount is not made on or before a date required hereunder or under the franchise agreement, a late payment or service charge of five (5%) percent of the amount due shall be paid to the City by the franchisee.

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- C. The five percent (5%) franchise fee provided for above is the maximum presently permitted by higher law. In the event a specified franchise fee higher than five percent (5%) is subsequently permitted, then, at the City's option exercisable by resolution of the City Commission, the franchise fee may be increased by the City up to the highest specified rate permitted by higher law. In the event all limitations on the franchise fee payable by a cable franchisee to the City are reviewed by higher law, then, at the City's option exercisable by resolution of the City Commission, the franchise fee may be increased by the City to a maximum of seven and one-half percent (7.5%) and the City shall have the additional right to compel the franchisee to enter into negotiations with the City for a rate higher than seven and one-half percent (7.5%).

28.08 CABLE ADVISORY BOARD

The City Commission shall establish a Cable Advisory Board (hereinafter the "Board"). The Board shall consist of five (5) members, all of whom shall be appointed by the City Commission. Members of the Board shall serve, without compensation, for terms of three (3) years. At the time of initial appointment creating the Board, two (2) members shall be appointed for three (3) year terms each, two (2) members shall be appointed for two (2) year terms each, and one (1) member shall be appointed for one (1) year term. Designation of the length of terms for the initial appointees shall be determined by lot. The City Manager or his representative shall serve as an ex officio member of the Board.

- A. The Board shall annually elect or re-elect from its members a chairman and such other officers as the Board may deem appropriate. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine, but not less frequently than quarterly. The Board shall adopt by-laws and rules of procedure and shall keep minutes of its meetings which shall be a public record. All regular and special meetings of the Board shall comply with the requirement of P.A. 267 of 1976, as amended ("Open Meetings Act").

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- B. The Board shall perform the duties and functions set forth below:
 1. Advise the City Commission on matters related to Cable Communications.

2. Monitor a franchisee's compliance with this Ordinance and all other provisions of the franchise.
3. Act as a liaison between a franchisee and subscribers and other users of the cable system; hear complaints from subscribers and other users of the cable system and seek the resolution of the same from the franchisee.
4. Advise the City Commission on rater regulation issues.
5. Advise the City Commission on the award, transfer, extension, renewal or termination of a franchise.
6. Submit an annual budget to the City Commission, with the expenditures itemized therein not to be exceeded without the prior consent of the City Commission.
7. Oversee matters involving public, educational and governmental access channels.
8. Apprise the City Commission of new developments in cable communications technology.
9. Hear all requests by a franchisee for any modifications of the franchisee's obligation under the franchise and advise and make recommendations to the City Commission regarding the same.
10. Hear and decide, except as otherwise provided in this Ordinance, all matters and disputes relating to or arising under the customer service and consumer protection provisions of this Ordinance, including the assessment of liquidated damages for any violation of such standards or provisions.
11. Perform such other duties and functions as may lawfully be delegated to it by the City Commission and exercise such powers as may be necessary or proper to carry out the duties expressly mandated in subsections 1 through 10 above or as may be delegated to it under this subsection 11, including, without limitation, the engagement of such professional services as may be necessary or proper to perform such duties and functions.

A franchisee shall be subject to the provisions set forth below regarding customer service and related matters affecting the relationship between the franchisee and subscribers and other users of the cable system.

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A. CUSTOMER SERVICE

The franchisee shall maintain a local office or offices which provide the necessary facilities, equipment and personnel to comply with the following customer service standards under normal conditions of operation. Normal conditions of operation shall mean all conditions which are within the control of franchisee, including special promotions, pay per view events, rate increases, and maintenance or upgrade of the cable system, but excluding conditions outside franchisee's control, such as, natural disasters, civil disturbances, power outages, telephone network outages and extreme weather. Inadequate staff shall not be deemed a condition beyond the franchisee's control.

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1. Sufficient customer service representatives and toll-free telephone line capacity during normal business hours to assure that a minimum of ninety percent (90%) of all calls will be answered within 30 seconds and ninety percent (90%) of all calls for service shall not be required to wait more than thirty (30) seconds after such call has been answered before being connected to a service representative. All incoming customer service lines shall not be simultaneously busy more than three percent (3%) of the total time the cable franchisee's office is open on any business day. The foregoing requirements shall be measured on a bi-monthly basis except as may otherwise be provided in the franchise agreement.

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2. Emergency toll-free telephone line capacity on a twenty-four (24) hour basis, including weekends and holidays.
3. The franchisee shall maintain an office within the franchise area with adequate office hours to meet public demand. The Cable Advisory Board may require the franchisee to alter or extend these hours if there is significant evidence through subscriber complaints that the posted hours are not adequate.
4. An emergency system maintenance and repair staff, capable of responding to and repairing system malfunctions on a twenty-four (24) hour basis.

5. Under normal operating conditions, in all areas where trunk and feeder cable have been installed, installations located up to 175 feet from the existing distribution system will be performed within seven (7) business days after an order has been placed. Installations shall be available from 8 AM to noon and 1 PM to 5 PM weekdays; on a call to meet basis, and by appointment on Saturday and in the evening. If the franchisee fails to keep an appointment for installation, installation shall be free. If the franchisee was then offering free installation, the subscriber shall receive a credit equal to the franchisee's then general charge for installation.

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6. The franchisee shall furnish each subscriber at the time service is installed or re-installed and at least annually written information regarding products and services offered; prices (rates) and options for cable services and conditions of subscription to cable service including those prices for programming, equipment rental, program guides, installation, late fees and other fees charged by the franchisee; installation and service maintenance policies; channel positions of programming carried on the cable television system; and written instructions regarding how to use the cable system, including procedures and options for pay per view and premium channels and installation and service maintenance policies which clearly set forth procedures for placing a service call, requesting a billing adjustment, or making a complaint. Such instructions shall also include the name, business address and telephone number of the City Manager or other designated City employee to whom the subscriber can call or write for information regarding the terms, conditions and provisions governing the franchisee's franchise if the franchisee fails to respond within a reasonable period of time to the subscriber's complaint or request for installation, or a service or billing adjustment. The franchisee shall furnish revised written information and instructions to each subscriber whenever the information instructions previously provided have been changed. The written information and instructions provided for herein shall be subject to the review and approval of the Cable Advisory Board which shall not withhold its approval unreasonably. The Board shall have the power to compel changes in such information and instructions if the Board deems the same to be misleading, incorrect or inadequate in any material respect, and the franchisee shall promptly institute any changes so required by the Board.

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B. CABLE SERVICE

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1. For purpose of this section, “service interruption” means the loss of picture or sound on one or more cable channels, affecting two or more subscribers. Excluding conditions beyond franchisee’s control, franchisee will begin working on a service interruption promptly and in no event later than 24 hours after the service interruption becomes known. The franchisee shall interrupt system service only with good cause and for the shortest time possible and, except in emergency situations, only after periodic cablecasting notice on the public access channel of service interruption fro two (2) days prior to and at the same time as the anticipated interruption.

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2. The franchisee shall maintain a written log, or an equivalent stored in computer memory and capable of access and reproduction in printed form, of all subscriber complaints. Such log shall list the dates and times of such complaints, identifying the subscribers and describing the nature of the complaints and when and what actions were taken by the franchisee in response thereto. Such log shall be kept at the franchisee’s local office, reflecting the operations to date for a period of at least three (3) years, and shall be available for public inspection during regular business hours. The franchisee shall submit a copy of such log quarterly to the Cable Advisory Board for its review.

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3. For purposes of this subsection, “subscriber problem” shall mean any malfunction affecting a single subscriber; “outage” shall mean a complete loss of picture and/or sound affecting more than one subscriber; “system problem” shall mean any problem other than an outage which affects more than one subscriber. The franchisee shall maintain a sufficient repair force of technicians so as to be able to respond to any subscribe request for CATV system service to the subscriber or to repair any malfunction attributable to the CATV system within the following time frames:

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- a. For an outage: within three (3) hours, including weekends and holidays, after receiving knowledge of such malfunction.

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- b. For subscriber problem: *Same day* service response and repair, seven (7) days a week, for all complaints and requests for repairs or adjustment received prior to 2:00 p.m. each day. In no event shall the response and repair time for calls received subsequent to 2:00 p.m.

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exceed twenty-four (24) hours, including weekends and holidays, from the time of receiving a subscriber's request for service.

- c. For a system problem: Within forty-eight (48) hours, including weekends and holidays, of receiving a request for service identifying a problem concerning picture or sound quality affecting any two or more subscribers.
4. Upon receipt of a request for service, the franchisee shall establish a four-hour appointment window with the subscriber (or adult representative of the subscriber) or such other appointment arrangement authorized in the franchise agreement. The franchisee shall respond to the request for service within such established appointment window. In the event access to the subscriber's home is not made available to the franchisee's technician when the technician arrives during the established appointment window, the technician shall leave written notification stating the time of arrival and requesting that the franchisee be contacted again to establish a new appointment window. In such case, the required response time for the request for service shall be twenty-four (24) hours from the time the franchisee is contacted to establish the new appointment window.

Notwithstanding the foregoing, if the franchisee's technician telephones the subscriber's home during the appointment window and is advised that the technician will not be given access to the subscriber's home during the appointment window, then the technician shall not be obliged to travel to the subscriber's home or to leave the written notification referred to above, and the burden shall again be upon the subscriber (or adult representative of the subscriber) to contact the franchisee to arrange for a new appointment window, in which case the required response time for the request for service shall again be twenty-four (24) hours from the time the franchisee is contacted to establish the new appointment window. If the franchisee fails to keep an appointment for service, the subscriber shall receive a \$20.00 credit on the subscriber's next bill.

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5. Except as otherwise provided in subsection (4) above, the franchisee shall be deemed to have responded to a request for service under the provisions of this section only when a sufficient repair force of technicians arrives at the service location, begins work on the problem and proceeds diligently to complete such work.

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6. No charge shall be made to the subscriber for any service call unless the problem giving rise to the service request can be demonstrated by the franchisee to have been:

a. Caused by subscriber error, or

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b. Caused by malicious destruction of cable equipment, or

c. A problem previously established as having been non-cable in origin.

7. All service personnel of the franchisee or its contractors or subcontractors who have as part of their normal duties contact with the general public shall wear on their clothing a clearly visible identification card bearing their name and photograph. The franchisee shall account for all identification cards at all times. Every service vehicle of the franchisee shall be clearly identifiable by the public.

C. FRANCHISEE'S BILLINGS

The franchisee's bills to its subscribers shall be clear, concise and understandable and shall be itemized as to each charge reflected thereon. The bill and any accompanying communication from the franchisee to its subscribers, and any other communication from the franchisee to its subscribers, shall not contain any material misstatement or omit to state a material fact, the omission of which would make the communication misleading. The franchisee's present bills and any modification of the form and content thereof shall be subject to the Board's approval.

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The Board shall not withhold its approval of the form and content of the franchisee's bills unreasonably. If the Board disapproves of any of the franchisee's bills to subscribers, it shall so notify the franchisee and shall specify the basis for such disapproval. The franchisee shall then modify the bills so as to remedy the defects specified by the Board. The modification shall be implemented by the franchisee within forty-five (45) days after receipt by the franchisee of the Board's notice of disapproval, unless the Board extends such time.

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D. DISCONNECT AND DOWNGRADE CHARGES

1. The franchisee shall make no charge to any subscriber on account of either complete discontinuance of service, or except as otherwise permitted by law, a downgrade of service whereby the subscriber requests a lower tier of basic service and/or a net reduction in premium service.

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2. The franchisee may only disconnect a subscriber if at least 45 days have elapsed after an authorized due date for payment of the subscriber's bill and the franchisee has provided at least 10 days written notice to the subscriber prior to disconnection, specifying the effective date after which cable services are subject to disconnection; provided, however, notwithstanding the foregoing, the franchisee may disconnect a subscriber at any time if the franchisee in good faith and on reasonable grounds determines that the subscriber has tampered with or abused the franchisee's equipment, or is or may be engaged in the theft of cable services. The franchisee may not disconnect a subscriber for failure to pay amounts that are the subject of a good faith billing dispute, unless authorized by the Cable Board after a hearing at which the franchisee and subscriber had an opportunity to appear.

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3. The franchisee shall promptly disconnect any subscriber who so requests disconnection. No period of notice prior to requested termination of service may be required of subscribers by the franchisee. No charge may be imposed upon the subscriber for any cable service delivered after the effective date of the disconnect request. If the subscriber fails to specify an effective date for disconnecting, the effective date shall be deemed to be the day following the date of disconnect request is received by the franchisee.

E. LATE PAYMENT CHARGES

Late payment charges imposed by the franchisee upon subscribers shall be fair, shall be reasonably related to the franchisee's cost of administering delinquent accounts, and can be imposed for a given month if the monthly payment is not received prior to statement cut-off for the next billing cycle.

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F. NOTICE OF PROGRAMMING OR CHANNEL CHANGE

The franchisee shall provide at least thirty (30) days written notice to subscribers prior to discontinuing any channel or programming service or to realigning any

channel and shall provide written notice of the same to the Cable Advisory Board no later than the franchisee's notice to subscribers. This provision shall not preclude the right of the City to contest or prohibit any such action by the franchisee if, and to the extent, such right exists. The foregoing notice requirement shall not apply in cases in which a programming service is discontinued because a non-affiliated provider thereof discontinues furnishing the same to the franchisee on less than thirty (30) days notice to the franchisee. In any such case the franchisee shall nevertheless furnish notice to its subscribers and the Cable Advisory Board promptly upon the franchisee receiving notice of discontinuance of the programming service from such unaffiliated provider.

G. NOTICE OF PRICE INCREASE OR REDUCTION OF SERVICE

The franchisee shall provide at least thirty (30) days written notice to subscribers prior to implementing any increase in subscriber rates or reduction in subscriber services and shall provide written notice of the same to the Cable Advisory Board no later than the franchisee's notice to subscribers. The provisions of this section shall not preclude the right of the City to contest or prohibit any such action by the franchisee if, and to the extent, such right exists.

H. FRANCHISEE'S COMMUNICATIONS

Any materially false or misleading statement made by a franchisee in any report or communication required under this Ordinance or the franchise to be made to the City or to the Cable Advisory Board shall be deemed a violation of this Ordinance and a material breach of the franchise agreement. Prior to or simultaneously with any communication made by the franchisee to the general public or to the franchisee's subscribers announcing or explaining any increase in subscriber rates or reduction in programming service, the franchisee shall furnish a copy of such communication to the Cable Advisory Board. The information so furnished shall not contain any material misstatement or omit to state a material fact, the omission of which would make the communication misleading.

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I. DISCLOSURE OF INFORMATION ON FRANCHISEE'S COSTS

In the event the franchisee, in any communication to the general public, to the City, to subscribers, or to the Cable Advisory Board, justifies a price increase or reduction in service on the basis of increased costs to which the franchisee has been subjected, then the franchisee, on written request of the Board, shall promptly furnish the Board the underlying information on which such claim of increased costs is based in such form as the Board may request. The information so furnished shall not contain any material misstatement or omit to state a material fact, the omission of which would make the information furnished misleading.

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J. SUBSCRIBER REBATES

1. In the event of a violation of the provisions of this Ordinance by the franchisee which results in a subscriber not receiving cable programming service or receiving only significantly impaired service, the Board may order and direct the franchisee to issue a rebate to such subscriber in an amount determined by the board to provide monetary relief to the subscriber substantially equal to the subscriber's unliquidated detriment or loss resulting from the violation.

2. Except for planned outages where subscribers are provided reasonable notification in advance, upon a subscriber's request, the franchisee shall provide not less than one day credit for each day in which there is a period of four hours or more during which the subscriber experienced an outage or significant impairment of cable service not attributable to any action or omission of the subscriber or to any defect in the subscriber's equipment. The credit specified herein shall be equal to one-thirtieth of the subscriber's total monthly bill for all services and equipment other than pay-per-view; provided, however, if such monthly bill includes a charge for a pay-per-view program subject to such outage or significant impairment, then the credit shall be increased by the amount of such charge. Credits for service shall be issued no later than a subscriber's next billing cycle following a determination that a credit is warranted.

3. Nothing in this section shall be deemed to preclude a subscriber from requesting and receiving from the franchisee a rebate greater than that provided in subsection (1) and (2) of this section.

K. NEGATIVE OPTIONS

Franchisee shall not engage in the practice of “negative option” marketing, and will not charge a subscriber for any premium service or equipment beyond basic and expanded basic service which the subscriber has not affirmatively requested.

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L. SUBSCRIBER REFUNDS

Any subscriber refund checks shall be issued following resolution of a request or return of equipment if service is terminated upon the earlier of the subscriber’s next billing cycle following resolution of the request, or within thirty (30) days, whichever is earlier.

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28.10 LIQUIDATED DAMAGES

Except as otherwise may be provided in the franchise agreement, the Cable Advisory Board may assess liquidated damages of up to \$100.00 per day against the franchisee for each day the franchisee is in violation of this Ordinance. Such assessment may be levied against the Security Fund specified in Section 28.13. Assessment of liquidated damages shall not constitute a waiver by the City of any other right or remedy it may have under the franchise or applicable law, including the right to recover from the franchisee any costs and expenses, including reasonable attorney fees, which are incurred by the City on account of the franchisee’s violation of this Ordinance or the franchise.

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28.11 REMEDIES AVAILABLE

If the Cable Advisory Board determines that a franchisee has violated any consumer protection provision of this Ordinance, the Board may order appropriate rebates to subscribers as provided in Section 28.09, subsection J, and/or assess liquidated damages against the franchisee as provided in Section 28.10. In addition, the City may pursue any additional or other legal or equitable remedies available to it under any applicable law.

29.12 APPEAL PROCESS

The franchisee may appeal any action of the Cable Advisory Board to the City by submitting a written appeal within twenty-one (21) days from the date of the Board’s action to which the franchisee objects. Upon such appeal, the City Commission shall conduct a de novo review of the action of the Board being appealed and shall set a hearing date within sixty (60) days of the date of receipt of the appeal. The franchisee may present any information, data or other evidence to the

commission either prior to or at the time of the hearing. Hearings shall be open to the public and members of the public and members of the Board may also present any evidence or information pertinent to the matter appealed. The Commission shall then determine whether to uphold, reverse, or modify the action of the Board. The appeal shall stay any further action on the matter appealed until the appeal has been decided by the Commission.

28.13 SECURITY FUND

- A.** Within ten (10) days after the award of a franchise or a transfer, extension or renewal of a franchise, the franchisee shall deposit with the City, and maintain on deposit through the term of the franchise, the sum of two thousand five hundred (\$2,500.00) dollars as security for:

 - 1.** The faithful performance by it of all the provisions of this Ordinance and the franchise,
 - 2.** Compliance with all orders, permits and directions of any agency, commission, board or department of the City having jurisdiction over its acts or defaults under the franchise, and
 - 3.** The payment by the franchisee of any claims, liens and taxes due the City which arise by reason of the construction, operation or maintenance of the system.
- B.** Within ten (10) days after notice to it that any amount has been withdrawn from the security fund, the franchisee shall pay to or deposit with the City a sum of money in the full amount withdrawn.
- C.** If the franchisee fails to pay to the City any fees within the time fixed herein; or fails, after ten (10) days written notice, to pay to the City any taxes due and unpaid; or fails to repay the City within such ten (10) days, any damages, costs or expenses which the City shall be compelled to pay by reason of any act or default of the franchisee in connection with a franchise; or fails, after three (3) days notice of such failure, to comply with any provisions of the franchise which the City reasonable determines can be remedied by a withdrawal from the security fund, the City may immediately withdraw the amount thereof, with interest and any additional charges, from the security fund. Upon such withdrawal, the City shall notify the franchisee of the amount and date thereof.
- D.** The security fund deposited pursuant to this section, including all interest thereon, if any, shall become the property of the City in the event that the franchise is rescinded or revoked by reason of the default of the franchisee. The franchisee, however, shall

be entitled to the return of such security fund, or such portion thereof as remains on deposit at the expiration of the term of the franchise, provided that there is then no outstanding default on the part of the franchisee. Any interest earned by the investment of the security fund shall become part of the security fund and unless consumed by the payment of liquidated damages, fees or other charges under this Ordinance, shall be returned to the franchisee at the expiration of the franchise term, provided that there is then no outstanding default on the part of the franchisee. The security fund may be commingled with other funds of the City and shall not be required to be invested in interest bearing accounts.

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- E. Payment from the security fund shall not constitute a cure of any violation or any act of non-compliance by the franchisee. The rights reserved to the City with respect to the security fund are in addition to all other rights of the City whether reserved by this Ordinance or authorized by law, and no action, proceeding or exercise of a right with respect to such security fund shall affect any other right the City may have.

28.14 SEPARABILITY

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional, by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

28.15 PENALTIES

Any person, firm or corporation that is found guilty of Section 28.03, supra, shall be fined not more than five hundred (\$500.00) dollars and imprisoned for not more than ninety (90) days, or by both such fine and imprisonment in the discretion of the Court. Each day a violation continues to exist shall be deemed to be a separate offense.

28.16 EFFECTIVE DATE

This Ordinance shall become effective on the 30th day of December 1992.