

CITY OF BONITA SPRINGS, FLORIDA
ORDINANCE NO. 16-13

AN ORDINANCE OF THE CITY OF BONITA SPRINGS, FLORIDA, TO REPEAL IN ITS ENTIRETY BONITA SPRINGS ORDINANCE NO. 03-23, THE CITY OF BONITA SPRINGS CABLE TELEVISION FRANCHISE ORDINANCE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in 2003, the City of Bonita Springs City Council adopted a cable television franchise which at the time was consistent with federal and state law; and

WHEREAS, in 2007, the Florida Legislature adopted Florida Statutes Chapter 610, which removed the authority from local governments to regulate cable franchises, including customer service, which is now administered by the Florida Department of Agriculture and Consumer Services; and

WHEREAS, this ordinance has proven out of date; and

WHEREAS, City Council desires to repeal in its entirety the City of Bonita Springs Cable Television Franchise Ordinance.

THE CITY OF BONITA SPRINGS HEREBY ORDAINS:

1. Bonita Springs Ordinance No. 03-23, as set forth in Exhibit A, attached hereto, is hereby repealed in its entirety and upon the effective date of this ordinance, the terms and conditions thereof are of no further force and effect.
2. The effective date of this ordinance shall be thirty (30) days from its adoption date.

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Lee County, Florida, this 17th day of August, 2016.

AUTHENTICATION:



Mayor



City Clerk

APPROVED AS TO FORM:



City Attorney

Vote:

DeWitt	Aye	Quaremba	Aye
Forbes	Aye	Simmons	Aye
Gibson	Aye	Slachta	Aye
O'Flinn	Aye		

Date filed with City Clerk:




Exhibit A

CITY OF BONITA SPRINGS, FLORIDA

ORDINANCE NO. 03-23

~~AN ORDINANCE OF THE CITY OF BONITA SPRINGS, FLORIDA, PROVIDING FOR CONSTRUCTION, OPERATION, REGULATION AND CONTROL OF CABLE TELEVISION FRANCHISES IN THE INCORPORATED CITY OF BONITA SPRINGS, FLORIDA; PROVIDING FOR DEFINITIONS; PROVIDING FOR FRANCHISE PROVISIONS; PROVIDING FOR RIGHTS; PROVIDING FOR INITIAL PERFORMANCE GUARANTEE; PROVIDING FOR RIGHTS TO USE STREETS NOT WARRANTED; PROVIDING FOR OTHER AGREEMENTS, PERMIT AND EASEMENT REQUIREMENTS; PROVIDING FOR NO PROPERTY RIGHTS CONVEYED; PROVIDING FOR JURISDICTION OF OTHER REGULATORY BODIES OR AGENCIES; PROVIDING FOR LIABILITY, INDEMNIFICATION; PROVIDING FOR INSURANCE; PROVIDING FOR BONDING REQUIREMENTS; PROVIDING FOR FCC LICENSES; PROVIDING FOR COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES; PROVIDING FOR MINIMUM FACILITIES AND SERVICES; PROVIDING FOR TECHNICAL STANDARDS; PROVIDING FOR ACCESS CHANNELS AND FACILITIES; PROVIDING FOR CUSTOMER SERVICE REQUIREMENTS; PROVIDING FOR SUBSCRIBER PRIVACY; PROVIDING FOR PROHIBITION OF DISCRIMINATION; PROVIDING FOR CABLE SYSTEM CONSTRUCTION; PROVIDING FOR USE OF STREETS; PROVIDING FOR REPORTS AND RECORDS; PROVIDING FOR ENFORCEMENT REMEDIES; PROVIDING FOR RENEWAL OF FRANCHISE; PROVIDING FOR TRANSFERS; PROVIDING FOR REVOCATION OR TERMINATION OF FRANCHISE; PROVIDING FOR MANDATORY CONTINUITY OF SERVICE; PROVIDING FOR RATES; PROVIDING FOR PERFORMANCE EVALUATION; PROVIDING FOR ADMINISTRATION; PROVIDING FOR FORCE MAJEURE; PROVIDING FOR APPLICABILITY; PROVIDING FOR MUNICIPAL CABLE SYSTEM OWNERSHIP AUTHORIZED; PROVIDING FOR RESERVATION OF RIGHTS; PROVIDING FOR SAVINGS; PROVIDING FOR SEVERABILITY; PROVIDING FOR APPLICABLE LAW; AND PROVIDING FOR AN EFFECTIVE DATE.~~

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~~WHEREAS, effective with adoption of the Charter of the City of Bonita Springs (the "Charter"), the City of Bonita Springs, Florida was created as a municipal corporation on December 31, 1999 pursuant to the Constitution of the State of Florida; and~~

~~WHEREAS, the City Council has determined it is in the public interest of the City of Bonita Springs (the "City") to permit the operation of one or more Cable Television Systems in the City; and~~

~~WHEREAS, one or more cable operators are occupying the City's public rights-of-ways and operating Cable Systems pursuant to a franchise(s) granted by Lee County; and~~

~~WHEREAS, the City adopted Lee County Ordinance No. 89-05 for transitional purposes so as to allow cable franchisees to continue to lawfully operate in the City on an interim basis; and~~

~~WHEREAS, Lee County has subsequently amended Ordinance No. 89-05 by the adoption of Ordinance No. 01-05; and~~

~~WHEREAS, Lee County has subsequently entered into franchise renewals pursuant to Ordinance No. 01-05; and~~

~~WHEREAS, it is the intent of City to exercise its authority as a local franchising authority to the fullest extent allowed by law; and~~

~~WHEREAS, this Ordinance shall replace and supercede the Cable Regulatory authority granted to the City of Bonita Springs by adoption of the Lee County Cable Television Ordinance as the City's transitional provision; and~~

~~WHEREAS, pursuant to Section 621 of the Communications Act of 1934, as amended, 47 U.S.C. 541, a cable operator may not provide cable service without obtaining a franchise from the franchising authority; and~~

~~WHEREAS, cable operator(s) desire(s) to obtain a cable franchise from the City; and~~

~~WHEREAS, the City Council of the City of Bonita Springs desires to provide reasonable and adequate protection and control over the use of City-owned easements and City rights-of-way by Cable Television Franchisees; and~~

~~WHEREAS, the City Council of the City of Bonita Springs has determined that adoption of a comprehensive Cable Ordinance is in the best interests of the citizens of the City.~~

~~NOW, THEREFORE, BE IT ORDAINED:~~

This Ordinance is entitled the City of Bonita Springs Cable Television Franchise Ordinance.

SECTION I - PURPOSE

- A. Purpose. This Ordinance is enacted for the purpose of providing procedures, requirements, regulations, conditions and provision, which shall apply:
1. To the granting, issuance, modification, transfer and renewal of non-exclusive franchisees for the installation, operation, use and maintenance of Cable Television Systems within the incorporated limits of Bonita Springs, Florida; and
 2. To provide reasonable and adequate protection and control over the use of City-owned easements and City rights-of-way by Cable Television Franchisees; all in the interest of the public health, safety and welfare of the citizens and inhabitants of Bonita Springs, Florida.

SECTION II - DEFINITIONS

- A. For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein unless the context clearly indicates that another meaning is intended. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural.
- B. The words "shall" and "will" are mandatory, and "may" is permissive. Words not otherwise defined herein or in any Franchise Agreement that might be granted hereunder shall be given the meaning set forth in the Communications Act of 1934, 47 U.S.C. 521 et. seq., and the Telecommunications Act of 1996, and as those Acts may hereinafter be amended (collectively the "Communications Act"), and, if not defined therein, their common and ordinary meaning.
1. "Activated Channel" means those channels engineered at the headend of a Cable System for the provision of services generally available to residential Subscribers of the Cable System, regardless of whether such services actually are provided, including any channel designated for educational or governmental use.
 2. "Access Channel" means any channel on a Cable System set aside without charge by the Franchisee for non-commercial educational and/or local governmental use ["EG"].
 3. "Affiliate" means any person who directly or indirectly owns or controls a Franchisee, any person who a Franchisee directly or indirectly owns or controls, or any person under common ownership or control with a Franchisee.
 4. "Analog Channel" means bandwidth in the electromagnetic spectrum capable of carrying one (1) standard television signal that is delivered in an analog format.
 5. "Applicant" means any person submitting an application within the meaning of this Ordinance.
 6. "Application" means any proposal, submission or request to (1) construct and operate a Cable System within the City; (2) transfer a franchise or control of the Franchisee; (3) renew a franchise; or (4) modify a franchise. An application includes an applicant's initial proposal, submission or request, as well as any and all subsequent amendments or supplements to

~~the proposal and relevant correspondence. The Franchise Agreement will represent the entire agreement.~~

- ~~7. "Basic Cable Service" or "Basic Service" means any service tier which includes the retransmission of local television broadcast signals.~~
- ~~8. "Cable Service" means the transmission of video or other programming services over a Cable System to Subscribers together with any Subscriber interaction, if any, which is required for the selection or use of such video programming or other cable services. If defined by applicable law, cable internet services, or other cable services, provided by a Franchisee, its parent, affiliate or subsidiary over the Cable System shall be deemed "cable services" for the purpose of this Ordinance and any franchise granted pursuant hereto.~~
- ~~9. "Cable System," or "System," means any facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming, and which is provided to multiple Subscribers within the City. Such term does not include (a) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations; (b) a facility that serves Subscribers without using any public right of way; (c) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. '201 et seq., except that such facility will be considered a Cable System to the extent it 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; (d) an open video System that complies with Section 653 of the Telecommunications Act of 1996; or (e) any facilities of any electric utility used solely for operating its electric utility Systems.~~
- ~~10. "Charter School" means that all charter schools in Florida shall be part of the State's program of public education. All charter schools in Florida are public schools. A charter school may be formed by creating a new school or converting an existing public school to charter status. A public school may not use the term charter in its name unless it has been approved under Fla. Stat. s. 1002.33.~~
- ~~11. "City" means the City of Bonita Springs, Florida, a municipal corporation of the State of Florida in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form, and shall mean and refer to all lands presently within the geographical limits of the City of Bonita Springs and all lands annexed hereafter.~~
- ~~12. "City Council" means the Bonita Springs City Council, Florida, or its designee, or any successor to the powers of the City.~~
- ~~13. "City Manager" means the City Manager of Bonita Springs, Florida, or his designee, or any successor to the powers of the City Manager.~~
- ~~14. "Communications Act" means the Communications Act of 1934, 47 U.S.C. '151 et. seq., as that Act has been and may hereinafter be amended.~~
- ~~15. "Control of a Franchisee or Applicant" means possession of the ability to direct or cause the direction of the management or policies of a Franchisee, or applicant, or the operation of a Franchisee's System, either directly or indirectly, whether through ownership of voting securities, by contract or in any other manner.~~

16. ~~"Fair Market Value" means the price that a willing buyer would pay to a willing seller for a going concern but with no value allocated to the franchise itself.~~
17. ~~"FCC" means the Federal Communications Commission, or any successor governmental entity thereto.~~
18. ~~"Franchise" means the right granted by the City to a Franchisee in a Franchise Agreement to construct, maintain and operate a Cable System under, on, and over streets, roads and any other public ways, rights-of-ways, or easements within the City. The term does not include any license or permit that may be required by this Ordinance or other laws, Ordinances or regulations of the City for the privilege of transacting and carrying on a business within the City or for disturbing or carrying out any work on any street.~~
19. ~~"Franchise Agreement" means a contract entered into by Ordinance in accordance with the provisions of this Ordinance between the City and a Franchisee that sets forth the terms and conditions under which the franchise will be exercised.~~
20. ~~"Franchise Area" means that territory within the incorporated limits of the City, as those limits may change from time to time through annexation or contraction, over which the terms of a Franchise Agreement shall extend.~~
21. ~~"Franchisee" means any person granted a franchise pursuant to this Ordinance who has entered into a Franchise Agreement with the City.~~
22. ~~"Gross Revenues" means all revenues derived by the Franchisee from the operation of the Cable System to provide Cable Services in the City to the extent not prohibited by applicable federal and state law. Gross Revenues include, but are not limited to, fees charged Subscribers for Basic Service; fees charged Subscribers for any optional, premium, per channel or per program service; fees charged Subscribers for any tier of service other than Basic Service; installation, disconnection, reconnection and change-in-service fees; late fees; leased access fees, payments or other consideration from programmers for carriage of programming on the System (excluding marketing support including launch fees to the extent such funds are not considered revenue under GAAP); revenue from converter, remote or any other cable service equipment rentals; revenues from leases of cable or fiber optic lines and other transmission devices and equipment revenues from cable modem and internet products and services to the extent included under Subsection 9 above; advertising revenues allocable to the City based on a percentage of Subscriber Base in the incorporated area of the City divided by the Subscriber Base of the System (such percentage shall then be multiplied by the total advertising revenue of the System to determine the allocable gross revenue stemming from advertising); revenues from home shopping channels or other sources allocable to the City, provided that where certain home shopping channel or other such revenue is allocable to more than one franchise area due to common zip codes, the Franchisee shall allocate the percentage of revenue to the City which is equivalent to the percentage of the population of the incorporated area of the City divided by the total population for the allocable franchise areas in question or on a subscriber basis where sufficient data exists. Gross Revenues shall be the basis for computing the franchise fee imposed pursuant to Section III(L)(1) hereof. Gross Revenues shall not include revenues directly generated by affiliated programmers for the provision of programming; any taxes on services furnished by the Franchisee which are imposed upon any Subscriber or user by the State,~~

County, City or other governmental unit and collected by the Franchisee on behalf of said governmental unit and which the Franchisee passes on in full to the applicable tax authority. However, it is hereby expressly provided that franchise fees shall be included in the calculation of Gross Revenues. Further, franchise fees shall not be paid on Subscriber deposits unless and until said deposits are applied to a customer account for services rendered. Revenue of an Affiliate shall be Gross Revenue under this definition only to the extent such revenue is derived from the operation of the Cable System to provide cable service by the Affiliate acting in the capacity of a cable operator and not in the capacity of a television program provider.

23. ~~"Institutional Network" means a cable network which is constructed or operated by the cable operator for the non-commercial use of the City and which is generally not available to subscribers.~~
24. ~~"Interconnection" means the electronic connection of two or more franchised Cable Systems solely for the purpose of sharing EG programming.~~
25. ~~"Law" means all duly enacted and applicable federal, state, county, and city laws, Ordinances, codes, rules, regulations and orders.~~
26. ~~"Leased Access Channel" means a channel designated in accordance with Section 612 of the Communications Act, 47 U.S.C. '532, for commercial use by persons unaffiliated with the Franchisee.~~
27. ~~"Open Video System" A facility consisting of a set of transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple Subscribers within a community, provided that the FCC has certified that such a System complies with applicable FCC rules and regulations.~~
28. ~~"Overbuild" means that portion of a Cable System constructed to serve Subscribers already served by an existing Cable System.~~
29. ~~"Person" means any individual, corporation, partnership, association, joint venture, organization or legal entity of any kind, and any lawful trustee, successor, assignee, transferee or personal representative thereof, but shall not mean the City.~~
30. ~~"Service Tier" means a category of multi-channel cable service provided by a Franchisee and for which a separate charge is made by the Franchisee.~~
31. ~~"State of the Art" means that level of Cable System technical performance, capacity, equipment, components and service (without reference to the content of service) equal to that which has been implemented by a franchised cable operator on any System operating in Lee County. Nothing herein shall be construed to require implementation of a specific technology by a Franchisee except as may be set forth in a Franchise Agreement.~~
32. ~~"Street or Streets" means the surface, the air space above the surface and the area below the surface of any public street, highway, road, boulevard, concourse, driveway, freeway, thoroughfare, parkway, sidewalk, bridge, tunnel, park, waterway, dock, bulkhead, wharf, pier, court, lane, path, alley, way, drive, circle, easement, or any other public right-of-way or public place, including public utility easements dedicated for compatible uses, or any other property in which the City holds any kind of property interest or over which the City exercises any type of lawful control, and any temporary or permanent fixtures or improvements located thereon, as may be ordinarily~~

~~necessary and pertinent to construct and operate a Cable System. The term includes any Rights of Way granted to the public or to any governmental body by way of conveyance, dedication, restriction, or by easement and any area within an easement given for governmental purposes.~~

33. ~~"Subscriber" means any person who lawfully receives cable service delivered over the Cable System. Except that any such person who lawfully receives service but is not billed on an individual basis shall not be considered a subscriber for the purposes of rate notification.~~
34. ~~"Subscriber Base" means the total number of residential and commercial Subscribers within the City. For purposes of calculating Subscribers under bulk or multi-user contracts, the Franchisee shall count each individual unit (e.g., in a multiple family dwelling, a unit will be defined as each Subscriber unit within the structure) included within a contract for service as one Subscriber. Franchisee may use reasonable equivalency measures provided it uses such measures uniformly for all franchise areas served by the System, and as provided for in a Franchise Agreement.~~
35. ~~"System Malfunction" means any Cable System equipment, facility or signal failure or malfunction that results in the loss of satisfactory service, as defined as compliance with the FCC standards and the requirements of the Ordinance, on one or more channels to one or more Subscribers. A malfunction is major if it affects fifty (50) or more Subscribers.~~
36. ~~"Transfer of a Franchise" means any transaction in which (1) any ownership or control of a Franchisee or its Cable System is transferred from one person or group of persons to another person or group of persons so that control of a Franchisee is transferred; or (2) the rights and/or obligations held by a Franchisee under a Franchise Agreement are transferred or assigned to another person, group of persons or business entity. A transfer may be considered "pro forma" when it involves a transfer to a person, group of persons or business entity owning, owned by, or under common ownership with the Franchisee and will not result in a change in the ultimate parental control or ownership of the Franchisee.~~
37. ~~"Two-way Capability" means the incorporation into a Cable System of all appropriate design and engineering characteristics and features so that two-way transmission, including but not limited to addressability, over the System can be implemented and activated.~~
38. ~~"Video Channel or Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel, including the associated audio signal.~~

SECTION III - FRANCHISING PROVISIONS

A. Franchise Authority.

~~The City may grant one or more non-exclusive franchises in accordance with this Ordinance.~~

B. Franchise Required.

1. ~~Unless the City is otherwise preempted from exercising franchising authority by applicable law, no person may construct or operate a Cable System over, on, or under public streets in the City without a franchise granted by the City and no person may be granted a franchise without having entered into a~~

~~Franchise Agreement with the City pursuant to this Ordinance or other such Ordinance of the City as may be applicable. All provisions of this Ordinance shall be incorporated in any franchise as a condition of said franchise, unless otherwise expressly agreed to by the parties in a Franchise Agreement.~~

- ~~2. Any franchise granted pursuant to this Ordinance shall be solely for the provision of cable service and shall not be construed to authorize or prohibit the provision of telephone, non-cable video or other telecommunications service.~~
- ~~3. Nothing in this Ordinance shall prevent a Franchisee from applying for a separate franchise or such other authorization as may lawfully be required by the City for the provision of telephone, non-cable video or other telecommunications service, pursuant to applicable law.~~
- ~~4. Any person desiring to install maintain or operate an Open Video System shall file an application with the City Council to obtain a franchise consistent with this Ordinance.~~

~~C. Franchise Characteristics~~

- ~~1. A franchise authorizes use of City streets for installing cables, wires, lines, optical fiber, underground conduit, ducts, conductors, amplifiers, vaults, and other facilities as necessary and pertinent to operate a Cable System to serve Subscribers within the City, but does not expressly or implicitly authorize the Franchisee to provide service to, or install cables, wires, lines, underground conduit, or any other equipment or facilities upon private property without owner consent (except for use of compatible easements pursuant to Section 621 of the Communications Act, 47 U.S.C. '541(a)(2) or as otherwise may be provided by law), or to use publicly or privately owned conduits without a separate agreement with the owners.~~
- ~~2. A franchise is nonexclusive, and will not expressly or implicitly preclude the issuance of other franchises to operate Cable Systems within the City, in accordance with applicable federal or state law, or affect the City's right to authorize use of City streets to other persons to operate Cable Systems or for other purposes as it determines appropriate.~~
- ~~3. All privileges prescribed by a franchise shall be subordinate to any prior lawful occupancy of the streets, and the City reserves the lawful right to reasonably designate where a Franchisees' facilities are to be placed within the streets. Such designation may include, but not be limited to, consideration of the availability of space in the rights-of-way.~~
- ~~4. A franchise shall be a privilege, which is in the public trust. No transfer, excluding mortgages and pledges of Franchisees' securities, of a franchise shall occur without the prior consent of the City and unless application is made by the Franchisee, and City approval is obtained, pursuant to Section XXV hereof and the Franchise Agreement.~~
- ~~5. A Franchise granted to an applicant pursuant to this Ordinance to construct, operate and maintain a Cable System within the City, shall be deemed to constitute both a right and an obligation on the part of the Franchisee to provide the services and facilities of a Cable System as required by the provisions of this Ordinance and the Franchise. The Franchise Agreement shall constitute all of the terms and conditions of the Franchise that are finally negotiated and agreed upon by the City and Franchisee. A Franchisee shall be bound by all documents or other portions of an~~

~~Application which the City relies upon as material and an inducement to granting a Franchise and which are integrated by the City and Franchisee as an exhibit to the Franchise Agreement. All oral representations made by an Applicant, or its representatives, before the City Council and on which the Council explicitly relies in the grant of a franchise, shall be part of the record and binding upon the Franchisee.~~

- ~~6. Notwithstanding anything to the contrary, in the event that Franchisee, its parent, affiliate or subsidiary elects to offer to Subscribers video programming services through any means or method not included within the definition of a Cable System, including but not limited to an "open video System", Franchisee shall remain subject to all terms and conditions of the cable Franchise granted pursuant to this Ordinance, with respect to its operation of the Cable System under the Franchise.~~

~~D. Franchise application procedure; information required.~~

~~All applications to construct, operate, or maintain a Cable System in the incorporated areas of the City shall be filed with the City Council or such office of the City as the City Council shall designate.~~

~~A written application shall be filed with the City for (a) grant of an initial cable franchise or Open Video System; (b) renewal of a franchise in accordance with Section 626 of the Communications Act, 47 U.S.C. 546; (c) modification of a Franchise Agreement; or (d) a transfer of a franchise. To be acceptable for filing, a signed original of the application shall be submitted together with eleven (11) copies, be accompanied by the required non-refundable application filing fee as set forth in Section III (E) hereof, conform to any applicable request for proposals, and contain all reasonably required information. Except in the case of an initial application, the City Manager may waive submission of certain information required herein, upon request of the Franchisee. All applications shall include the names and addresses of persons authorized to act on behalf of the applicant with respect to the application.~~

- ~~1. All applications accepted for filing shall be made available by the City for public inspection consistent with applicable law.~~
- ~~2. An application for the grant of an initial franchise may be filed pursuant to a request for proposals issued by the City or on an unsolicited basis. The City, upon receipt of an unsolicited application, may issue a request for proposals. If the City elects to issue a request for proposals upon receipt of an unsolicited application, the applicant may submit an amended application in response to the request for proposals, or may inform the City that its unsolicited application should be considered in response to the request for proposals, or may withdraw its unsolicited application. An application, including an unsolicited application which applicant has subsequently designated as responsive, which does not conform to the reasonable requirements of a request for proposals may be considered non-responsive and denied on that basis.~~
- ~~3. An application for: (i) the grant of an initial franchise, (ii) a transfer of an existing franchise, and (iii) upon request, an application for a renewal of a franchise shall provide any or all of the information listed below as requested by the city:
 - ~~a. Name and address of the applicant and identification of the ownership and control of the applicant, including: the names and addresses of all persons with five percent (5%) or more ownership interest in the applicant, including the names and addresses of parents or subsidiaries holding such ownership interests directly or indirectly; the persons who control the applicant; all officers and directors of the~~~~

~~applicant; and any other Cable System ownership or other communication ownership interest of each named person;~~

- ~~b. The names and addresses of any parent or affiliate, of the applicant and of any other business entity owning or controlling in whole or in part or owned or controlled in whole or in part by the applicant.~~
- ~~c. An indication of whether the applicant, or any person controlling the applicant, or any officer, or director or person with five percent (5%) or more ownership interest in the applicant, has been adjudged bankrupt, had a cable franchise or license revoked, or been found by any court or administrative agency to have violated a security or antitrust law, or to have committed a felony, or any crime involving moral turpitude; and, if so, identification of any such person and a full explanation of the circumstances;~~
- ~~d. A demonstration of the applicant=s technical, legal and financial ability to construct and/or operate the proposed Cable System, including identification of key personnel to the extent known;~~
- ~~e. A detailed and complete financial statement of the applicant, prepared by a certified public accountant, or as certified by a duly authorized financial officer of the Franchisee, for the five (5) fiscal years immediately preceding the date of the application hereunder, or a letter or other acceptable evidence in writing from a reasonable lending institution or funding source, addressed to both the applicant and the City, setting forth a clear statement of its intent as a lending institution or funding source to provide whatever capital shall be required by the applicant to construct and operate the proposed System in the City. If the corporate or business entity organization of the applicant has not been in existence for a full five (5) years, applicant shall submit a financial statement prepared by a certified public accountant or as certified by a duly authorized financial officer for the period of its existence.~~
- ~~f. A description of the applicant=s prior experience in Cable System ownership, construction and operation, and identification of communities in which the applicant or any person controlling the applicant or having more than a ten percent (10%) ownership interest in applicant has, or has had, a cable franchise or license or any interest therein;~~
- ~~g. A description of the services and physical facilities proposed, including channel capacity, performance characteristics, headed, and access facilities; upon request, the applicant shall make information on technical design available for inspection;~~
- ~~h. A description of the construction of the proposed System, including an estimate of plant mileage and its location, a detailed strand and trench map, the proposed construction schedule, a description, where appropriate, of how services will be converted from existing facilities to new facilities, and information on the availability of space in conduits~~

including, where appropriate, an estimate of the cost of any necessary rearrangement of existing facilities;

- i. ~~For informational purposes, the proposed rate structure, including projected charges for each service tier, installation, converters, and other equipment or services, and the applicant's ownership interest in any proposed program services to be delivered over the Cable System;~~
- j. ~~A demonstration of how the applicant's proposal will reasonably meet the future cable-related needs and interests of the community, including a description of how the proposal will meet the needs described in any recent community needs assessment conducted by or for the City and any surveys or other research conducted by Franchisee.~~
- k. ~~A description of the applicant's proposal to provide access channels, facilities, equipment, personnel and financing in support of the City's education and government related activities and a comparison to provisions in other communities within the State of Florida, served by Franchisee, its parent, affiliate or subsidiaries in the State of Florida.~~
- l. ~~A description of any cable and non-cable telecommunications services offered or proposed to be offered by the applicant or its parent, affiliates or subsidiaries in the State of Florida and Franchisee's plan with respect to the availability of such services to Subscribers in the City;~~
- m. ~~For applications where the applicant or its parent is not a publicly traded company, pro-forma financial projections for the first five (5) years of the franchise term, including a statement of projected income, the source of funding and applicable guarantees, and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules;~~
- n. ~~If an applicant proposes to provide cable service to an area already served by an existing Cable Franchisee, the identification of the area where the overbuild would occur, the potential Subscriber density in the area which would encompass the overbuild, and the ability of the streets to accommodate an additional System;~~
- o. ~~If requested, a proposal to provide an I-Net to the City.~~
- p. ~~A description of the applicant's proposal to transmit the City's access channels to neighboring communities or municipalities, upon request of such community or municipality which receives services from the City and a proposal to transmit all Lee County government educational programming to all subscribers within the City.~~
- q. ~~Any other information as may be reasonably necessary to demonstrate compliance with the requirements of this Ordinance and information that the City may request of the~~

applicant that is relevant to the City's consideration of the application; and

~~f. An affidavit or declaration of an authorized officer of the applicant or Franchisee or legal entity in control of the corporation or a partner in control of the Cable Systems assets or an officer of the ultimate parent entity corporation or partnership of the applicant certifying the truth and accuracy of the information in the application and certifying that the proposal meets all federal and state law requirements.~~

~~4. An application for modification including, but not limited to expansion of service area, of a Franchise Agreement shall include, at minimum, the following information:~~

- ~~a. The specific modification requested;~~
- ~~b. The justification for the requested modification, including the impact of the requested modification on Subscribers and others, and the financial impact on the applicant if the modification is approved or disapproved;~~
- ~~c. A statement whether the modification is sought pursuant to Section 625 of the Communications Act, 47 U.S.C. '545, and, if so, a demonstration that the requested modification meets the standards set forth in 47 U.S.C. '545.~~
- ~~d. Any other reasonable information necessary for the City to make an informed determination on the application for modification; and~~
- ~~e. An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, including those types of applications as defined in Section II hereof, and certifying that the application is consistent with all federal and state law requirements.~~

~~5. An application for renewal of a franchise shall comply with the requirements of Section XXIV hereof.~~

~~6. An application for approval of a transfer of a franchise shall comply with the requirements of Section XXV hereof.~~

~~E. Application Fee.~~

~~1. To be acceptable for filing, an application shall be accompanied by a non-refundable filing fee in the following amount, as applicable:~~

- ~~a. For a new or initial franchise: \$15,000.00~~
- ~~b. For renewal of a franchise: \$10,000.00~~
- ~~c. For a transfer of a franchise: \$ 5,000.00~~
- ~~d. For modification of a franchise Agreement pursuant to 47 U.S.C. '545: \$ 2,500.00~~

~~The purpose of the filing fee is to defray a portion of the City's cost in processing an application. Such fee shall be credited against amounts due under Section (E)(2) below.~~

~~2. Franchisee shall reimburse the City for all costs and expenses incurred by the City in considering and processing the application, including but not limited to consulting and legal costs, less the~~

~~amount of the filing fee set pursuant to Section (E)(1) above. Within five (5) calendar days prior to the planned date of the resolution approving or denying the Franchise Agreement or renewal or modification or transfer thereof by the City Council, the City shall advise the Franchisee of the amount of the processing fee and its method of calculation. If the processing fee is not paid to the City on the date of the City Council meeting scheduled to consider the grant, renewal, modification or transfer of the Franchise Agreement, any approval may be postponed or denied.~~

F. ~~Public Hearing on Applications.~~

1. ~~Upon receipt of a completed application for an initial grant or modification of a franchise, including modifications, submitted under the provisions of this section, and within one hundred and twenty (120) days or such extended period of time as the City Council may approve upon joint request by the applicant and the City Manager, the City Manager shall review the application for sufficiency and compliance with Sections A-E above. If the City Manager finds that the application is incomplete, he shall return it to the applicant with a letter describing any and all insufficiencies found in the application. The applicant may then reapply for a franchise upon correcting the deficiencies noted by the City Manager. Upon receipt of a complete application, the City Manager shall complete review of the application within a one hundred and twenty (120) day period. Upon review and after a final finding that the application is complete and in compliance with this section, the City Manager shall forward said application to the City Council for publication of a notice of public hearing in accordance with this Ordinance.~~
2. ~~Upon receipt of an application for an initial franchise transfer, modification or renewal and after review by the City Manager, the City Clerk shall publish in a paper of general circulation within the City a notice of consideration of a cable franchise. Said notice shall name the applicant, describe the proposed service area, invite objections to the establishment of a Cable System in the proposed service area from existing Systems and the general public, and set a time and date certain, at least fourteen (14) days prior to the scheduled meeting date, for the consideration of the application at public hearing.~~
3. ~~The initial application and all subsequent applications and all materials related thereto received prior to the public hearing shall be a matter of public record.~~

G. ~~Issuance of Franchise~~

1. ~~The City Council may issue one or more franchises from the applications filed and considered at a public hearing. The City Council shall, prior to an issuance of a franchise, consider the information and criteria required by this Ordinance, and any other information it reasonably deems appropriate in making a determination to issue a franchise. During the public hearing the City Council shall also consider, investigate, receive input, and make findings regarding the following:~~
 - a. ~~The economic impact upon private property within the franchise area;~~
 - b. ~~The public need for such a franchise, if any;~~
 - c. ~~The capacity of public rights-of-way to accommodate the Cable System;~~
 - d. ~~The present and future use of the City rights-of-way to be used by the Cable System;~~

- e. ~~The potential for disruption of future service by competing companies based on the number of potential subscribers in the proposed service area;~~
- f. ~~The potential disruption to existing users of the City's right-of-way to be used by the Cable System and the resultant inconvenience, which may occur;~~
- g. ~~The financial ability of the franchise applicant to perform and to make the necessary investment to erect, operate and maintain the Cable System;~~
- h. ~~The experience of the applicant in the erection, operation and maintenance of a Cable System including compliance with local government rules, regulations and orders;~~
- i. ~~The location and type of permanent facilities proposed to be constructed for the Cable System;~~
- j. ~~The technical quality and completeness of the proposed plan for operation of the Cable System, indirectly but not limited to products and services to be made available and the level of customer service standards to be maintained;~~
- k. ~~The likelihood that the applicant's proposal will satisfy the future cable related needs and interests of the community;~~
- l. ~~The requisite legal, character, financial, technical and other qualifications necessary to construct, own and operate a Cable Television System; and~~

2. ~~In considering the desirability of an additional or expanded cable franchise, City Council shall balance the desirability to promote competition in the Cable Television industry, so as to promote a diversity of information and the provision of high quality cable services against the use and unreasonable disruption of private and public property by multiple cable operations. Furthermore, if the City grants a franchise to an additional cable operator or expands a current operator's franchise, the City may impose such conditions, as it deems necessary and proper at the time of the grant consistent with applicable federal and state law.~~

3. ~~Pursuant to terms and conditions set forth in a franchise agreement, City Council has the authority to retain an expert or consultant to conduct a study at any time, but no more frequently than annually, in order to assess the performance of the incumbent's operations. Any resulting fees or expenses of experts or consultants incurred to conduct a performance evaluation, as a result of noncompliance with the Ordinance or Franchise Agreement are to be borne by the applicant if noncompliance is established following release of the report and a public hearing thereon. However, where the applicant is a current Franchisee, the applicant shall be required to pay said costs and fees only in the event of non-compliance with this Ordinance or the Franchise Agreement.~~

4. ~~The City Council shall vote whether to grant or deny any application and thereafter notify in writing all applicants of its decision within thirty (30) days from the date of said vote. Unless a Franchise Agreement states otherwise, all of the statements and declarations contained in the application shall be incorporated as conditions and material representations of any franchise that is issued by the City, and the breach of any such conditions and representations shall constitute cause for commencement of termination proceedings of the franchise by the City.~~

H. ~~Terms of Franchise.~~

~~No franchise shall be issued for a term longer than fifteen (15) years, although provisions for extensions may be agreed upon. All current Cable Television Franchise Agreements lawfully enforceable on the effective date hereof shall remain in effect until their respective date of expiration subject to the lawfully applicable provisions of this Ordinance. However, any Franchisee holding a current Franchise under any previous Ordinance or Franchise Agreement granted by Lee County which had expired and was subsequently renewed by the County after the date of the City's~~

~~incorporation shall apply to the City for a grant of a franchise from the City, pursuant to the terms of this Ordinance which shall require adequate notice to the public and opportunity to comment. Any cable operator operating a Cable System within the City as of the effective date hereof, pursuant to a franchise granted by the County, shall file with the City an application for a franchise consistent with this Ordinance no later than sixty (60) days after the effective date hereof. Failure to obtain a franchise from the City within twelve (12) months of the effective date hereof, unless such time period is extended by the City Manager shall be considered a violation of this Ordinance and subject the operator to liquidated damages in the form of a fine in the amount of Two Thousand Dollars (\$2,000) per day for each day such violation continues.~~

~~I. Effective Date of Franchise.~~

- ~~1. Any franchise granted pursuant to the provisions of this Ordinance shall become effective as provided herein.~~
- ~~2. Within thirty (30) calendar days after the passage of the Resolution awarding of a franchise, or within such extended period of time as the City Council in its discretion may authorize, the Franchisee shall file with the City its written acceptance of the franchise, together with the insurance policies and bonding documents required by Sections X and XI hereof, any payments due to the City and its agreement to be bound by and to comply with all requirements pursuant to the provisions of this Ordinance and the franchise. Such acceptance and agreement shall be acknowledged by the Franchisee before a notary public, and shall in form and content be satisfactory to and approved by the City.~~

~~J. Business Authorization.~~

~~Any franchise granted pursuant to the provisions of this Ordinance shall authorize and permit the Franchisee to engage in the business of operating Cable System in the portion of the City for which application was made and described therein, and for that purpose and that purpose only, subject to the approval of City staff, to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any public rights of way or street, such poles, wires, cable, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to the Cable System; and in addition, subject to the approval of the City Manager or his designee, pursuant to generally applicable procedures and requirements, to use, operate, and provide similar facilities or properties rented or leased from other persons, including but not limited to any public utility or other Franchisee furnished or permitted to do business in the City.~~

~~K. Changes to Franchise Terms and Conditions~~

~~No changes in the terms of any franchise may be made without the prior written approval of the City Council and Franchisee, unless otherwise expressly provided by law or the Franchise Agreement.~~

~~L. Franchise Fee.~~

- ~~1. As of the effective date hereof, the City recognizes that Florida State Law, Fla. Stat. 202.24, preempts Section L(2)(3)(4)(5) hereof. However, if at any time applicable state law is amended or repealed so as to allow the City to collect franchise fees, Section L(2)(3)(4)(5) hereof will become effective.~~
- ~~2. A Franchisee, as compensation for the privilege granted under a franchise for the use of the City's streets to construct and operate a Cable System, shall pay to the City a franchise fee in an amount up to a maximum of either:~~

- a. ~~Five percent (5%) of the Franchisee's Gross Revenues derived from the operation of its Cable System within the City to provide cable services during the term of its franchise; or~~
 - b. ~~In the event the Communications Act or other applicable law is amended to permit the City to assess a franchise fee of a greater amount or on a broader revenue basis than that specified in subsection (2(a), above, the Franchisee agrees to pay to the City the new amount after a public hearing in which the public and Franchisee are given an opportunity to comment on the impact of the higher fee. In no event shall a Franchisee pay a Franchise fee greater than the maximum permitted by applicable federal or state law.~~
3. ~~Franchise fee payments are due on a quarterly basis. Payments shall be payable to the City within forty five (45) business days after the close of each calendar quarter. Payments due hereunder shall be accompanied by a quarterly gross revenues audit report signed by a certified public accountant or a duly authorized officer of the franchisee in a form acceptable to the City. All amounts which are not paid when due and payable hereunder shall bear interest at the legal rate, as defined in Fla. Stat. §687.01, until paid and shall be subjected to a late fee in the amount of One Hundred (\$100.00) Dollars per day or part thereof that such violations continues.~~
 4. ~~Notwithstanding the requirements of subsection (L)(2) above for delivery of an audit report by Franchisee, the City shall have the right and authority to inspect the Franchisee's revenue records under the franchise and the right of audit and recomputation of any and all amounts payable under this section. All costs associated with any such audit shall be borne by Franchisee when said audit indicates an underpayment by the Franchisee by more than three percent (3%) of the amount due.~~
 5. ~~No acceptance of a payment of a franchise fee shall be construed as a release or as an accord and satisfaction of any claim the City may have for further sums payable under this Ordinance or for the performance of any other obligation hereunder. Furthermore, unless prohibited by applicable law, the franchise fee to be paid to the City pursuant to this Ordinance shall not be deemed to be in the nature of a tax and shall be an addition to other taxes, fees or charges which a Franchisee may be required to pay to the City or to any state or federal agency.~~

M. ~~Franchise Restrictions~~

1. ~~Any franchise granted under this Ordinance shall be non-exclusive.~~
2. ~~No privilege or exemption shall be granted or conferred by any franchise granted under this Ordinance broader than those prescribed herein, unless expressly mandated by applicable state or federal law.~~
3. ~~Any privilege claimed under any such franchise by a Franchisee in any street or other public property shall be subordinate to any prior lawful occupancy of the streets or other public property.~~

SECTION IV - RIGHTS IN ORDINANCE

- A. ~~The right is hereby reserved to the City to adopt, in addition to the provisions contained herein and in existing applicable agreements, such additional regulations as it shall find necessary in the exercise of its lawful police power; provided that such regulations, by Ordinance or otherwise, shall be reasonable and not in conflict with the terms and conditions of the franchise and the rights herein granted.~~
- B. ~~The City, at its own expense, shall have the right during the term of any franchise granted under this Ordinance to install and maintain free of charge upon the poles of the Franchisee all wire and pole fixtures necessary for a police alarm System, or traffic control System on the conditions that such wire and pole fixtures do not interfere with the present and future cable operation of the Franchisee.~~
- C. ~~Upon reasonable prior notice, the City shall have the right to inspect at the Franchisee's business office the maps, plans, and other like materials of the franchise at any time during normal business hours where such maps, plans, and other materials are related to this Ordinance or any franchise granted by the City.~~
- D. ~~Subject to applicable law, except as may be specifically provided by this Ordinance or under the terms of a Franchise Agreement and subject to the Communications Act, the failure of the City, upon one or more occasions, to exercise a right or to require compliance or performance under this Ordinance or a Franchise Agreement shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance.~~

SECTION V - INITIAL PERFORMANCE GUARANTEE

- A. ~~Within twenty four (24) months from the date of issuance of an initial franchise or the extension of a service area, the Franchisee shall accomplish construction of the proposed Cable System within said service area where the density is at least twenty five 25 homes per cable mile, so as to make available all services to all dwellings and business within the service area. Such period may be extended by the City Council for good cause shown. Notwithstanding anything to the contrary, a Franchisee shall be neither required to overbuild nor prohibited from overbuilding the facilities of another cable operator to comply with the requirements of this section.~~
- B. ~~A Franchisee shall, upon request at all times during the term of a franchise provide to the City strand and trench maps of the Cable System. Said maps shall be provided in a format to be reasonably approved by the City staff.~~

SECTION VI - RIGHT TO USE STREETS NOT WARRANTED

~~It is understood that there may be from time to time within the City various streets which the City does not have the unqualified right to authorize Franchisee to use, because of reservations in favor of previous dedications or because of other legal impediments; therefore, in granting a franchise under this Ordinance, the City does not warrant or represent as to any particular street or portion of a street that it has the right to authorize Franchisee to install or maintain portions of its System therein, and in each case the burden and responsibility for making such determination in advance of the installation shall be upon the Franchisee.~~

SECTION VII - OTHER AGREEMENTS, PERMIT AND EASEMENT REQUIREMENTS

~~The City shall not be required to assume any responsibility for the securing of any rights of way, easements, or other rights which may be required by the Franchisee for the installation of a Cable System, nor shall the City be responsible for securing any permits or agreements with other persons or utilities.~~

SECTION VIII - NO PROPERTY RIGHTS CONVEYED

~~Nothing in this Ordinance or in a franchise shall grant to a Franchisee any right of property in City owned property or public rights of way as described in Section VI of this Ordinance, nor shall the City be compelled to maintain any of its property or said public rights of way any longer than, or in any fashion other than in the City's judgment, as its own business or needs may require. In addition, the franchise holder shall~~

not be entitled to any compensation for damages from the City as a result of having to remove or relocate its property, lines and cables from said public property or public rights-of-way in the event the City determines that a necessity exists for such removal or relocation.

SECTION IX -- LIABILITY, INDEMNIFICATION

A. Liability in case of emergency:

if, at any time in case of fire, disaster, or other emergency, it shall appear necessary in the judgment of the City to cut, move or otherwise interfere with any of the wires, cables, amplifiers, appliances or appurtenances thereto of the Franchisee, the City shall not be liable for any injury or damage to such property and equipment of the Franchisee as a result of such cutting, moving or interference. However, City agrees that it will make a good faith effort to contact Franchisee, to allow Franchisee to participate on-site in any emergency work prior to cutting, moving or otherwise interfering with any of Franchisees' facilities.

B. Indemnification:

1. ~~By acceptance of the franchise granted under this Ordinance, Franchisee agrees to indemnify, defend and hold harmless the City, its officers, boards, City Council members, agents and employees from any and all actions, claims, suits, penalties and judgments for damages at law or equity of any nature whatsoever arising out of or through:~~
 - a. ~~The acts or omissions of the Franchisee, its servants, employees and agents; and/or~~
 - b. ~~The conduct of its business as a Cable Television communications service. However, Franchisee's obligation pursuant to this Section shall not extend to claims arising from the negligence or willful misconduct of the City, its employees, officers, boards, City Council members and agents.~~
2. ~~The Franchisee shall defend in the name of the City, and pay all expenses incurred by the City in defending itself, with regard to all damages and penalties the City may legally be required to pay as a result of the franchise granted hereunder, excluding education and government channels required by a Franchise granted pursuant to this Ordinance, under the exclusive control of the City. Damages and penalties shall include but not be limited to damages arising out of copyright infringement exclusive of programming on the EG channels distributed by the local government and local education authority and all other damages arising out of the construction, installation, operation and maintenance of its cable communications System, whether or not any such act or omission is authorized, allowed or prohibited by this Ordinance or the franchise granted hereunder. Expenses shall include all reasonable actual expenses and costs including, but not limited to attorney fees and the reasonable value of any service rendered by the office of the City Attorney. In any action arising under this Section, Franchisee shall have the right to defend the action and choose the attorney or law firm to defend the action with the City Attorney having the right to approve the choice of counsel. Such approval shall be withheld only for good cause shown.~~

SECTION X -- INSURANCE

A. Insurance Coverage Required:

1. ~~Within thirty (30) days after the Council resolution approving an initial grant or as of the date of the effective date of the Council's approval of the renewal or transfer of a franchise, a Franchisee shall provide proof of general liability insurance insuring against claims for liability and damages. The Franchisee shall maintain said insurance through out the term of the franchise and said insurance shall include, at a minimum, the following types of insurance coverage in amounts not less than shown below:~~

- a. ~~Workers= Compensation: Coverage to apply to all employees for statutory limits in compliance with the applicable state and federal laws. The policy must include employers' liability with a minimum limit of Five Hundred Thousand (\$500,000.00) Dollars each accident.~~
 - b. ~~Comprehensive General Liability: Shall have minimum limits of One Million (\$1,000,000.00) Dollars per occurrence combined single limit for bodily injury liability and property damage liability. This shall include premises and/or operations, independent contractors and subcontractors, and/or completed operations, broad form property damage, Excavation, Collapse and Underground Insurance (XCU) coverage, and a contractual liability endorsement.~~
 - c. ~~Business Auto Policy: Shall have minimum limits of One Million (\$1,000,000.00) Dollars per occurrence combined single limit for bodily injury liability and property damage liability. This shall include owned vehicles, hired and non-owned vehicles and employee non-ownership.~~
2. ~~The certificate of insurance obtained by the Franchisee in compliance with this section shall be on file with and approved by the City Manager throughout the term of the franchisee.~~
 3. ~~From time to time as circumstances reasonably warrant, the City and a Franchisee may meet to review the insurance coverage and policy requirements and to discuss the need to change the amounts to reflect changing liability exposure and limits in light of circumstances existing at the time.~~
 4. ~~Nothing herein is intended as a limitation to the extent of any legal liability of the Franchisee.~~

B. ~~Insurance Policy Provisions~~

1. ~~Resident company and agent: All insurance policies and bonds as are required of a Franchisee in this Ordinance shall be written by a company or companies authorized and qualified to do business in the State of Florida, and have a minimum rating of "A-1" in Best's Rating Guide.~~
2. ~~Certificates and renewals: Certificates and renewals of all coverage required shall be promptly filed by the Franchisee with the City Manager. Each policy shall require notice and the Franchisee shall notify the City within thirty (30) business days of any cancellation or modification of any insurance coverage required by this Ordinance, which notice shall be sent by mail or hand delivery so as to provide a signed receipt to the Manager. Renewal certificates shall be filed with the Manager no less than thirty (30) business days prior to the policy expiration date.~~
3. ~~Additional insured: The City of Bonita Springs shall be included as an additional insured on the comprehensive general liability.~~
4. ~~Premium payment: Companies issuing the insurance policies shall have no recourse against the City for payment of any premiums or assessments, and same shall be the sole responsibility of the Franchisee.~~
5. ~~No franchise granted under this Ordinance shall be effective unless or until each of the foregoing policies= certificates of insurance as required in this section have been delivered to the City and approved by the Risk Manager.~~
6. ~~Neither the provisions of this section, nor the acceptance of any bonds by the City pursuant to this Ordinance, nor any damages received by the City thereunder, shall~~

~~be construed to excuse performance by a Franchisee or limit the liability of a Franchisee for damages to the full amount of the bonds or otherwise.~~

SECTION XI - BONDING REQUIREMENTS

~~A. Construction Bond.~~

- ~~1. The Franchisee shall, within thirty (30) business days after the effective date of a franchise granted under this Ordinance, post with the City a construction bond or letter of credit as provided in a Franchise Agreement. Said bond or letter of credit may be returned at the end of twelve (12) months after the System has been completed and approved by the City provided that the Franchisee has complied with all terms and conditions of the Franchise Agreement and all provisions of this Ordinance as well as the rules and regulations herein required and permitted.~~
- ~~2. If the Franchisee shall fail to perform the obligations heretofore set out in this section, the Franchisee shall forfeit to the City the hereinabove referenced construction bond or letter of credit in the amount of all expenses incurred by the City to complete the construction, repair damages and to pay all costs and expenses related thereto caused by construction which a Franchisee has refused or failed to repair following reasonable prior written notice.~~
- ~~3. Said construction bond or letter of credit shall not be in lieu of any other guarantee or indemnification required by this Ordinance and shall be in addition to the performance bond or irrevocable letter of credit required in Section XI (B).~~

~~B. Permanent performance and payment bond.~~

- ~~1. The Franchisee shall within thirty (30) days of the effective date of franchise granted under this Ordinance or within thirty (30) days of the granting of a renewal or the transfer of a franchise existing prior to the effective date of this Ordinance, furnish to the City, in such form and amount as shall be agreed upon in a Franchise Agreement, a cash deposit, performance bond or an irrevocable letter of credit issued by a Florida bank or a federally insured lending institution in the amount of no less than Fifty Thousand (\$50,000.00) Dollars. The deposit performance bond or letter of credit shall be used to guarantee the compliance with performance requirements and payment of all sums which may become due to the City under this Ordinance and/or any Franchise Agreement entered into by the City and Franchisee. The deposit, performance bond or letter of credit shall be maintained in the full amount specified herein throughout the term of the franchise and for one year after the franchise expires or is terminated, without reduction or allowances for any amounts which are withdrawn or paid.~~
- ~~2. The rights reserved to the City with respect to the bond or the letter of credit are in addition to all other rights of the City.~~

SECTION XII - FCC LICENSES

~~Failure of the Franchisee to obtain necessary FCC permits and licenses shall cause the franchise to become subject to revocation, consistent with the procedures set forth herein, unless the Franchisee petitions and the City Council grants a request for an extension of time for good cause shown.~~

SECTION XIII - COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

~~The Franchisee shall at all times during the life of this Ordinance be subject to all lawful exercise of the police power by the City and to such lawful rules and regulations by the City as the City shall hereafter provide. The Franchisee shall comply with all laws, statutes, codes, Ordinances, rules, or regulations applicable to its business, subject to Franchisees' lawful rights in its franchise.~~

SECTION XIV – MINIMUM FACILITIES AND SERVICES

- ~~A. At such time as set forth in a franchise Agreement, the City may request a meeting with the Franchisee to review the status of the Cable System in relation to the State of the Art. Franchisee may agree to make such technically and commercially feasible improvements to its System as may be necessary to bring the System to the State of the Art, as defined in Section II (A)(30), and in exchange, the City Council may grant an extension of the franchise term.~~
- ~~1. Any Cable System that commences construction, including but not limited to initial construction, rebuild, upgrade, or reconstruction or is granted a franchise or renewal after the effective date of this Ordinance shall have a minimum capacity of at least 750 MHz capacity or the equivalent thereto for immediate use. A Franchise Agreement may provide for a larger minimum capacity requirement.~~
 - ~~2. The City and a Franchisee shall agree in a Franchise Agreement that a Franchisee provide access channels, facilities and other capital support for education and/or governmental use as set forth in a Franchise Agreement.~~
 - ~~3. Upon request of the City Council, cable casting of Council meetings live to all Subscribers located within the City shall be carried by the Franchisee on a City government access channel.~~
 - ~~4. A Franchisee shall make available to all subscribers in the City, all County educational and government programming including, but not limited to County Council meetings.~~
 - ~~5. A Cable System shall provide leased access channels as required by Federal law.~~
 - ~~6. A Franchisee shall:
 - ~~a. Upon request, provide at least one Cable Television service outlet to each public and charter elementary and secondary school within its franchise area that is within 200 feet of its Cable System, and shall provide basic cable service and the cable programming services tier ("CPST") or expanded basic to those installations at no cost to the City or school involved, and shall charge no more than its time and material costs for the installation of any additional cable service outlets or for line extensions beyond 200 feet to such facilities.~~
 - ~~b. Upon request, provide at least one standard installation for basic Cable Television service to each and every City government building within its franchise area that is within 200 feet of its Cable System and shall provide basic cable service, the cable programming services tier ("CPST") or expanded basic to those installations at no cost to the City and shall charge no more than its time and material costs for the installation of any additional basic cable service outlets or for line extensions beyond 200 feet to such facilities.~~~~
 - ~~7. A Franchisee shall design its System to allow the City or other appropriate government body, to interrupt cable service in an emergency to deliver necessary information to Subscribers, at minimum consistent with FCC regulations.~~
 - ~~8. A Franchisee shall make available to its Subscribers information regarding equipment capable of decoding closed circuit captioning information for the hearing impaired.~~

- ~~9. Standard installation shall consist of a drop, not exceeding 200 feet from the cable plant to the nearest part of a Subscriber's residence; or, if a commercial Subscriber, the nearest part of Subscriber's place of business.~~
- ~~10. Any and all rights which the City may have, now or in the future as permitted by Federal law, to regulate a Franchisee's provision of or placement of facilities used for the provisions of cable internet services are hereby reserved by the City and may be exercised at any time throughout the term of the Franchise, unless otherwise prohibited by applicable law.~~
- ~~B. A Franchisee shall make cable service available to every dwelling within the Franchise Area as defined in a Franchise Agreement unless prohibited by a private property owner from doing so; provided that such dwelling is in an area of density of at least twenty-five 25 dwelling units per required cable mile. Density per cable mile shall be computed by dividing the number of dwelling units in the area by the length, in miles or fractions thereof, of the total amount of aerial or underground cable necessary to make service available to the dwelling units in such area in accordance with the Franchisee's System design parameters.~~

SECTION XV - TECHNICAL STANDARDS

- ~~A. Any Cable System within the City shall at minimum meet the technical standards of the FCC or other applicable federal or state technical standards, including any such standards as hereinafter may be amended or adopted. All television signals transmitted on a Cable System shall include any closed circuit captioning information for the hearing impaired received by the Franchisee's Cable System to the extent required by law as well as non-English language translation. Antennas, supporting structures, and outside plant used in the System shall be designed to comply with all generally accepted industry practices and standards and with all federal, state, City, and/or utility laws, Ordinances, rules and regulations.~~
- ~~B. All construction, installation and maintenance shall comply with the National Electrical Safety Code, the National Electric Code, the Florida Building Code and all other applicable building codes.~~
- ~~C. As required by FCC rules, the Franchisee shall perform at its expense proof of performance tests designed to demonstrate compliance with FCC requirements. The Franchisee shall provide, upon written request, the proof of performance test results to the City within thirty (30) days after completion. At any time during the term of a Franchise, the City shall, upon reasonable notice, have the right to inspect the Cable System facilities in the streets, when feasible in the presence of Franchisee's representative during and after their construction to ensure compliance with the requirements of the Franchise Agreement, this Ordinance, and FCC standards, in a manner that causes a minimum of interference with a Franchisee's operation of the Cable System.~~
- ~~D. The Franchisee shall notify the City within ten (10) days of Franchisee's failure of proof of performance or other test required in subsection C above.~~
- ~~E. Inspection. Upon request, the Franchisee shall furnish the City Manager with a written report of the results of Franchisees' annual System proof of performance tests, as required by the FCC. The City may require additional tests as proof of performance should it have reasonable cause to believe that a Franchisee's System is not providing quality service transmission to its Subscribers. Where the reports demonstrate noncompliance, Franchisee shall pay all reasonable, actual out-of-pocket costs incurred by the City for any technical assistance deemed necessary by the City for obtaining independent verification of technical compliance with all standards.~~
- ~~F. A Franchisee shall not design, install or operate its facilities in a manner that will interfere with the signals of any broadcast station, the pre-existing facilities of any public utility, the~~

~~preexisting Cable System of another Franchisee, or individual or master antennas used for receiving television or other broadcast signals.~~

- ~~G. Franchisee shall provide access channels, facilities, and financial support, in accordance with the terms of a Franchise.~~

SECTION XVI – ACCESS CHANNELS AND FACILITIES

- ~~A. Applications for an initial grant or renewal of a franchise shall include proposals for the provision of education and government access channels and equipment, facilities and support relating to such channels sufficient to meet community needs and interests in light of the costs thereof. Any Franchisee granted an initial or renewal Franchise on or after the effective date hereof, shall, at minimum, provide the City for its exclusive use with one (1) and upon request by the City, two (2) activated education/government access channels for educational and/or governmental use, as determined by the City. The City may request and the Franchisee shall provide an additional channel, upon the first channel being programmed with non-repetitive programming, exclusive of character generated material, Monday through Friday for six (6) hours per day between the hours of 8:00 a.m. and 10:00 p.m. for six (6) weeks. A Franchisee shall have ninety (90) days to make the second channel available. If usage of the first channel drops below the aforesated threshold for a period of six (6) weeks, a Franchisee shall have the right to reclaim the second channel upon ninety (90) days notice. However, in no event shall the City be denied the first channel. In addition, an applicant shall include its proposal for carriage of all Lee County government and education programming to Subscribers in the City. In no event shall a Franchisee be required to provide more than three (3) analog channels or the digital equivalent thereof for City government and education programming or such larger number equal to that provided by the Franchisee to Lee County or any community located therein.~~
- ~~B. During the Term of the Franchise, if Franchisee decides to convert all channels on the Cable System to digital channels and, thus, no longer provides analog channels, Franchisee shall give the City at least one hundred twenty (120) days notice before implementing such change. On and after the date of such change, the City shall have the right, upon its written request, to use digital channel capacity on the "basic tier" equivalent to the "spectrum capacity" then currently occupied by the analog Education/Government Access Channel(s) at the time such change is made; provided the City meets the usage triggers set forth above in Section XVI.A. above for each digital channel of Access programming. For purposes of this Section, "Spectrum capacity" shall mean 6 MHz for each analog channel. In addition, Franchisee shall provide to the City the equipment necessary for analog to digital conversion, at no cost to the City.~~
- ~~C. At minimum, said applications shall include proposals to provide the following based on community needs and interests in light of the costs thereof:~~
- ~~1. The live cable casting of all City Council meetings and certain other events.~~
 - ~~2. Studio facilities with adequate space, lighting, audio and video equipment and personnel necessary for on-site videotaping, recording and transmission over the Cable System of educational and governmental programs.~~
 - ~~3. Equipment, facilities and capital support in order to facilitate the City's operation of educational and government access channels.~~
 - ~~4. Trained personnel to assist the City in production of live and video-taped municipal programs at locations, including but not limited to, the City's studio, or Franchisee's studio as the case may be, or such location as may be designated by the City.~~
- ~~D. A Franchisee shall provide to the City access to the System for transmission of emergency messages and alerts in compliance with FCC rules and state law, and shall provide for~~

character generated "crawl" information to be superimposed on all video channels, as permitted pursuant to applicable law for the hearing impaired. In the case of any emergency or disaster, as determined by the City, a Franchisee shall, upon request of the City, make the override capacity available to the City without charge for use during emergency or disaster period.

E. Applications for an initial grant, renewal or transfer of a franchise shall include a proposal for the interconnection of Franchisee's System to any or all other franchised Cable Systems operating within the City or in areas adjacent to the City for the purpose of transmitting educational and government programming provided that interconnection is technically and economically feasible and Franchisee and any other affected operator agree upon reasonable interconnection arrangements, including an allocation of the costs of interconnection between Franchisee and such other operator, that is reasonable in light of the relative benefits and burdens, including consideration of support provided for educational and governmental access purposes.

F. Consistent with Section 611(b) and (e) of the Communications Act any Franchisee granted an initial franchise or renewal after the effective date hereof may be required to provide to the City, as set forth in a Franchise Agreement, an Institutional Network (I-NET) or equivalent thereto providing bi-directional transmission of data among all government facilities located within the franchise area. At such time as more than one franchise is granted for any specific area within the City, the City shall allow the financial obligation of the cost of the I-NET to be satisfied on a shared basis with obligations imposed in proportion to the number of Subscribers served by each Franchisee.

G. A Franchise Agreement may provide for a financial grant in lieu of some or all of the facilities, equipment, and services provided pursuant to Section XVI hereof. However any such grant shall be considered a capital grant for use in support of education and government cable and City Council needs pursuant to Section 622(g)(2)(c) of the Communications Act and shall not be included in or otherwise credited against any franchise fee or tax.

SECTION XVII - CUSTOMER SERVICE REQUIREMENTS

A. A Franchisee shall at a minimum maintain all parts of its System in good condition and in accordance with FCC standards or such more stringent standards provided in this Ordinance or a Franchise Agreement. Sufficient employees shall be retained to provide safe, adequate and prompt service for all of its customers and facilities, as set forth in this Ordinance and a Franchise Agreement. The customer service requirements set forth herein are applicable to all services subject to the Ordinance.

B. A Franchisee shall maintain at least one (1) conveniently located business office and service center within the City limits, to which Subscribers may telephone without incurring added message units or toll charges. This business office shall be open at minimum during normal business hours, Monday through Friday, and some weekend and/or evening hours. Further, Franchisee shall locate, construct, design, staff, operate and maintain said office(s) so as to provide all Subscribers, including but not limited to those Subscribers who may be elderly, disabled or otherwise impaired, with access to its office, in accordance with applicable law. The office shall make available sufficient covered waiting areas and adequate seating capacity in an air conditioned space. Such office must have adequate counter personnel to keep wait time to a reasonable length. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Two Hundred Fifty (\$250.00) Dollars, per day or part thereof that the violation continues.

C. Franchisee shall maintain a listed local, toll free telephone number under the name by which Franchisee is doing business in the City, and employ a sufficient number of telephone lines, personnel and answering equipment or service to allow reasonable access by Subscribers and members of the public to contact the Franchisee on a full time basis, twenty four (24) hours per day, seven (7) days per week including holidays. Knowledgeable, qualified Franchisee representatives shall be available to respond to customer telephone inquiries, at

a minimum, fifty-five (55) hours per week, including from 9:00 a.m. to 5:00 p.m., Monday through Friday, plus a minimum of eight (8) hours in the course of Saturday and Sunday. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Two Hundred (\$200.00), per day or part thereof that the violation continues.

- D. ~~Franchisee shall answer all customer service and repair telephone calls made under normal operating conditions within thirty (30) seconds, including wait time and within an additional thirty (30) seconds to transfer the call. Customers shall receive a busy signal less than three percent (3%) of the time. These standards shall be met no less than ninety percent (90%) of the time under normal operating conditions, measured on a quarterly basis. However, when performance falls below ninety percent (90%) for the quarter, each and every day that performance is below ninety percent (90%) shall constitute a separate violation and fines shall accrue for each day starting with the first day of said violation. Franchisee shall maintain performance data necessary to confirm compliance with the standards set forth herein, and such records shall be made available for review, inspection and audit by the City or its designee pursuant to Section XXII of this Ordinance. Such records shall be maintained at the franchise level, for a period of no less than three (3) years. Franchisee's material failure to comply with this subsection may result in a fine in the amount Two Hundred Fifty (\$250.00) Dollars per violation, per day or part thereof that the violation continues.~~
- E. ~~A Franchisee shall employ and maintain sufficient qualified personnel and/or equipment to be available (1) to accept payments during normal business hours; (2) to exchange or accept converters or other equipment during normal business hours; (3) to receive Subscriber complaints or requests for service or repairs on a full-time basis, twenty-four (24) hours per day, seven (7) days per week; (4) to undertake normal repairs, by the next business day; (5) to enable a service technician to respond to service calls between 6:00 a.m. and midnight, under normal operating conditions, seven (7) days a week including holidays, when more than five (5) Subscribers served from the same nearest active electronic device, such as an amplifier or node, call with the same technical complaint. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Two Hundred (\$200.00) Dollars per violation, per day or part thereof that the violation continues.~~
- F. ~~Franchisee must meet each of the following standards no less than ninety-five (95) percent of the time under normal operating conditions as measured on a quarterly basis:~~
- ~~1. Standard installation work shall be performed within seven (7) business days after an order has been placed except in those instances where a Subscriber specifically requests an installation date beyond the seven (7) business day period. "Standard" installations are up to one hundred and twenty-five (125) feet from the existing distribution System. If scheduled installation is neither started nor completed as scheduled, the Subscriber shall be telephoned by an employee of the Franchisee the same day;~~
 - ~~2. Franchisee shall respond to service interruptions promptly and in no event later than twenty-four (24) hours after the interruption becomes known to Franchisee. Other service problems shall be responded to promptly and in no event later than the next business day after the problem becomes known to the Franchisee;~~
 - ~~3. The appointment window alternatives made available for installations, service calls, repairs, and other installation activities shall be either a specific time, a four-hour time block during normal business hours, or at the election and discretion of the Subscriber, "all day." These options shall be clearly explained to the customer at the time of scheduling;~~
 - ~~4. Franchisee may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment;~~

5. ~~If at any time an installer or technician is running late for a scheduled appointment, an attempt to contact the customer shall be made and the appointment rescheduled as necessary at a time which is convenient for the customer.~~
 6. ~~Franchisee's material failure to comply with this subsection may result in a fine in the amount of Two Hundred (\$200.00) Dollars, per violation, per day or part thereof that the violation continues.~~
- G. ~~Franchisee shall institute and maintain a program providing a reasonable Subscriber credit, consistent with industry practice, but not less than a Twenty (\$20) Dollar credit or a free installation for missed appointments.~~
- H. ~~Disconnection.~~
1. ~~Voluntary Disconnection.~~
 - a. ~~A Subscriber may terminate service at any time.~~
 - b. ~~A Franchisee shall promptly disconnect any Subscriber who so requests from the Cable System of the Franchisee. No period of notice prior to voluntary termination of service may be required of Subscribers by any Franchisee. No charge may be imposed by any Franchisee for such voluntary disconnection, or for any Cable Services delivered after the date of the requested disconnection.~~
 - c. ~~A Franchisee may hold a Subscriber responsible for the return of equipment of the Franchisee which has been provided for Subscribers use. The Franchisee may request the Subscribers to return the equipment to Franchisee's office but, if the Subscriber requests, Franchisee shall pick up the equipment at the Subscriber's premises, subject to (b) above.~~
 - d. ~~Any security deposit and/or other funds due the Subscriber shall be refunded on disconnected accounts after any customer premises equipment including all converters but excluding wiring have been recovered by the Franchisee. The refund process shall take a maximum of forty-five (45) days from the date equipment is returned to Franchisee to the date the customer receives the refund.~~
 2. ~~Involuntary Disconnection. If a Subscriber fails to pay a monthly subscription or other fee or charge, the Franchisee may disconnect the service outlet of the Subscriber; however, such disconnection shall not be effected until twenty-five (25) days after the due date of the monthly Subscriber fee or other charge, and ten (10) days advance written notice of intent to disconnect to the Subscriber in question. If the Subscriber pays within twenty-five (25) days of the due date and after notice of disconnection has been given, the Franchisee shall not disconnect. After disconnection, upon payment by the Subscriber in full of all proper fees or charges, including the payment of the reconnection charge, if any, the Franchisee shall promptly reinstate service. Franchisee reserves the right to deny service to any customer who has been repeatedly disconnected for non-payment of services to the extent such rights are consistent with applicable state and federal law.~~
 3. ~~With respect to any disconnection, whether requested or involuntary, a Franchisee shall comply with the rules and regulations of the FCC and applicable law with respect to ownership, sale, removal and abandonment of home wiring. Failure to comply with such rules including, but not limited to providing applicable notice to Subscribers and property owners shall be considered a violation of this Ordinance.~~
 4. ~~Franchisee's material failure to comply with this subsection may result in a fine in the amount of Two Hundred (\$200.00) Dollars per violation, per day or part thereof that the violation continues.~~
- I. ~~Franchisee shall intentionally interrupt service only for good cause and for the shortest time possible and shall use its best efforts to minimize the number of service interruptions~~

~~between 6:00 p.m. and 11:00 p.m. Franchisee shall maintain a written log for all intentional service interruptions. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Two Hundred Fifty (\$250.00) Dollars per violation, per day or part thereof that the violation continues.~~

- ~~J. Franchisee shall provide the City Manager or designee telephone number(s) and/or pager number(s) to enable the City Manager or designee to contact at any time a person responsible for the operation of the Cable System serving all parts of the City. Franchisee's material failure to comply with this subsection shall make Franchisee subject to a fine as provided herein. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Two Hundred (\$200.00) per violation, per day or part thereof that the violation continues.~~
- ~~K. Franchisee shall cause all of its field employees to wear a picture identification badge indicating employment by Franchisee. This badge shall be clearly visible to the public. All company vehicles shall display the company name and logo, if any, in a manner clearly visible to the public. Contractor vehicles shall display the contractor name, telephone number, and contractor license number, as required by applicable law. Employees of contractors working for Franchisee shall wear a picture identification badge. Franchisee's material failure to comply with this subsection may result in a fine in the amount of One Hundred (\$100.00) Dollars per violation, per day or part thereof that the violation continues.~~
- ~~L. A Franchisee shall develop written procedures for the investigation and resolution of all Subscriber or City resident complaints, including, but not limited to, those regarding the quality of service and equipment malfunction, which procedures shall be provided upon request to the City Manager. The good faith or lack thereof of the Franchisee in attempting to resolve Subscriber and resident complaints in a fair and equitable manner shall be considered in connection with the renewal application of the Franchisee, to the extent consistent with applicable law. Franchisee shall maintain a complete list of all complaints received during the prior twelve (12) months, requiring a service call not resolved within seven (7) days of receipt and the measures taken to resolve those complaints. This list shall be provided to the City upon request. Franchisee shall also maintain a list of all written complaints received, which list shall be available to the City upon request. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Two Hundred Fifty (\$250.00) Dollars per violation, per day or part thereof that the violation continues.~~
- ~~M. Upon reasonable request by the City, Franchisee shall permit the City Manager or his/her designee to inspect and test the technical equipment and facilities upon reasonable notice not to be less than two (2) business days, and accompanied by an employee of the Franchisee. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Three Hundred Fifty (\$350.00) Dollars per violation, per day or part thereof that the violation continues.~~
- ~~N. Franchisee shall abide by the following requirements governing communications with customers, bills and refunds:~~
- ~~1. Each Franchisee shall provide to Subscribers written information in each of the following areas at the time of installation, at least once annually, and at any future time upon request by the Subscriber:
 - ~~a. How to use the cable service;~~
 - ~~b. Installation and service maintenance policies;~~
 - ~~c. All products and services offered;~~
 - ~~d. Prices and service options;~~
 - ~~e. Channel positions of programming carried on the System;~~
 - ~~f. The Franchisee's procedures for the receipt and resolution of customer complaints, the address of the Franchisee and telephone number to which complaints may be reported, and the hours of operation;~~~~

- g. ~~The availability and costs of a "lock-out" device and/or other parental control mechanisms, if any;~~
 - h. ~~Collection policies of the Franchisee;~~
 - i. ~~Privacy policies of the Franchisee, pursuant to federal law.~~
 - j. ~~Franchisee's material failure to comply with this subsection may result in a fine in the amount of One Hundred (\$100.00) Dollars per violation, per day or part thereof that the violation continues.~~
2. ~~To the extent a Franchisee's billing schedule allows, each Franchisee shall provide written notice in or on its monthly billing or such other written communication agreed to by the City Manager, at the request of the City, of any City meeting regarding requests or applications by the Franchisee for renewal, transfer or modification of its Franchise. The City shall make such a request in writing, with reasonable notice prior to the mailing of any billing by Franchisee, such that Franchisee's regular billing cycle shall not be interrupted. Said notices shall be made at Franchisee's expense for the first time only for each matter and said expense shall not be considered part of the Franchise fee assessed pursuant to this Ordinance and shall not be considered part of the Franchise fee, as defined in Section 622 of the Communications Act, 47 U.S.C. '542. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Three Hundred Fifty (\$350.00) Dollars per violation, per day or part thereof that the violation continues. In addition, Franchisee shall, consistent with applicable law, provide written notice in or on its monthly billing of any change in service, rates or charges, except the addition of channels, to Subscribers unless such written notification takes place by separate mailing or other means.~~
3. ~~Franchisee bills shall be clear, concise and understandable to Subscribers. Franchisee's material failure to comply with this subsection may result in a fine in the amount of One Hundred (\$100.00) Dollars per violation, per day or part thereof that the violation continues.~~
4. ~~Credits for service or refunds shall be issued no later than thirty (30) days or the next billing cycle of the customer following the determination that a credit or refund is warranted. Franchisee's material failure to comply with this subsection may result in a fine in the amount of One Hundred (\$100.00) Dollars per violation, per day or part thereof that the violation continues.~~
5. ~~Except for additions to the channel line-up, Franchisee shall provide Subscribers, the Mayor, City Council Members, and the City Manager with at least thirty (30) days advance written notice of any changes in rates, charges, channel lineup, revisions or changes of service or services offered over the Cable System whenever practicable. Franchisee's material failure to comply with this subsection may result in a fine in the amount of One Hundred (\$100.00) Dollars per violation, per day or part thereof that the violation continues.~~
- O. ~~Except in the case of a System malfunction not within the control of the cable operator, upon a Subscriber's request, a Franchisee shall provide a refund or credit to the account of the Subscriber, prorated on a daily basis, for any period of four (4) hours or more within a twenty four (24) hour period during which a Subscriber experienced an interruption of service or substantial impairment of service. However, no refunds shall be due for service interruptions directly related to a rebuild, upgrade or routine maintenance of the Cable System which is planned, noticed properly to Subscribers, and occurs during a time other than between 6:00 p.m. and 11:00 p.m. and lasts for four (4) hours or less. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Two Hundred (\$200.00) Dollars per violation, per day or part thereof that the violation continues.~~
- P. ~~Billing.~~

- ~~1. The first billing statement of the Franchisee after a new installation or service change shall be pro-rated as appropriate and shall reflect any security deposit.~~
- ~~2. The billing statement of the Franchisee must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Statements shall also clearly delineate all activity during the billing period, including optional charges, rebates and credits.~~
- ~~3. Any balance not received within ten (10) days after the due date may be assessed an administrative charge. However, in no event shall administrative charges for an overdue balance accumulated against any individual Subscriber exceed Twenty-Five (\$25.00) Dollars. The charge shall appear on the billing statement for the following month. Any administrative charge applied to unpaid bills shall be subject to regulation by the City consistent with applicable law. Subscribers shall not be charged an administrative fee, a late fee or otherwise penalized for any failure by the Franchisee, its employees, or contractors, including failure to timely or correctly bill the Subscriber, or failure to properly credit the Subscriber for a payment timely made.~~
- ~~4. The Franchisee must notify the Subscriber that payment can be remitted in person at the office of the Franchisee in the City and inform the Subscriber of the address of that office where payment can be made.~~
- ~~5. Franchisee's material failure to comply with this subsection may result in a fine in the amount of One Hundred (\$100.00) Dollars per violation, per day or part thereof that the violation continues.~~

~~Q. No charge may be made for any service or product which the Subscriber has not affirmatively requested by name. Subscriber's failure to refuse a cable operator's proposal to provide such service or equipment is not an affirmative request for service or equipment. A Subscriber's affirmative request for service or equipment may be made orally or in writing. Franchisee's material failure to comply with this subsection may result in a fine in the amount of One Hundred (\$100.00) Dollars per violation, per day or part thereof that the violation continues.~~

~~R. The Franchisee shall, upon request, certify in writing to the City, based upon internal due diligence by the Franchisee, that to the best of Franchisee's knowledge it is in substantial compliance with the standards set forth in this Section. At the request of the City, the Franchisee shall submit such documentation as may be required to demonstrate compliance with this Section. This documentation shall be submitted within forty-five (45) days of the receipt by the Franchisee of the City's request.~~

~~S. Responsibility for the administration of this Ordinance, and any Franchise granted pursuant to this Ordinance, and for the resolution of all complaints referred to the City against a Franchisee regarding the quality of service, equipment malfunctions, and related matters, is hereby delegated to the City Manager (who can in turn designate to a City employee), who is empowered, among other things, to settle, or compromise any controversy arising from operations of the Franchisee, on behalf of the City. In cases where requests for service have been ignored or in cases where the service provided is alleged to be in non-compliance with this Ordinance or a Franchise Agreement, the City Manager or designee, hereafter referred to jointly as City Manager, shall have the power to require the Franchisee to provide service consistent with the terms of the Franchise, if in the opinion of the City Manager, such request for service is reasonable. Any person aggrieved by a decision of the City Manager, including the Franchisee, may appeal the matter to the City Council for hearing and determination. The City Council may accept, reject or modify the decision of the City Manager. No adjustment, settlement, or compromise, whether instituted by the City Manager or by the City Council shall be contrary to the provisions of this Ordinance or any Franchise Agreement issued pursuant to this Ordinance, and neither the City Manager nor the City Council, in the adjustment, settlement, or compromise of any controversy shall have the right or authority to add to, modify or delete any provision of this Ordinance or of the Franchise, or to interfere with any rights of Subscribers or any Franchisee under applicable federal, or state law or private contract.~~

- ~~1. Unless otherwise expressly provided herein or in a Franchise Agreement, the fines to which the Franchisee is subject as set forth in this Section are to be assessed by the City on a per violation basis, with each day of a continuing violation constituting a separate violation. Where a credit required by this Section is not possible because service has been terminated, Franchisee shall issue a refund to the former Subscriber for the appropriate amount.~~
- ~~2. Prior to the City's assessment of a fine pursuant to this Ordinance, the City Manager, or his designee, shall mail to the Franchisee a written notice, by hand delivery or certified or registered mail, of the proposed fine, specifying the violation at issue. The Franchisee shall have thirty (30) days from the date of receipt of the written notice to cure or commence to cure the alleged violation and to file a written response to the notice of the City Manager as to whether the violation has been cured. The written response of the Franchisee shall be signed by management level personnel of Franchisee.~~
- ~~3. The City shall consider any justification or mitigating factor advanced in the written response of the Franchisee, including but not limited to rebates or credits to the Subscriber or a cure or commencement of a cure to the City's reasonable satisfaction of the violation. The City may not assess any fine if the Franchisee has cured or commenced to cure the violation within a reasonable time frame. However, said Subscriber may be entitled to a credit or refund as provided herein.~~
- ~~4. Subsequent to the notice of proposed fine to Franchisee, and consideration of the response of the Franchisee, if any, the City may, after a public hearing at which Franchisee shall have an opportunity to be heard, issue an assessment of fine. The fine shall be paid within thirty (30) days of written notice to the Franchisee or, if Franchisee challenges the assessment in a court of competent jurisdiction, within thirty (30) days of a final non-appealable decision that the assessment is valid. If said refund, credit or fine is not paid by Franchisee within such thirty (30) day period, as the case may be, the City may, at its discretion, withdraw immediately the amount thereof from the Security Fund. Upon such withdrawal, the City shall notify Franchisee of the withdrawal amount, after which Franchisee shall have ten (10) days from the date of such notice to deposit in the Security Fund an amount sufficient to restore the Security Fund to the amount specified in the Franchise Agreement. This fine shall constitute liquidated damages to the City for the violation and the City may enforce payment of the fine in any court having jurisdiction. It is the intent of the City to determine fines as a reasonable estimate of the damages suffered by the City, whether actual or potential, and may include without limitation, increased costs of administration and other damages difficult to measure.~~
- ~~5. Franchisee may appeal any decision of the City Manager or his designee directly to the City Council within thirty (30) days of notice of the decision to the Franchisee.~~
- ~~6. Intentional material misrepresentation by a Franchisee in any response to a notice of proposed credit, refund and/or fine, whether oral or written, shall be considered a material breach of the Franchise Agreement, subject to a penalty of no less than One Thousand (\$1,000.00) Dollars in liquidated damages per violation to the City, and may be grounds for the imposition of damages and Franchise revocation in the event of repeated violations as set forth in Section XXIII D.~~
- ~~7. In addition to complying with the customer service standards set forth in this Ordinance or in any Franchise issued pursuant to this Ordinance, a Franchisee shall, at minimum, comply with all customer service standards of the FCC applicable to Cable Systems and any other applicable federal or state law concerning customer service standards, consumer protection, and unfair or deceptive trade practices.~~

~~8. The City expressly reserves the right to consider violations of the customer service requirements in evaluating any renewal, modification or transfers of any Franchise, to the extent consistent with applicable law.~~

~~U. The City hereby acknowledges that the standards incorporated in this Section XVII (A-T) are not applicable to cable modem service. However, the City hereby reserves the right to adopt customer service standards applicable to cable modem service and to impose such standards on a Franchisee, upon ninety (90) days notice subject to Federal law.~~

SECTION XVIII - SUBSCRIBER PRIVACY

~~A. A Franchisee shall at all times protect the privacy of all Subscribers to the full extent required by Section 634 of the Communications Act, 47 U.S.C. '551 and state law. A Franchisee shall not condition Subscriber or other service on the Subscriber's grant of permission to disclose information which, pursuant to federal or state law, cannot be disclosed without the Subscriber's explicit consent. No penalties or extra charges may be invoked by the Franchisee for a Subscriber's failure to grant consent.~~

~~B. Unless otherwise permitted by federal or state law, neither the Franchisee nor its agents or employees shall, without the prior and specific written authorization of the Subscriber involved, sell, or otherwise make available for commercial purposes the names, addresses or telephone numbers of any Subscriber or Subscribers, or any information which identifies the individual viewing habits of any Subscriber or Subscribers.~~

SECTION XIX - DISCRIMINATION PROHIBITED

~~A. No Franchisee may in its rates or charges, or in the availability of the services or facilities of its System, or in any other respect, make or grant any illegal undue preferences or advantages to any Subscriber, potential Subscriber, or group of Subscribers or potential Subscribers, nor subject any such persons or group of persons to any illegal undue prejudice or any disadvantage. A Franchisee shall not deny, delay, or otherwise burden service or discriminate against Subscribers or users on the basis of age, race, creed, religion, color, sex, handicap, national origin or marital status, except for discounts for senior citizens, the economically disadvantaged or handicapped that are applied in a uniform and consistent manner. A Franchisee may offer bulk discounts to the extent such discounts are otherwise permissible by law.~~

~~B. A Franchisee shall not deny cable service to any potential Subscriber because of the income of the residents of the area in which the Subscriber resides.~~

~~C. A Franchisee shall not refuse to employ, nor discharge from employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment because of age, race, creed, religion, color, sex, disability, national origin, or marital status. The Franchisee shall comply with federal, state and local laws and regulations governing equal employment opportunities, as the same may be from time to time amended.~~

SECTION XX - CABLE SYSTEM CONSTRUCTION

~~A. Construction map and schedule. Where applicable, Franchisee shall submit a construction plan or reconstruction plan which shall be incorporated by reference and made a part of the Franchise Agreement. The plan shall include Cable System design details, equipment specifications, and design performance criteria. The plan shall also include a map of the entire franchise area and shall clearly delineate the following:~~

- ~~1. Areas within the franchise area where the Cable System will be initially available to Subscribers including a schedule of construction for the first six months that construction or reconstruction is proposed; and~~
- ~~2. Areas within the franchise area where extension of the Cable System cannot reasonably be done due to lack of present or planned development or other similar~~

reasons, with the areas and the reasons for not serving them clearly identified on the map.

3. A Franchisee shall provide to the City, a detailed explanation, with proper notice including a detailed explanation of any delay of greater than twenty-one (21) days in the construction schedule.

B. Early construction and extension. Nothing in this section shall prevent the Franchisee from constructing or reconstructing the Cable System earlier than planned. However, any delay greater than 3 months in the Cable System construction beyond the times specified in the plan report timetable shall require application to and consent by the City Council.

C. Delay in construction timetable. Any delay of more than 3 months beyond the terms of construction or reconstruction timetable, unless approved by the City Council, will be considered a violation of this Ordinance for which the provisions of Section XXIII shall apply as determined by the Council.

D. Commencement of construction or reconstruction. Construction or reconstruction in accordance with the plan submitted by Franchisee shall commence as soon after the grant and acceptance of a franchise as is reasonably possible. Failure to proceed expeditiously shall be grounds for revocation of a franchise. Failure to proceed expeditiously shall be presumed in the event construction or reconstruction is not commenced within twelve (12) months of the grant and acceptance of a franchise.

E. Additional mandatory extension. Extension of a Cable System into any area not specifically treated in the plan shall nonetheless be required if the terms of Section XIV (B) are satisfied. In areas not meeting the requirements for mandatory extension of cable service pursuant to Section XIV (B), Franchisee shall provide, upon the request of five (5) or more potential Subscribers desiring cable service, an estimate of the costs required to extend cable service to said Subscribers. Franchisee shall then extend cable service upon request and agreement of said potential Subscribers to pay the cost of extension.

F. Prior approval by City. Except for individual service drops, the Franchisee shall not erect any pole, run any line, make any attachment, nor shall any construction of any kind be commenced without the prior approval of the City or compliance with all applicable permitting requirements. Prior to the issuance of such approval, the Franchisee shall submit to the City, upon request:

1. ~~Strand maps of the System authorized by the proposed franchise showing plant routing, utility company poles to which the System facilities are to be attached, and~~
2. ~~True copies or such other evidence acceptable to the City Manager of all pole attachment agreements made by the Franchisee with Sprint or its successors and Florida Power and Light Company and any other telephone or utility or company to which an attachment is to be made.~~

G. City's right to inspect and correct defects. The City shall have and maintain the right to inspect the installation, construction, operation and maintenance of the System by the Franchisee to insure the proper performance of the terms of this Ordinance, provided said inspection does not interfere with the operations of the System. The City shall also have the right to correct any defects after notice to the Franchisee and its failure to correct such defects after seven (7) days.

H. Joint or common use of poles.

1. To enhance the public convenience and to minimize the placement of poles and wire holding structures within public ways, the Franchisee shall enter into agreements for the joint or common use of poles or other wire holding structures where poles or other wire holding structures already exist for the use in serving the City or serving the public convenience. Where reasonable terms and conditions cannot be negotiated with the owners of such poles and wire holding structures, the Franchisee

~~shall demonstrate the unreasonableness of the negotiations and terms, to the City Manager's satisfaction, and request waiver of this provision. However, no location of any pole or wire holding structure of the Franchisee shall be a vested interest, and such pole or structure shall be removed or modified by the Franchisee at its own expense whenever the City Manager or his designee determines it to be necessary.~~

- ~~2. The City shall be permitted to make use of the poles or other wire holding structures of the Franchisee, without charge or remuneration to the Franchisee, if the City Manager determines that the use would enhance the public convenience and would not unduly damage, hamper or interfere with the Franchisee's present and future operations and provided that the use by the City is not to offer a service directly competitive to a Franchisee's cable service.~~

~~I. Permits, easements and agreements.~~

~~The City shall not be required to assume any responsibility for the securing of any rights-of-way or easements, nor shall the City be responsible for securing any permits or agreements with other persons or utilities. A Franchisee is required to obtain all such permits or easements prior to construction.~~

~~J. Location/relocation of facilities/use of streets.~~

- ~~1. Franchisee's System may be installed above ground in areas where existing power or telephone facilities are above ground, and shall be installed underground in areas where existing power and telephone facilities are installed underground. Where reasonable terms and conditions cannot be negotiated with the owners of such areas, the Franchisee shall report the unreasonableness of the negotiations and terms, to the City Manager and request waiver of this provision. The Franchisee shall endeavor to enter into agreements for the purpose of sharing poles with any person, firm or corporation now or hereafter authorized by license, franchise or otherwise to erect and maintain overhead or underground wires and cables, it being the intent hereof that all above ground installations of Cable Systems shall be accomplished on existing utility poles and easements where feasible, and installed only parallel to existing facilities. Where new poles are installed, prior approval of the City Manager as to location must be received.~~
- ~~2. Franchisee shall not place any fixtures or equipment where the same will interfere with any gas, electric, cable, telephone, sewer, drainage or water lines, fixtures or equipment, and the location by Franchisees of their lines and equipment shall be in such a manner as not to interfere with the usual travel on or the proper use of said streets, the use of the same for the installation or operation of gas, electric, telephone, water, drainage, or sewer lines equipment, or, the rights or reasonable convenience of owners of property which abuts any street.~~
- ~~3. Franchisees shall relocate any above ground portion of their Systems underground in any City easement or Rights-of-Way area where existing power and telephone facilities are hereafter so relocated unless Franchisee elects to purchase said poles owned by utility company or is permitted to remain on said poles pursuant to contractual pole attachment agreements. Any such relocation shall be at their expense, and such relocation shall be accomplished concurrently with relocation of any such power and telephone facilities.~~
- ~~4. The Franchisee, upon notice to the City of not less than seven (7) business days, emergency situations excepted, shall have the authority to trim trees upon or overhanging streets, alleys, sidewalks and public ways and places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Franchisee, in a manner approved by and acceptable to the City. At the option of the City, such trimming may be done by the City or under its supervision and direction at the expense of the Franchisee, if prior notification has been given to the Franchisee and Franchisee thereafter failed to respond.~~
- ~~5. Franchisees shall promptly, upon the City's request and at their own expense, modify or relocate when necessary, any part of their Systems to accommodate the abandonment of any street.~~

- ~~6. The location of any underground or above-ground facility or structure of any Franchisee shall not result in a vested interest, and such poles or structures shall be removed or modified by a franchisee at its own expense whenever the City determines that public convenience would be enhanced thereby.~~

SECTION XXI - USE OF STREETS

- ~~A. Any pavements, sidewalks, curbing or other paved area taken up or any excavations made by a Franchisee shall be done in compliance with City requirements under permits issued for work by the proper officials of the City, and shall be done in such manner as to give the least inconvenience to the inhabitants of the City. Nothing herein shall be construed to exempt a Franchisee from compliance with the provisions of the Lee County Right-Of-Way Ordinance, No. 88-11, as amended by 88-17, 90-42, 92-29, 96-24 as adopted and by the City of Bonita Springs and any subsequent amendments thereto and administrative code 11-12, and any subsequent amendments thereto, and the payment of the appropriate fees established pursuant to said Ordinance.~~
- ~~B. A Franchisee shall, at its own cost and expense, and in a manner approved by the City, replace and restore any such pavements, sidewalks, curbing or other paved areas in as good a condition as before the work involving such disturbance was done, and shall also prepare, maintain and provide to the City Engineer strand and trench maps showing the exact locations of its facilities located within the public streets, ways, and easements of the City. These maps shall be available to the City Engineer.~~
- ~~C. Except to the extent required by law, a Franchisee shall, at its expense, protect, support, temporarily disconnect, relocate, or remove, any of its property when required by the City by reason of traffic conditions, public safety, street construction, street resurfacing or widening, change of street grade, installation of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of municipal or public utility improvements; provided, however, that the Franchisee shall, in all such cases, have the privilege of abandoning any property in place. Franchisee shall do so at its expense to the extent other users of the rights-of-way are so responsible, consistent with applicable law.~~
- ~~D. A Franchisee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting same, and the Franchisee shall have the authority to require such payment in advance, except in the case where the requesting person is the City, in which case no such payment shall be required. The Franchisee shall be given not less than seven (7) business days advance notice to arrange for such temporary wire changes.~~
- ~~E. A Franchisee shall use, with the owner's permission, existing underground conduits (if applicable) or overhead utility facilities whenever feasible and if available on reasonable terms and conditions. Upon request, copies of agreements between a Franchisee and third party for use of conduits or other facilities shall be filed with the City, provided that the Franchisee shall have the right to redact proprietary and confidential information in such agreements as it pertains to financial arrangements between the parties, consistent with state law.~~
- ~~F. All wires, cable lines, and other transmission lines, equipment and structures shall be installed and located to cause minimum interference with the rights and convenience of property owners. The City may issue such generally applicable rules and regulations concerning the installation and maintenance of a Cable System installed in, on, or over the Streets, as may be consistent with this Ordinance and the Franchise Agreement.~~
- ~~G. Safety.~~
- ~~1. Franchisee's work, performance, equipment and job sites shall be in compliance with all applicable state and federal requirements. A Franchisee's work, while in~~

~~progress, shall be properly protected at all times with suitable barricades, flags, lights, flares, or other devices as are required by the Manual on Uniform Traffic Control Devices (FDOT) to protect all members of the public having occasion to use the portion of the streets involved or adjacent property.~~

- ~~2. Franchisee shall at all times employ due care and shall install, maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public. All structures, lines, equipment and connections in, over, under and upon streets of the City wherever situated or located shall at all times be kept and maintained in a safe, suitable, condition, and in good order and repair. Franchisee shall install and maintain its wires, cables, fixtures and other equipment in accordance with the requirements of the National Electrical Safety Code promulgated by the National Bureau of Standards, the National Electrical Code of the American Insurance Association.~~

SECTION XXII - REPORTS AND RECORDS

A. Within six (6) months after the close of its fiscal year, a Franchisee shall provide the City an annual report that, at minimum, includes the following information:

- ~~1. Upon request, a summary of the previous year's activities in development of the Cable System serving the City including but not limited to, services and products initiated or discontinued, new technologies, number of Subscribers, homes passed, and miles of cable distribution plant in service. The summary shall also include a comparison of any construction, including System upgrades, during the year with any projections previously provided to the City, as well as rate and charge increases and/or decreases for the previous fiscal year.~~
- ~~2. To verify franchise fee payments, a financial statement, including a statement of sources of revenues for the Franchise Area. The statement shall be certified by the Franchisee's chief financial officer or other duly authorized financial officer of the Franchisee. The statement shall include notes that specify all significant accounting policies and practices upon which it is based.~~
- ~~3. To the extent there have been changes from maps already filed by Franchisee, a copy of updated strand maps depicting the location of all cable plant, showing areas served and locations of all trunk lines and feeder lines in the City. Upon request by the City, such maps shall be provided in digitized form at Franchisee's expense.~~
- ~~4. Upon a request, a summary of Subscriber or resident written complaints and/or complaints requiring a service call, identifying the number and nature of complaints and their disposition. Where complaints involve recurrent System problems, the nature of each problem and the corrective measures taken shall be identified. More detailed information concerning complaints shall be submitted upon written request of the City.~~
- ~~5. Upon written request, a summary of the number of outages exceeding one (1) hour, including number of planned outages, number of outages during prime viewing hours (8:00 p.m. to 11:00 p.m. daily), and number of outages by duration including number of Subscribers affected.~~
- ~~6. Upon any change of the composition of the members of the Board or Senior Officers, if the Franchisee is a corporation, a list of officers and members of the board of directors; the officers and members of the board of directors of any parent corporation; and if the Franchisee or its parent corporation's stock or ownership interests are publicly traded, a copy of its most recent annual report.~~
- ~~7. Upon any additions or deletions of Partners or Senior Officers, if the Franchisee is a partnership, a list of the partners, including any limited partners, and their addresses; and if the general partner is a corporation, a list of officers and members of the board of directors the corporate general partner, and the officers and directors of any parent corporation; and where the general partner or its parent corporation's ownership interests are publicly traded, a copy of its most recent annual report.~~
- ~~8. Upon any change, a list of all persons holding five percent (5%) or more ownership or otherwise cognizable interest in the Franchisee pursuant to 47 C.F.R. 76.501.~~

- ~~9. Upon request, a copy of the Franchisee's rules and regulations applicable to Subscribers of the Cable System.~~
 - ~~10. Upon request, a report on the number of senior citizen, economically disadvantaged or handicapped Subscribers receiving any rate discounts, if any, and the amount of any such discounts for specific services if Franchisee offers separate rates or discounts for those categories of Subscribers.~~
 - ~~11. A full schedule and description of all products, services, and equipment offered to cable Subscribers, service hours and location of the Franchisee's customer service office or offices available to Subscribers, and a schedule of all rates, fees and charges for all product, services and equipment provided over the Cable System.~~
 - ~~12. A report on the number of total Subscribers served by the Franchisee in the Cable System.~~
- ~~B. Upon written request by the City, a Franchisee shall provide, on an annual basis, the following documents to the City as received or filed, without regard to whether the documents are filed by the Franchisee or an affiliate:~~
- ~~1. Annual report of the Franchisee or its parent or any affiliate of Franchisee which controls Franchisee and issues an annual report;~~
 - ~~2. Copyright filings reflecting the operation of the System;~~
 - ~~3. Applicable FCC Forms and filings.~~
 - ~~4. Any and all pleadings, petitions, applications, communications, reports and documents (collectively referred to as "filings") submitted by or on behalf of the Franchisee to the FCC, SEC or any state or federal agency, court or regulatory commission which filings may impact the Franchisee's operation of the Franchisee's Cable System in the City or that may impact the City's rights or obligations under this Ordinance or the Franchise Agreement issued pursuant to this Ordinance and any and all responses, if any, to the above mentioned filings.~~
 - ~~5. Any and all notices of deficiency, forfeiture, or documents instituting any investigation, civil or criminal proceeding issued by any state or federal agency regarding the System, Franchisee, or any Affiliate of Franchisee, provided, however, that any such notice or documents relating to an Affiliate of Franchisee need be provided only to the extent the same may concern Franchisee's operations in the City. For example, a notice that an Affiliate which has a management contract for the City's System was not in compliance with FCC EEO requirements with respect to its activities in the City would be deemed to affect or bear on operations in the City.~~
 - ~~6. Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy.~~
 - ~~7. Notwithstanding anything to the contrary, the Franchisee agrees to provide the City, within thirty (30) days of filing or receipt of such, any document filed with or received from a governmental agency that may adversely impact Franchisee's obligations under its Franchise with respect to the construction, operation or maintenance of the Franchisee's Cable System or the City's rights with respect thereto.~~
- ~~C. Upon reasonable notice and during normal business hours, a Franchisee shall make a complete set of books and records available for inspection and audit by the City in the Southwest Florida Area, for purposes of ascertaining compliance with requirements of this Ordinance and the Franchise Agreement.~~
- ~~D. Any materials requested by the City which are deemed proprietary and confidential under applicable law shall be made available to the City for review and inspection (but not copying or removal), but shall not be required to be filed with the City unless such filing is required by applicable law. To the extent consistent with applicable law, the City shall maintain the confidentiality of information provided by Franchisee, when designated as proprietary and confidential by Franchisee.~~

SECTION XXIII – ENFORCEMENT REMEDIES

- A. ~~In addition to any other remedies available at law or equity or provided herein, the City may apply any one or combination of the following remedies in the event a Franchisee violates this Ordinance, its Franchise Agreement, applicable state or federal law, or applicable local law or order:~~
1. ~~Impose liquidated damages in such amount, whether on a per diem, per incident, or other measure of violation, as provided in this Ordinance or in a Franchise Agreement. Payment of liquidated damages by the Franchisee will not relieve the Franchisee of its obligation to comply with the Franchise Agreement and the requirements of this Ordinance.~~
 2. ~~Impose as liquidated damages a fine in an amount not less than Two Thousand (\$2,000.00) Dollars per day for failure to obtain a Franchise Agreement from the City pursuant to this Ordinance.~~
 3. ~~Impose as liquidated damages a fine in the amount of Two Hundred Fifty (\$250.00) Dollars per violation, per day for material failure to comply with any provision of this Ordinance, except as otherwise provided for herein or as otherwise provided for in a Franchise Agreement.~~
 4. ~~In the event of a material failure to comply with the provision of this Ordinance, revoke the franchise pursuant to the procedures specified in Section XXVI hereof.~~
 5. ~~In addition to or instead of any other remedy, the City may seek legal or equitable relief from any court of competent jurisdiction.~~
- B. ~~In determining which remedy or remedies are appropriate, the City shall take into consideration the nature of the violation, the person or persons bearing the impact of the violation, the nature of the remedy required in order to prevent further violations, and such other matters as the City determines are appropriate to the public interest.~~
- C. ~~Notwithstanding anything to the contrary, Franchisee's failure to comply with Sections XIV, XV and XVI hereof, may result in the assessment of liquidated damages in the amount of Seven Hundred (\$700.00) Dollars per day for each day such violation continues.~~
- D. ~~A practice of intentional misrepresentation, fraud or deceit by a Franchisee in connection with the records of a Franchisee, or any other written document generated by a Franchisee, pertaining to a material and substantial fact that has been knowingly made by a Franchisee, shall constitute a violation of a material provision of this chapter and shall subject the Franchisee to liquidated damages in an amount up to \$25,000, or revocation of the Franchise, depending on the severity of the misrepresentation, fraud or deceit as determined by Council.~~
- E. ~~Failure of the City to enforce any requirements of a Franchise Agreement or this Ordinance shall not constitute a waiver of the City's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.~~
- F. ~~In any proceeding wherein there exists an issue with respect to a Franchisee's performance of its obligations pursuant to this Ordinance, the Franchisee shall provide such information as it may have concerning its compliance with the terms of the Ordinance. The City Council may find a Franchisee is not in compliance with the terms and conditions of this Ordinance and apply any one or combination of the remedies otherwise authorized by this Ordinance or applicable law.~~
- G. ~~Notwithstanding anything to the contrary, and notwithstanding being subjected to a fine or refund requirement, Franchisee shall be obligated to cure, or take all reasonably practicable steps to cure, any violation of this Ordinance or of any Franchise Agreement granted hereto within thirty (30) business days after receipt of notice from the City of the alleged violation. If the alleged violation is not cured or Franchisee has not taken all reasonable and practicable steps to commence to cure within such period, the City may exercise all rights and remedies available pursuant to this Ordinance, or applicable law, or the Franchise Agreement.~~

SECTION XXIV – RENEWAL OF FRANCHISE

Renewal shall be conducted in a manner consistent with Section 626 of the Communications Act, 47 U.S.C. '546. To the extent such additional requirements are consistent with applicable law, the following requirements shall apply.

- A. ~~Upon completion of the review and evaluation process set forth in Section 626(a)(1)(2) of the Communications Act, 47 U.S.C. '546, should that process be invoked, the City may notify the Franchisee, by certified or registered mail that it may file a renewal application in the form of a renewal proposal. The notice shall specify the information to be included in the renewal proposal and the deadline for filing the application, which shall be no earlier than thirty (30) calendar days following the date of the notice.~~
 1. ~~The application shall comply with the requirements of Section III hereof, to the extent applicable to franchise renewals and provide the specific information requested in the notice. If the Franchisee does not submit a renewal application by the date specified in the City's notice to the Franchisee given pursuant to this subsection, the City may take such action as appropriate under law.~~
 2. ~~Upon receipt of the renewal application, the City shall publish notice of its receipt and make copies available to the public. The City, following prior public notice, shall hold one or more public hearings on the renewal application.~~
- B. ~~After the public hearing(s) on the renewal application is held, the City Council may either:~~
 1. ~~Pass a resolution approving the proposed Franchise Agreement and thereby renew the Franchise; or~~
 2. ~~Only after a public hearing properly noticed, pass a resolution that makes a preliminary assessment that the franchise should not be renewed.~~
- C. ~~If a preliminary assessment is made that a franchise should not be renewed, at the request of the Franchisee or on its own initiative, the City will commence a proceeding in accordance with Section 626(c) of the Communications Act, 47 U.S.C. '546(c) to address the issues set forth in Section 626(c)(1)(A)-(D) of the Communications Act, 47 U.S.C. '546(c)(1)(A)-(D). Any denial of a proposal for renewal that has been submitted in compliance with subsection (b) of '546 shall be based on one or more adverse findings made with respect to the factors described in '546(c)(1)(A)-(D), pursuant to the record of proceedings under '546(c). The City shall not base a denial of renewal on a failure to substantially comply with the material terms of the franchise under '546(c)(1)(A) or on events considered under '546(c)(1)(B) unless the City has provided the Franchisee with notice and opportunity to cure, or in any case in which it is documented that the City has waived its right to object, or the Franchisee gives written notice of a failure or inability to cure and the City fails to object within a reasonable time after receipt of such notice.~~
- D. ~~Any request to initiate a renewal process or proposal for renewal not submitted within the time period set forth in Section 626(a) of the Communications Act, 47 U.S.C. '546(a), shall be deemed an informal proposal for renewal and shall be governed in accordance with Section 626(h) of the Communications Act, 47 U.S.C. '546(h). The City may hold one or more public hearings or implement other procedures under which comments from the public on an informal proposal for renewal may be received. Following such public hearings or other procedures, the City Council shall determine whether the franchise should be renewed and the terms and conditions of any renewal.~~
- E. ~~If the City Council grants a renewal application, the City and the Franchisee shall agree on the terms of a Franchise Agreement, pursuant to the procedures specified in this Ordinance, before such renewal becomes effective.~~

- ~~F. If renewal of a franchise is lawfully denied, the City may acquire ownership of the Cable System or effect a transfer of ownership of the System or effect a transfer to another person upon approval of the City Council. Any such acquisition or transfer shall be at Fair Market Value, determined on the basis of the Cable System valued as a going concern but with no value allocated to the franchise itself. The City may not acquire ownership of the System while an appeal of a denial for renewal is pending in any court pursuant to 47 U.S.C '546(e).~~
- ~~G. If renewal of a franchise is lawfully denied and no appeal to a court is pending, and the City does not purchase the Cable System or approve or effect a transfer of the Cable System to another person, the City may require the former Franchisee to remove its facilities and equipment at the former Franchisee's expense. If the former Franchisee fails to do so within a reasonable period of time, the City may have the removal done at the former Franchisee's and/or surety's expense.~~

SECTION XXV - TRANSFERS

- ~~A. No transfer of a franchise shall occur without prior approval of the City, which shall not be unreasonably withheld.~~
- ~~B. An application for a transfer of a franchise shall meet the requirements of Section III hereof, and provide complete information on the proposed transaction, including details on the legal, financial, technical and other qualifications of the transferee, and on the potential impact of the transfer on Subscriber rates and service. The application shall provide, at a minimum, the information required in Section III with respect to the proposed transferee. The information required in Section III shall also be provided whenever the proposed transferee expects material changes to occur in those areas.~~
- ~~C. In making a determination on whether to grant an application for a transfer of a franchise, the City Council shall consider the legal, financial, and technical capacity of the transferee to operate the System; whether the incumbent cable operator is in substantial compliance with the material terms of its Franchise Agreement and this Ordinance and, if not, the proposed transferee's commitment to cure such noncompliance; and whether operation by the transferee would adversely affect cable services to Subscribers.~~
- ~~D. No application for a transfer of a franchise shall be granted unless the transferee agrees in writing, in the form of an affidavit signed by a duly authorized officer of the transferee, and its ultimate parent legal entity, that it will abide by and accept all terms of this Ordinance and the Franchise Agreement, and that it will assume the obligations and liabilities of the previous Franchisee to the City under this Ordinance and the Franchise Agreement.~~
- ~~E. Approval by the City of a transfer of a franchise does not constitute a waiver or release of any of the rights of the City under this Ordinance or the Franchise Agreement, whether arising before or after the date of the transfer.~~
- ~~F. The application process shall not include any pro forma transfers, as defined herein, mortgages and pledges of Franchisee's securities, but shall require proper notice to the City, pursuant to the terms of the Ordinance or the Franchise Agreement.~~

SECTION XXVI - REVOCATION OR TERMINATION OF FRANCHISE

- ~~A. A franchise may be revoked by the City Council for a Franchisee's material failure to construct, operate or maintain the Cable System as required by this Ordinance or the Franchise Agreement, or for any other material violation of this Ordinance or material breach of the Franchise Agreement. To invoke the provisions of this subsection (A), the City shall give the Franchisee written notice, by certified mail at the last known address, that Franchisee is in material violation of this Ordinance or in material breach of the Franchise Agreement and describing the nature of the alleged violation or breach with specificity. If within thirty (30) calendar days following receipt of such written notice from the City to the Franchisee, the Franchisee has not cured such violation or breach, or has not commenced~~

~~corrective action and such corrective action is not being actively and expeditiously pursued, the City may give written notice to the Franchisee of its intent to revoke the franchise, stating its reasons.~~

- ~~B. Prior to revoking a franchise under subsection (A) hereof, the City Council shall hold a public hearing, upon thirty (30) calendar days notice, at which time the Franchisee and the public shall be given an opportunity to be heard. Following the public hearing the City Council may determine whether to revoke the franchise based on the evidence presented at the hearing, and other evidence of record. If the City Council determines to revoke a franchise, it shall issue a written decision setting forth the reasons for its decision. A copy of such decision shall be transmitted to the Franchisee.~~
- ~~C. Notwithstanding subsections (A) and (B) hereof, any franchise may, at the option of the City following a public hearing before the City Council, be revoked one hundred and twenty (120) calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the Franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding, unless within that one hundred twenty (120) day period:~~
- ~~1. Such assignment, receivership or trusteeship has been vacated; or~~
 - ~~2. Such assignee, receiver or trustee has fully complied with the terms and conditions of this Ordinance and the Franchise Agreement and has executed an agreement, approved by a court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of this Ordinance and the Franchise Agreement.~~
- ~~D. In the event of foreclosure or other judicial sale of a significant part of the facilities, equipment or property of a Franchisee's System in the Public Rights-of-Way, the City may revoke the franchise, consistent with the procedures of subsections A and B hereof, including a public hearing before the City Council, by serving notice upon the Franchisee and the successful bidder at the sale, in which event the franchise and all rights and privileges of the Franchisee will be revoked and will terminate thirty (30) calendar days after serving such notice, unless:~~
- ~~1. The City has approved the transfer of the franchise to the successful bidder; and~~
 - ~~2. The successful bidder has covenanted and agreed with the City to assume and be bound by the terms and conditions of the Franchise Agreement and this Ordinance.~~
- ~~E. If the City revokes a Franchise, or if for any other reason a Franchisee abandons, terminates or fails to operate or maintain service to its Subscribers for a period of six (6) months, the following procedures and rights are effective:~~
- ~~1. The City may require the former Franchisee to remove its facilities and equipment at the former Franchisee's expense. If the former Franchisee fails to do so within a reasonable period of time, the City may have the removal done at the former Franchisee's and/or surety's expense.~~
 - ~~2. The City, by resolution of the City Council, may acquire ownership, or effect a transfer, of the Cable System at an equitable price, consistent with applicable law.~~
 - ~~3. If a Cable System is abandoned by a Franchisee, the City may sell, assign or transfer all or part of the assets of the System.~~
- ~~F. The City shall hold one or more public hearings on the transfer application and after said hearing(s) shall pass a resolution to grant or deny the application to transfer the Franchise.~~
- ~~G. Where the City has issued a franchise specifically conditioned in the Franchise Agreement upon the completion of construction, System upgrade or other specific obligation by a specified date, failure of the Franchisee to complete such construction or upgrade, may result in revocation of the franchise by the City where it is so provided in the Franchise Agreement, unless the City, at its discretion and for good cause demonstrated by the Franchisee, grants an extension of time.~~

- H. ~~Except as provided in Subsection F, no adverse action against a Franchisee may be taken by the City pursuant to this section except as consistent with the procedures set forth in Subsections A and B hereof.~~

SECTION XXVII - CONTINUITY OF SERVICE MANDATORY

- A. ~~It is the right of all Subscribers to receive all available services requested from the Franchisee as long as their financial and other obligations to the Franchisee are satisfied.~~
- B. ~~In the event of a termination or transfer of a franchise for whatever reason, the Franchisee shall ensure that all Subscribers receive continuous, uninterrupted service. The Franchisee shall cooperate with the City to operate the System for a temporary period following termination or transfer as necessary to maintain continuity of service to all Subscribers. The temporary period will not exceed six (6) months without the Franchisee's written consent. During such period the Cable System shall be operated under such terms and conditions as the City and the Franchisee may agree, or such other terms and conditions that will continue, to the extent possible, the same level of service to Subscribers and that will provide reasonable compensation to the cable operator.~~
- C. ~~In the event a Franchisee fails to operate the System for seven (7) consecutive days without prior approval of the City or without just cause, the City may, at its option, operate the System or designate an operator until such time as the Franchisee restores service under conditions consistent with the terms of the Franchise or until a permanent operator is selected. If the City is required to fulfill this obligation for the Franchisee, the Franchisee shall reimburse the City for all costs or damages resulting from the Franchisee's failure to perform that are in excess of the revenues from the System received by the City. Additionally, the Franchisee will cooperate with the City to allow City employees and/or City agents free access to the Franchisees' facilities and premises for purposes of continuing System operation.~~

SECTION XXVIII - RATES

- A. ~~Nothing in this Ordinance shall prohibit the City from regulating rates for cable services to the full extent permitted by law and in accordance with applicable law.~~
- B. ~~Any rate or charge established for cable service, equipment, repair and installation shall be reasonable to the public and in compliance with FCC guidelines. Compliance with applicable laws and regulations shall be considered reasonable. Upon written request from the City or its agent, Franchisee shall provide all requested data, records and documentation to show the reasonableness of the rates as required by FCC regulations or other applicable law. Where such information is designated proprietary and confidential, it shall not be copied or removed or otherwise subject to public inspection to the extent the City is permitted to protect such information from public inspection under applicable law.~~
- C. ~~The City's regulation of rates as permitted under applicable law, shall be consistent with Federal Communications Commission cable rate regulation standards or other applicable law in effect at the time. A Franchisee shall notify the City of any changes in rates or service no less than thirty (30) days prior to the effective date of such change. Unless otherwise prohibited by applicable law, the City may require the Franchisee to notify each Subscriber, by placing an announcement of not less than one quarter page in a newspaper of general circulation and/or via the Cable System, or by written notice to the Subscriber, or such other reasonable means consistent with applicable law, of the proposed rate change. At any hearing conducted by the City in the exercise of any rate regulatory authority, the Franchisee and members of the public will be given an opportunity to present their respective views on the proposed rates. Upon conclusion of the public hearing, the City Council shall decide the matter by majority vote and adopt a Resolution taking such action and providing such relief as is appropriate and authorized by Federal Communications Commission rate regulation standards or other applicable law. The resolution shall set forth complete findings of fact and conclusions regarding all of the basic elements considered in the City Council's determination.~~

SECTION XXIX – PERFORMANCE EVALUATION

~~The City may conduct periodic performance evaluations of a Franchisee as the City, in its sole discretion, determines is necessary. A Franchisee shall cooperate with these evaluations reasonably and in good faith. If the City implements a survey of cable Subscribers in connection with a performance evaluation, the City and Franchisee may agree in a Franchise Agreement that Franchisee shall distribute the City's questionnaire to its Subscribers at the Franchisee's expense.~~

SECTION XXX – ADMINISTRATION

- A. ~~The City Manager, either directly or through a duly appointed designee, shall have the responsibility for overseeing the day-to-day administration of this Ordinance and Franchise Agreements on behalf of the City. The City Manager shall be empowered to take all administrative actions on behalf of the City, except for those actions specified in this Ordinance that are reserved to the City Council. The City Manager may recommend that the City Council take certain actions with respect to the franchise. The City Manager shall keep the City Council apprized of developments in cable and provide the Council with assistance, advice and recommendations as appropriate.~~
- B. ~~Subject to federal and state law, the City Council shall exercise the sole authority of the City to regulate rates for cable services, grant franchises, authorize the entering into of Franchise Agreements, modify Franchise Agreements, renew or deny renewal of franchises, revoke franchises, and authorize the transfer of a franchise.~~

SECTION XXXI – FORCE MAJEURE

~~In the event a Franchisee's performance of or compliance with any of the provisions of this Ordinance or the Franchisee's Franchise Agreement is prevented by a cause or event not within the Franchisee's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof, provided, however, that Franchisee uses all practicable means to expeditiously cure or correct any such inability to perform or comply. For purposes of this Ordinance and any Franchise Agreement granted or renewed hereunder, causes or events not within a Franchisee's control shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court. Causes or events within Franchisee's control, and thus not falling within this Section, shall include, without limitation, Franchisee's financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of Franchisee's directors, officers, employees, contractors or agents~~

SECTION XXXII – APPLICABILITY

~~This Ordinance shall be applicable to all cable franchises granted, transferred, modified, or renewed after its effective date, and shall apply to all cable franchises granted prior to the effective date of this Ordinance, to the full extent not inconsistent therewith.~~

SECTION XXXIII – MUNICIPAL CABLE SYSTEM OWNERSHIP AUTHORIZED

- A. ~~To the full extent permitted by law, the City may acquire, construct, own, and/or operate a Cable System.~~
- B. ~~Nothing in this Ordinance shall be construed to limit in any way the ability or authority, if any, of the City to acquire, construct, own, and/or operate a Cable System to the full extent permitted by law or consistent with the terms of a Franchise.~~

SECTION XXXIV – RESERVATION OF RIGHTS

- A. ~~The City reserves the right to amend this Ordinance as it shall find necessary in the lawful exercise of its police powers.~~

- B. ~~Any additional regulations adopted by the City shall be incorporated into this Ordinance and compiled with by all Franchisees within thirty (30) days of the date of adoption of such additional regulations unless imposition of such regulations would be otherwise prohibited by applicable law, or inconsistent with an existing Franchise.~~
- C. ~~The City reserves the right to exercise the power of eminent domain to acquire the property of Franchisee's Cable System, consistent with applicable federal and state law. Notwithstanding anything to the contrary, this Section shall not enlarge or restrict the City's exercise of eminent domain except to the extent provided by applicable law.~~
- D. ~~The City shall at all times have the right, upon reasonable notice and during normal business hours, with a representative of the Franchisee present to examine records and to inspect a Franchisee's facilities to the extent needed to monitor a Franchisee's compliance with and performance under this Ordinance and the Franchisee's Franchise Agreement.~~
- E. ~~Where there exists a reasonable basis for concern that the Cable System is not functioning at a level consistent with the requirements of the Ordinance and Franchise, FCC Rules and Regulations or with generally accepted industry practice, the City Council has the authority to retain an expert or consultant to conduct a study at any time, but no more frequently than annually, in order to assess the performance of the incumbent's operation. However, no less than thirty (30) days prior to the retaining of such expert, the City will provide notice to the Franchisee, and provide Franchisee with an opportunity to respond to the issues of concern. After review of the response, the decision as to whether to proceed to retain the expert shall remain solely within the discretion of the City. Any resulting fees or expenses of experts or consultants incurred to conduct a performance evaluation are to be borne by the applicant if non-compliance with this Ordinance or a franchise agreement is established following release of the report and a public hearing thereon. However, in no event shall franchisee be responsible for payment to any consultant retained on a contingency payment basis.~~

F. ~~At the expiration without right of renewal of the term for which this Franchise is granted, including any renewal term, or upon its termination and cancellation, as provided for herein, the City, at its election, and upon payment of the fair market value to the Franchisee consistent with applicable law, shall have the right to purchase and take over the Franchisee's System in the City. The above price shall not include, and the Grantee shall not receive, anything for the valuation of any right or privilege appertaining to it under a Franchise. Upon the exercise of this option by the City and its service of an official notice of such action upon the Franchisee, the Franchisee shall immediately transfer to the City possession and title to all facilities and property, real and personal, of the System, free from any and all liens and encumbrances not agreed to be assumed by the City in lieu of some portion of the purchase price set forth above, and the Franchisee shall execute such warranty deeds or other instruments of conveyance to the City as shall be necessary for this purpose. The Franchisee shall do nothing during the term of this franchise or any extension thereof to or in any way prevent or hinder the City from purchasing the System under the option contained herein.~~

SECTION XXXV - SAVINGS

All rates, fees, charges and financial obligations previously accrued pursuant to the Ordinances and resolutions repealed pursuant to Section 2 above shall continue to be due and owing until paid.

SECTION XXXVI - SEVERABILITY

If any part, section, subsection, or other portion of this Ordinance or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reason, such part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Ordinance, and all applications thereof not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City declares that no invalid or prescribed provision or

~~application was an inducement to the enactment of this Ordinance, and that it would have enacted this Ordinance regardless of the invalid or prescribed provision or application.~~

SECTION XXXVII - APPLICABLE LAW

~~This Ordinance shall be construed in accordance with the law of the State of Florida and is subject to applicable local, state and federal law.~~

SECTION XXXVIII - EFFECTIVE DATE

~~The effective date of this Ordinance shall be thirty (30) days from its adoption date.~~

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Florida this 17th day of December, 2003.

AUTHENTICATION:

MAYOR _____ CITY CLERK _____

APPROVED AS TO FORM: _____
CITY ATTORNEY _____

Vote: _____

Arend _____	Aye _____	Piper _____	Aye _____
Edsall _____	Aye _____	Wagner _____	Aye _____
Nelson _____	Aye _____	Warfield _____	Aye _____
Pass _____	Aye _____		

Date filed with City Clerk: _____