

**CHAPTER 20**  
**FRANCHISES**

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(Originally adopted by Ord. No. 432, '1, 4/10/95)  
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**ARTICLE I. IN GENERAL**

**Sec. 20-1. Definitions**

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) "City" means the City of West Columbia, Texas.
- (2) "Council" means the governing body of the City.
- (3) "Grantee" means any person or entity to which a franchise is

granted under this Chapter.

(4) "Person" means any natural person, company or entity of any kind.

(5) "Franchise Area" means that area within the corporate limits and/or extra-territorial jurisdiction of the City, as now or hereafter constituted.

(7) "Street" means the surface of and the space above and below any public street, way, place, right-of-way, road, highway, freeway, bridge, tunnel, lane, path, bike path, alley, court, sidewalk, parkway, drive, communications or utility easement, by whatever named called, now or hereafter existing as such with the Franchise Area.

(8) "Patron" means any person or entity receiving and paying for any service for which a franchise is required within the City.

(9) "Shall" for the purposes of this Chapter, is always mandatory and not merely directory.

(10) "Utility" shall mean and include any person or entity engaged in the sale and/or distribution of products or services within the City using equipment designed, constructed or wired for the purpose of selling, distributing and/or transmitting any product or service along, beneath, above or across any Street of the City. The products and services covered by the term "Utility" will include, but not be limited to, electricity, natural gas, telephone, cable television and wireless cable television.

(11) "Equipment" shall mean and include wires, pipes, lines, poles, conduits, cables, towers, convertors, pedestals, appliances, attachments, conductors, convertors, appurtenances to any of the above, and any other device used in or associated with the distribution or transmission of products or services in conjunction with a utility.

(12) "Franchise" means a grant of authority for a specified period of time to any person to own, operate, and/or maintain a Utility within the Franchise Area.

## **Sec. 20-2. Franchise Required**

It shall be unlawful for any person or entity to operate or maintain

any Utility within the City unless the operator has obtained and maintains in good standing a valid Franchise under this Chapter.

**Sec. 20-3. Franchises Non-exclusive**

Any and all Utility Franchises granted under this Chapter shall be non-exclusive.

**Sec. 20-4. Conditions of Street Occupancy**

(a) All equipment erected, installed and/or maintained by a Grantee within the Franchise Area shall be so located as to cause minimum interference with the proper use of streets, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of said streets.

(b) Any Grantee which uses above ground wire or cable for the purpose of distributing its product is prohibited from erecting poles or other wire holding or cable holding structures in any location at which Patrons can reasonably be served from poles or other wire holding or cable holding structures already existing and belonging to some other Grantee operating a Utility under a Franchise from the City. Any Grantee is required to utilize such poles and structures of such other Grantee in accordance with the rules and expressed consent of the Grantee involved. In specific locations which cannot be reached by the use of existing poles and structures of other Grantees, a Grantee may construct its own poles.

(c) Any Grantee is prohibited from erecting or installing equipment above ground in any area, subdivision or city block in which all other utility systems utilize underground transmission systems. In any area, subdivision or city block of the Franchise Area where the utility equipment is hereafter placed underground, the Grantee shall forthwith remove any and all above ground equipment, and install and operate all of its equipment underground.

(d) In case of any disturbance by Grantee of pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its own cost and expense, and in the manner approved by the City Manager, replace and restore all paving, sidewalk, driveway or surface disturbed, in as good condition as before said work was commenced, and shall maintain the restoration in an approved condition for a period of at least one (1) year.

(e) In the event that at any time during the period of any franchise granted under this Chapter, the City shall elect to narrow, widen,

relocate, alter, or change the grade of any street, or to vacate or abandon same, the Grantee shall, upon reasonable notice by the City, remove, relay and relocate its equipment at its own expense and without claim for reimbursement from the City. Whenever, by reason of construction, reconstruction or maintenance of any public structure or facility, it shall be deemed necessary by the City Manager for the Grantee to remove, relocate, change, alter or modify any of its equipment, the Grantee shall promptly do so upon reasonable notice by the City, at the Grantee's own expense and without claim for reimbursement from the City. Unless emergency or other urgent public necessity exists, for the purpose of reasonable notice by the City shall consist of written notification by the City to the Grantee on or before the later to occur of (i) October 31<sup>st</sup> of the calendar year and (ii) forty-five (45) days following the adoption of the City's budget for the City's fiscal year during which the project is planned. The Grantee shall in all cases have the right of abandonment of its property.

**(f)** Any Grantee under this Chapter shall not place equipment where the same will interfere with the equipment of any other utility or any water, sewer or drainage facilities or equipment maintained by the City, and all such equipment shall be placed as directed by the City Manager, in such manner as to not interfere with the usual travel or use of the streets. Grantee shall make no excavation in the streets without first procuring a written permit from the City Manager and all work shall meet the requirements of the Code of Ordinances of the City and shall, at the City's option, be supervised by the City Manager.

**(g)** Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires and cables to permit the moving of buildings. The reasonable expense of such temporary removal, raising or lowering of wires and cables should be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than five (5) business days advance notice to arrange for such temporary changes.

**(h)** Grantee shall have the authority, to the extent that the City may lawfully grant the same, to trim trees upon and overhanging streets of the City so as to prevent the branches of such trees from coming in contact with the equipment of the Grantee.

**(i)** Subject to any applicable state or federal regulations or tariffs, the City shall have the right to make additional use, for any public purpose, of any poles or conduits controlled or maintained exclusively by or for the Grantee in any street provided that the City holds the Grantee harmless with respect to any damages or causes of action arising from such use.

(j) Any Grantee under this Chapter shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods, equipment and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

(Ord. No. 460, '1, 12/8/97, added language in para. (e).)

#### **Sec. 20-5. Indemnification**

Any Grantee under this Chapter shall indemnify and hold harmless the City, the Council, Mayor, its officers and employees from any and all claims, damages, lawsuits, judgments and liability arising out of or resulting from the construction, operation or maintenance of the utility for which it holds a franchise under this Chapter. This indemnification shall include, but not be limited to, any damages resulting from infringement of any copyright, trademark or franchise. The Grantee shall pay to the City any expenses incurred by the City in defending itself with regard to damages above set forth including reasonable value of services rendered by the City Attorney or other attorney representing the City. The Grantee waives all claims, damages and liability it could assert against the City, as to all claims, damages and liability which would not have arisen but for Grantee's operations and exercise of rights, privileges and duties under this chapter.

#### **Sec. 20-6. Operational Standards**

(a) Any Grantee under this Chapter shall install and maintain its equipment in accordance with all applicable national codes and safety requirements.

(b) All above ground wires and cables crossing a street shall be at least eighteen feet (18') above the surface of the traffic lane except with respect to a State Highway in which case they shall be at least twenty-two feet (22") above the surface.

(c) Grantee shall make every reasonable effort to consistently provide its Patrons with service of high quality. In that connection, the Grantee shall:

- (1) Limit failures to a minimum by locating and correcting malfunctions promptly, but in any event no later than

twenty-four hours after giving of notice, and begin actions to correct other service problems the first business day following notification of remedial action, once commenced, with reasonable diligence to completion;

- (2) Render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the system;
- (3) Shall maintain, unless expressly waived in writing by the City, an office in the City, which shall be open during all usual business hours, have a listed telephone, and be so operated that complaints and requests for repairs or adjustments may be received during all usual business hours and during all hours of distribution; and
- (4) Maintain a staff sufficient to service adequately all of the equipment which it furnishes during all hours of distribution.

(d) In the event that the performance by Grantee of any of its obligations or undertakings hereunder shall be interrupted or delayed by any occurrence not occasioned by the conduct of either the City or the Grantee, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then it shall be excused from such performance for such a period of time as is reasonably necessary, after such occurrence, to remedy the effect thereof.

(Ord. No. 460, '1, 12/8/97, language added to paragraph (c)(1))

## **Sec. 20-7. Records and Reports**

The Grantee shall at all times maintain adequate records of gross receipts from service income, which records shall be available at all reasonable times to inspection by the City through its duly designated officers, agents or representatives. The City shall have access at all reasonable hours to all of the Grantee=s plans, contracts, engineering, accounting, financial, statistical, customer

and service records relating to the equipment and operations of the Grantee within the Franchise Area, and all other records required to be kept under this Chapter. The following records and reports shall be filed with the City Secretary and in the local office of the Grantee:

(1) Copies of such rules, regulations, terms and conditions adopted by the Grantee for the conduct of its business within the City; and

(2) An annual report showing gross revenues received by the Grantee with respect to the Franchise Area during the preceding fiscal year of the Grantee, said annual report to be filed no later than ninety (90) days from the end of Grantee=s fiscal year, which reports shall be sworn to and shall include among other things a detailed explanation of all receipts relating to Grantee=s operations within the Franchise Area and of all items deducted from those receipts in calculating Franchise fees payable pay (sic) by Grantee to the City.

(Ord. No. 460, '12/8/97, added language)

#### **Sec. 20-8. Prohibition of Transfer**

Any Grantee under this Chapter shall not sell or transfer any rights under the franchise to another, other than a parent company or a wholly owned subsidiary of the Grantee, without the prior written approval of the Council. No sale or transfer of the Grantee=s franchise rights shall be effective unless and until the transferee has filed in the office of the City Secretary an instrument duly executed, reciting the fact of such sale, accepting the terms of the franchise, and agreeing to perform and otherwise abide by all terms and conditions of the franchise.

#### **Sec. 20-9. Application and Hearing Required**

(a) An application for a utility franchise shall be submitted to the City in such form as is specified or is otherwise acceptable at the time of submission, to the City. The City may request such facts and information as it deems appropriate. Any application shall include, but not by way of limitation, a map of suitable scale which shows all roads and public buildings, and which indicates the areas to be served and the proposed dates of commencement of service for each area. The proposed service area shall be subject to approval by the City. If approved, the service area shall be incorporated into any franchise granted pursuant to this Article. If no service area is specifically

delineated in a franchise, it shall be considered to be coterminous with the boundaries of the Franchise Area.

**(b)** After receiving an application for a franchise, the City shall have access at all reasonable hours to all of the Applicant=s contracts, and engineering, accounting, financial, statistical, customer and service records relating to the property and the operation of the Applicant, and to all other records required to be kept thereunder at the office where such information is located. The Grantee shall, upon request form the City, copy any and all such records and provide those copies to the City, with the City to bear the reasonable cost of making and transmitting those copies. Nothing in this section is intended nor shall it be construed as requiring the Grantee to provide or disclose to the City any proprietary information.

**(c)** In the event an application is filed proposed to serve a Franchise Area which overlaps, in whole or in part, an existing Grantee=s Franchise Area, a copy of such application shall be served by the Applicant, by registered or certified mail, upon the existing Grantee. Such notice shall be considered a condition precedent to consideration of the application by the City.

**(d)** Since franchises may have an adverse impact on the public rights-of-way, the City may issue a franchise only following a public hearing to consider the potential impact which the grant of a franchise may have on the community. In considering whether to grant one or more franchises, the City shall consider the following issues:

- (1)** The positive and/or negative impact of a franchise on the community.
- (2)** The amount of time it will take the applicant to complete construction of the proposed system and activate service in the entire area to be served; and whether the applicant can complete construction and activation of its system in a timely manner.
- (3)** The financial capabilities of the applicant and its commitment to make the necessary investment to erect, maintain and operate the proposed utility system for the duration of the franchise term.
- (4)** The quality and technical reliability of the proposed system, based upon the applicant's plan of construction, the method of distribution of signals, and the applicant's technical qualifications to

construct and operate such system.

- (5) The experience of the applicant in the erection, maintenance and operation of a utility system.
- (6) The probability and ability of an applicant to continue to provide the utility service in question to patrons within the entire franchise area for the duration of the franchise.

(Ord. 445, '1, 1/8/96, added para. (d); Ord. No. 460, '1, 12/8/97, added language to para. (b))

### **Sec. 20-10. Grant of Franchise**

Should the City determine to grant a Utility Franchise in response to an application filed under this Chapter, which shall do so by ordinance which shall specify the Grantee, any special terms of the Franchise, and the commencement and ending dates of the Franchise, subject to earlier termination as provided in Sec. 20-11. Any Grantee whose application is approved by the City shall have thirty (30) days after passage and approval of the ordinance granting the franchise within which to file with the City Secretary its written acceptance of that grant. Failure to file the acceptance within the time provided shall result in the automatic termination of the Franchise.

### **Sec. 20-11. Early Termination**

Any franchise granted under this article is subject to early termination should the Grantee fail to cure one or more of the grounds for termination set forth below within sixty (60) days after written notice from the City to correct such grounds and following a public hearing held expressly for that purpose. The grounds for early termination are as follows:

- (1) Material breach, whether by act or omission, of any terms or conditions of this Chapter or of the ordinance granting the specific Franchise; or
- (2) Material misrepresentation of fact in the negotiation of any franchise granted hereunder; or
- (3) Insolvency of the Grantee, or application by the Grantee for adjudication as a bankrupt, or inability or unwillingness of the Grantee to pay its just debts when they accrue, except that the Grantee may withhold payments when there is a good faith belief that the payment is not due or there is a dispute

regarding the debts; or

(4) Failure to provide Patrons or users with adequate service in the best interest of the public convenience and welfare.

### **Sec. 20-12. Insurance**

Within thirty (30) days following the grant of a franchise by ordinance under this Chapter, the Grantee shall obtain and provide the City with certificates evidencing the following insurance policies:

(1) A general comprehensive liability policy indemnifying, defending and saving harmless the City, its officers, boards, commissions, agents or employees from any and all claims by any person whatsoever on account of injury to or death of a person or persons occasioned by the operations of the Grantee under the franchise herein granted, or alleged to have been so caused or occurred, with a minimum liability of One Million Dollars (\$1,000,000) per personal injury or death of any one person, and Two Million Dollars (\$2,000,000) for personal injury or death of any two or more persons in any one occurrence.

(2) Property damage insurance for property damage occasioned by the operation of Grantee under the franchise herein granted, or alleged to have been so caused or occurred, with a minimum liability of five Hundred Thousand Dollars (\$500,000.00) for property damage to the property of any one person and One Million dollars (\$1,000,000.00) for property damage to the property of two or more persons in any one occurrence.

(3) All insurance policies called for herein shall name the City as an additional insured and shall contain a waiver of subrogation and shall provide for thirty (30) days= written notice of any cancellation to both the City and the Grantee. The City further agrees to, upon written request from the Grantee, provide Grantee with a Waiver of Subrogation in behalf of the City and the City=s liability insurance carrier. The Grantee shall, in the event of any such cancellation notice, obtain, pay all premiums for, and file with the City, written evidence of the issuance of replacement policies within thirty (30) days following receipt by the City or the Grantee of any notice of cancellation, and in any event prior to the effective cancellation date contained in that notice.

(4) To the extent the Grantee obtains and maintains in effect the insurance coverage required under this section, the City agrees to and shall waive, in behalf of its liability insurance provider subrogation against the

Grantee as to claims and amounts covered by Grantee=s insurance.

(Ord. No. 460, '1, 12/8/97, increased minimum liability for personal injury.)

**Sec. 20-13. Compliance with State and Federal Laws**

The Grantee shall at all times comply with all State and Federal laws and the applicable rules and regulations of administrative agencies. If the Federal Communications Commission (FCC), the Texas Public Utility Commission, or any other federal or state governmental body or agency enacts any law or regulation or exercises any paramount jurisdiction over the subject matter of this Chapter or any franchise granted hereunder, the jurisdiction of the City shall cease and no longer exist to the extent such superseding jurisdiction shall pre-empt or preclude the exercise of like jurisdiction by the City.

**Sec. 20-14. Interest**

Any and all sums payable by a Grantee under this Chapter to the City shall bear interest from the date due until paid at twelve percent (12%) per annum.

## **Sec. 20-15. Rates for Services**

All charges to Patrons shall be consistent with a schedule of fees for services offered and established by the Grantee. Rates shall be non-discriminatory in nature and uniform to persons of like classes, under similar circumstances and conditions, except where necessary to meet competition.

(1) Grantee may offer different or discounted rates at its discretion in order to meet competition or for promotional use purposes. Grantee may establish different rates for different classes of Patrons where appropriate, such as offering discounted rates to low income individuals and groups.

(2) Grantee shall inform each new Patron of all applicable fees and charges for providing cable television service.

(3) Grantee may, at its own discretion and in a non-discriminatory manner, waive, reduce or suspend connection fees, monthly service fees or other charges on a one time or monthly basis for promotional purposes.

(4) This section shall not prevent a Grantee from refusing service to any person because the Grantee's prior accounts with that person remain due and owing.

(5) A Grantee may offer service which requires advance payment of periodic service charges. A Patron shall have the right, at any time, to have service disconnected with a refund of any pre-paid but unused service charges within sixty (60) days from the date service is disconnected.

(6) The Grantee shall provide the City with thirty (30) days' advance written notice of any change in rates and charges.

(7) The Grantee shall provide refunds to Patrons in the following cases:

(A) If the Grantee fails within a reasonable time to commence service requested by a Patron, it will refund all deposits or advance charges that the Patron has paid in connection with the request for such service at the request of the Patron.

(B) If a Patron terminates any service at any time and has a credit balance, the Grantee will, upon notice from the Patron and upon return of all of Grantee's

equipment, refund the appropriate credit balance to the Patron. The Patron will be responsible for furnishing the Grantee a proper address to which to mail the refund.

- (C) If any Patron's utility service is out of order for more than forty eight (48) consecutive hours during the month due to technical failure, damage, or circumstances within the control of the Grantee, the Grantee will credit the account of that Patron on a pro rata basis upon the Patron's written request. The credit will be calculated using the number of twenty-four (24) hour periods that service is impaired and the number of channels on which service is impaired as a fraction of the total number of days in the month that the service impairment occurs and the total number of channels provided by the system in the absence of an impairment.

(Ord. No. 445, '1, 1/8/96, added language)

#### **Sec. 20-16. Franchise Fees Not in Lieu of other Fees or Taxes**

The payment of a franchise fee by a utility under this Chapter shall be in addition to and shall not be construed as payment in lieu of all other taxes and fees that generally apply to other utilities or businesses, such as personal or real property taxes levied by the City. No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee under this Chapter or for the performance of any other obligation of any Grantee under this Chapter.

(Ord. No. 445, '1, 1/8/96, section added)

#### **Sec. 20-17. Patron Refunds**

Any Grantee shall provide refunds to Patrons in the following cases:

- (a) If the Grantee fails within a reasonable time to commence service requested by a Patron, then the Grantee shall immediately refund all

deposits or advance charges that the Patron has paid in connection with the request for such service at the request of the Patron.

(b) Patrons may notify the Grantee they wish to terminate part or all services at any time. Upon return of the appropriate Grantee's equipment, when applicable, by the patron, any pre-paid but unused service charges shall be refunded to the Patron. Refund checks will be issued promptly, but no later than either the Patron's next billing cycle following the termination of service, or thirty (30) days, whichever is earlier. Credits for service will be issued no later than the Patron's next billing cycle, or thirty (30) days, whichever is earlier. The Patron is responsible for furnishing the Grantee with a proper address to mail the refund.

(c) If any Patron's service is out of order for four (4) or more cumulative hours during any twenty-four (24) hour period due to technical failure, damage, or circumstances within the control of the Grantee, the Grantee shall credit the account of that Patron a minimum of one (1) day's service. Each reoccurrence of the above conditions in a subsequent twenty-four (24) hours period shall also be considered a full day for crediting purposes. The twenty-four (24) hour period shall begin when Grantee has either its own knowledge of the event or has been notified by the Patron. Credit shall be automatic, whether requested by the Patron or not, and shall be calculated using the number of days that the service interruption occurs as a fraction of the total number of days in the month that the service interruption occurs.

(Ord. No. 445, '1, 1/8/96, section added)

### **Sec. 20-18. Customer Service Hours and Telephone Service**

For Patrons to report outages or substandard service or reception, the Grantee shall have directory listed telephone numbers. These listings shall be local or toll free, and shall be manned (not a recording or recorder) with trained representatives to receive service calls a minimum of forty (40) hours per week, at Grantee's discretion between the hours of 8:00 a.m. and 6:00 p.m. on business days, but excluding holidays, and an adequate number of telephone lines and operators shall be provided so there is a minimum of one (1) available telephone line open at least every three (3) minutes (to prevent indefinite busy signals) and such that no caller remains on hold for over thirty (30) seconds at any time and no longer than two (2) cumulative minutes in total. At all other times, Grantee shall have an answering machine or other device activated on such local or toll free lines to receive and record reports by Patrons. If in the judgment of the City, the Grantee appears to have developed a history of non-

compliance, then the Grantee, at its own expense, shall install the appropriate equipment to measure compliance of any of the telephone standards required in this section. Grantee shall be deemed in compliance if the above standards are met at least ninety (90%) percent of the time, as measured on a quarterly basis.

(Ord. No. 445, '1, 1/8/96, section added; Ord. No. 460, '1, 12/8/97, language added)

### **Sec. 20-19. Grantee Employee Identification**

Grantee agrees to make a background check on all of its employees. All employees and contractors and installers except office personnel will wear uniforms and badges with identifying photograph identifying them by name and as employees of the Grantee.

(Ord. No. 445, '1, 1/8/96, section added)

### **Sec. 20-20 Force Majeure**

(a) In the event the Grantee is prevented or delayed in the performance of any of its obligations under this Chapter by conditions which are completely beyond the Grantee's control such as:

- (1) Acts of God - including flood, fires, hurricanes, tornadoes, earthquakes or other unusually severe weather conditions;
- (2) Civil disturbances - including war, riot, and sabotage;
- (3) Acts or omissions or delays by utility companies upon whom Grantee is dependent for pole attachments or easement use;
- (4) Absence of incoming broadcast signals from suppliers.

(b) The Grantee shall have a reasonable time under the circumstances to perform, its obligations under this Chapter or to procure a reasonable, and comparable substitute for such obligations. Under such circumstances the Grantee shall not be in default or noncompliance with the provisions of the Chapter nor shall it suffer any penalty relating thereto.

(c) Circumstances deemed to be within the control of the Grantee are not allowable defenses for delays or non-performance of any of the Grantee's obligations under this Chapter.

(Ord. No. 460, '1, 12/8/97, sec. added)

## **Sec. 20-21. Assignment of Franchise**

### **(a) Pledge for Security Purposes or Assignment to a Related Entity**

The Grantee may secure financing or an indebtedness by trust or mortgage, in whole or in part, without requiring the consent of the City. Consent shall be required to assign a Franchise from one business entity to another which is operated or managed by the present Grantee or manager of the system, which consent shall not be unreasonably withheld.

### **(b) Assignment to an Unrelated Entity**

A Grantee may request permission to assign its Franchise to another entity (defined as the "Assignee"). The consent of the City shall be required for such an assignment. To aid the City in its review of this request, the City shall be provided with a reasonable showing that the proposed Assignee possess the technical and financial qualifications to operate that Utility Franchise and that the Assignee agrees to comply with the terms of this Chapter.

### **(c) Procedures to be Followed Upon Request for Assignment**

(1) Within thirty (30) days following receipt of the request for the assignment from the Grantee, the City shall inform the Grantee in writing by certified mail whether or not it intends to hold a hearing. If no hearing is held by the City within thirty (30) days following receipt of the request for assignment by the Grantee, the assignment of the Franchise shall be deemed approved. If the hearing is held, it shall provide the Grantee and the Assignee the opportunity to present evidence as to the Assignee's technical and financial qualifications. Such hearing shall be held by the City within a timely manner.

(2) Within fourteen days (14) following the date of the hearing, the City shall make a formal determination regarding the requested assignment. If the City determines that the proposed Assignee is not technically or financially qualified to operate the cable system, it shall send a written

explanation of its decision to the Grantee by certified mail within fourteen (14) day period.

**(d) Assignment May be Appealed**

The reasonableness of the City's actions regarding a requested assignment shall be subject to judicial review by a court of appropriate jurisdiction. The City shall not be liable for any of Grantee's costs associated with the appeal process, regardless of the outcome.

(Ord. No. 460, '1, 12/8/97, sec. added)

**Sec. 20-22. Notice to the Grantee**

Except as otherwise provided in this Chapter, the City shall not meet to take any action involving the Grantee's Franchise unless the City has notified the Grantee by certified mail and telephonic wire transfer (fax) at least five (5) days prior to such meeting, as to its time, place and purpose. The notice provided for in this section shall be in addition to, and not in lieu of, any other notice to the Grantee provided for in this Chapter. All notices, requests, demands and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given if mailed by certified mail return receipt requested, to the contact person and address originally listed in the specific Franchise agreement or as may be properly updated by certified mail. It shall solely be the Grantee's duty and responsibility to notify the City in writing if the contact's name or address should change.

(Ord. No. 460, '1, 12/8/97, sec. added)

**Sec. 20-23. Construction Timetables for System Upgrades and Expansions**

When major construction is to be undertaken by the Grantee, on its own initiative or at the request of the City, such as system upgrades related to renewal of Franchise, the construction timetable and reporting shall be submitted to the City no fewer than thirty (30) days prior to commencement of the project in a form acceptable to or specified by the City and in accordance with procedures and schedules established by the City. All installations and construction will conform to the City ordinance and be subject to all building permits and inspections required by the City. Plans showing detail of all construction shall be filed with the City prior to commencement of construction

and "as built" plans will be filed after construction is completed as well as plans showing all subsequent construction and alterations.

(Ord. No. 460, '1, 12/8/97, sec. added)

**Sec. 20-24. Nondiscrimination in Employment**

The Grantee shall not refuse to hire, discharge from employment, nor discriminate against any person in their compensation, terms, conditions, or privileges of employment because of age, sex, race, color, creed, or national origin.

(Ord. No. 460, '1, 12/8/97, sec. added)

**Sec. 20-25. Grantee May Issue Rules**

The Grantee shall have the authority to issue such rules, regulations, terms and conditions of its business as shall be reasonably necessary to enable it to exercise its rights and perform its services under this Chapter and the Rules of any applicable governing body, state or federal, and to assure uninterrupted service to each and all of its Subscribers.

(Ord. No. 460, '1, 12/8/97, sec. added)

**Sec. 20-26. Grantee Must Provide Maps**

The Grantee must provide to the City, within three months of the issuance of a Franchise, a complete set of maps of the existing franchise distribution lines or other devices, including in each instance whether and to what extent those lines or devices are above ground or below ground. The Grantee shall provide updated and current maps to the City on at least a quarterly basis, and sooner if significant changes have taken place. This requirement may be waived if no changes have taken place in the quarter, or by prior written agreement with the Grantor.

(Ord. No. 460, '1, 12/8/97, sec. added)

[**Note:** Sec. 20-27 thru and including Sec. 20-39 are intentionally omitted, and are reserved for subsequent expansion.]

## **ARTICLE II. CABLE TELEVISION SYSTEMS**

### **Sec. 20-40. Definitions**

(a) ACable Television Systems@ shall mean and include a system composed of equipment for the purpose of producing, receiving, amplifying and distributing television or other electronic or electrical signals by cable (whether consisting of wire, fiber optics, or any other similar or successor technology) to and from persons, subscribers and locations within the Franchise Area.

(b) "Acceptable Minimum", when referring to service and reception is defined as both the standards adopted under 47 CFR, Section 76.605, as amended from time to time, together with any and all other applicable federal statutes, rules and regulations.

(c) "Basic Service" means the standard base service as defined by the Cable Act.

(d) "Cable Act" means The Cable Television Consumer Protection Act of 1992, and such future legislation as may amend or supersede it.

(e) "Channel" is a band of frequencies, in the electromagnetic spectrum, capable of carrying one audio and/or visual signal.

(f) "Drop Line" means the line which the Grantee uses to provide service from the main or trunk line to the cusomter=s service connection.

(g) "FCC" means the Federal Communications Commission.

(h) "Gross Revenues" shall mean any and all revenues actually received, from all sources, except copyright fees, by the Grantee from the operation of its cable systems in providing cable services within the City, including, but not limited to, all income without any offsetting of expenses, costs, or depreciation, any of which are derived from:

- (1) Subscribers receiving goods, equipment, equipment service, or cable service from or through the use of a cable system within the City; revenues for service, installation and repair, and any and charges not specifically exempt herein such as delinquency fees, interest, or finance charges;
- (2) Advertising, marketing, and sales of programming, air time, or other services offered by or, through a cable system within the City or aired within the City;
- (3) Home shopping channel sales made within the City; and
- (4) Any and all revenues received by a franchisee for services which, even if unrelated to cable systems, are provided by a franchisee within the City Limits.
- (5) Without limiting the generality of the foregoing, "gross revenues" is not intended to include income, credits or revenues attributable to the operation of a cable system within the City arising from:
  - (A) Real property transactions;
  - (B) Taxes, including Franchise Fees, paid by subscribed or those paid within and to the City by the operator of a cable system;
  - (C) Interest, other than interest charged subscribers of the cable system within the City or advertisers for services provided or delivered by the cable system within the City, or dividends on investments received by the Grantee unrelated to the delivery of cable services within the City; or
  - (D) Net uncollectible debts.

(i) "Out of Order" or "Sub-Standard Reception" or "Non-Service" or any similar term used in the same general context, means that the level of physical service at the point of the Patron's service connection is below the acceptable minimum, as defined in Section (b) above.

(j) "Pay Television" or "Pay Per View" means unique special event broadcasts or special service broadcasts, as opposed to continuous type or ongoing broadcasts, provided on an individual basis at an additional charge to the subscriber.

(k) "Service Connection" or "Service Outlet" means the point at which the Grantee's service responsibilities end and the Patron's begin. For use in this Article, that point shall be twelve inches (12") from where the cable is physically attached to the Patron's structure as defined by the FCC Ruling.

(l) "Site Specific Service Failure" means the failure to provide an acceptable signal to a specific subscriber location, with such failures usually being caused by a drop line problem.

(m) "Site Specific System Failure" means the failure to provide an acceptable signal to a generally contiguous group of Patrons, with such facilities usually being caused by main line problems, or centralized equipment problems.

(n) "Trunk Line" or "Main Line" generally means the larger lines from which service lines will branch.

(o) "Service Interruption" means the loss of picture or sound on one or more cable channels.

(p) "Public Building" shall mean and include the City Hall, the Civic Center, the community library, the police department, the fire station, all other city owned buildings to which the public generally has access, and all of the campuses and buildings of Columbia-Brazoria Independent School District located within the Franchise Area.

(q) "Programming Services" shall mean the delivery of audio and/or video signals by cable to and from persons, subscribers and locations within the Franchise Area.

(Ord. No. 445, '1, 1/8/96, defs. (h) B [o] added; Ord. No. 460, '1, 12/8/97, added language to (b) and defs. (p) and (q).)

**Sec. 20-41. Franchise Fee**

Any Grantee under this Article shall pay a franchise fee for the use, occupancy, oversight, supervision and regulation of the City's rights-of-way and to compensate the City for all costs associated with administering and regulating

the utility system in question. The franchise fee under this section is lieu of and in full compensation for any lawful tax or license or charge or right-of-way permit fee or inspection fee or right-of-way easement or rental or corporate franchise tax for the use and occupancy of the rights-of-way within the City, except for the usual general ad valorem taxes, special assessments in accordance with State law, or sales taxes now or hereafter levied by the State or City in accordance with State law. The amount of the franchise fee shall be three percent (3%) of the Grantee's Annual Gross Patrons Receipts, and such fee shall be paid on an annual basis within ninety (90) days from the close of the calendar year. Grantee shall be entitled to list the franchise fee as a separate line item on monthly bills. The franchise fee for any fractional portion of a calendar year included within the term of the franchise shall be prorated, including for the purposes of that proration all of any month during a portion of which the franchise is in effect. Failure to pay the franchise fee in full within fifteen (15) days of written demand by the City shall constitute a material breach under Section 20-11.

#### **Sec. 20-42. On Site Service Responses**

The following response times are in addition to, and not in lieu of, other service standards and response times specified in Article I of this chapter. In the event different response time under this section from those specified in Article I of this chapter, the shorter response time shall apply.

**(a)** Excluding conditions beyond Grantee's control, grantee will begin working on service interruptions promptly and in no event later than twenty-four (24) hours after the interruption is reported to Grantee. Grantee must begin actions to correct the service problem the first business day following notification of the problem. In either case, Grantee must pursue the appropriate remedial action, once commenced, with reasonable diligence to completion.

**(b)** Service calls, installations, and related installation activities, when requested by the Patron, will be either a specific time or, at maximum; a four (4) hour time block during normal business hours. The Grantee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the Patron.

**(c)** A Grantee may not cancel an appointment with a Patron after the close of business on the business day prior to the scheduled appointment. If a cable operator representative is running late for an appointment with a Patron and will not be able to keep the appointment as scheduled the Patron shall be contacted, and if it is acceptable to the Patron, the

appointment may be rescheduled, as necessary, at a time which is convenient for the Patron.

(Ord. No. 445, '1, 1/8/96, section change; Ord. No. 460, '1, 12/8/97, deleted paras. (d)-(f), paras. (a)-(c) substantial language change)

### **Sec. 20-43. Customer Service and Consumer Protection and Customer Notification**

(a) In establishing response time to service or repairs calls, the Grantee may differentiate between service problems unique to single household as compared to problems caused by a service outage which affects a large number of Patrons ("area outage"). An "area outage" is defined as an outage of all cable channels in four (4) or more residences in the same neighborhood or area which is caused by a problem with the cable system, rather than being caused by the patron or by a cause beyond the Grantee's control, such as a loss of power from the local electric company.

(b) All area outages shall be responded to as soon as possible after notification on a twenty-four (24) hour-a-day, seven (7) day-a-week basis. Designated technicians shall be on call twenty-four (24) hours a day to respond when notified by phone or paged by Grantee or an answering service employee.

(c) The Grantee shall not, without good cause, fail to make available cable television service to prospective Patrons nor shall the Grantee terminate service without good cause. Service shall be provided to all interested customers where economically feasible and consistent with the line extension provisions contained in this Chapter.

(d) The Grantee shall provide the Grantor and all Subscribers with notice thirty days in advance of any changes in rates, programming services or Channel positions through announcements on the cable system and in writing. In addition, the Grantee shall notify Subscribers thirty days in advance of any significant changes in the information in each of the following areas, as well as at the time of installation of service, at any time upon request, and once a year as required by Federal Rule:

- (1) Products and services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other

services;

- (3) Installation and service maintenance policies;
- (4) Instructions on how to use the cable service;
- (5) Channel positions programming carried on the system; and,
- (6) Billing and complaint procedures, including the address and telephone number of the local Franchise authority's cable office.

(Ord. No. 445, '1, 1/8/96, deleted prior para. (a) and renumbered; Ord No. 460, '1, 12/8/97, added para (d).)

#### **Sec. 20-44. Extension of Cable Service**

(a) A Grantee which is not already serving the entire Franchise Area shall provide service to all portions of the Franchise Area reaching a minimum density of thirty (30) dwelling units per linear street mile as measured from the nearest system trunk line with one (1) year after the grant of a franchise.

(b) Grantee shall extend and make cable television service available to any resident within the Franchise Area who requests connection at the standard connection charge if the connection to the resident would require no more than a standard one hundred fifty foot (150') aerial or seventy-five foot (75') buried drop line. With respect to requests for connection requiring an aerial or buried drop line in excess of 150 and 75 feet respectively, Grantee shall extend and make available cable television service to such residents at the scheduled connection charge.

(c) In areas with less than thirty (30) residential units per proposed cable bearing strand mile, Grantee shall offer a cost-sharing arrangements with residents. A dwelling unit will be counted for this purpose if its lot fronts a street. At the request of a resident desiring service, Grantee shall determine the cost of the plant extension required to provide service to potential Patrons from the closest point on the cable television system where it is technically feasible. The cost of construction shall be allocated based on the following formula:

- (1) If a request for extension of service into a residential area requires the construction of a cable plant which does not pass at least thirty (30) potential Patrons, then for each proposed cable bearing strand mile, Grantee and residents who agree to subscribe to cable television service will each bear their proportionate share of construction costs. For example, if there are five (5) dwelling units per proposed cable bearing strand mile, Grantee's share will equal 5/30ths or one-sixth (1/6th) of the construction cost. The remaining cost will be share equally by each Patron.
- (2) Should additional residents subscribe to cable television service in areas where Patrons have already paid proportionate share under the extension costs sharing formula. In such case, the pro rata shares shall be recalculated and each new Patron shall pay the new pro rata share, and all Patrons who previously paid a proportionate share shall receive pro rata refunds. In the event such Patrons (or prior Patrons) have been disconnected or have moved and owe the Grantee money which has not been recovered, Grantee shall have the right to first apply the refund to amounts owed the Grantee and give the balance, if any to the Patron. At such times as there are thirty (30) potential patrons per cable bearing strand mile, the Patrons shall receive their pro rata share of construction costs. In any event one (1) year after the completion of a project, Patrons who have paid a share of line extension costs are no longer eligible for refunds, and the amounts paid in construction costs will be credited to the plant account of Grantee.

#### **Sec. 20-45. Free Basic Service to Public Buildings**

Grantee shall provide, without charge, one service outlet activated for basic patron service to each police station, fire station, public school, public library and the City office. If it is necessary to extend Grantee's trunk or feeder lines more than two hundred feet (200') solely to provide service to any such school or public building, the City or the building owner or occupants shall have

the option of either paying Grantee's direct costs for line extensions in excess of two hundred feet (200') or releasing the Grantee from the obligation to provide service to such building. Furthermore, Grantee shall be permitted to recover the direct cost of installing cable television service, when requested to do so, in order to provide: (a) more than one (1) outlet; (b) inside wiring; or (c) a service outlet requiring more than two hundred feet (200') of drop cable.

## **Sec. 20-46. Channel Blockers**

Upon request from Patrons, the Grantee shall supply free of additional charge, a device to block out undesired channels.

(Ord. No. 445, '1, 1/8/96, new section)

## **Sec. 20-47. Protection of Privacy**

The Grantee and the City will constantly guard against possible abuses of the right of privacy or other rights of any Patron or person. In particular, the Grantee shall comply with the privacy provisions of the Cable communications Policy Act of 1984, 47 U.S.C. 551.

**(a)** The Grantee shall not permit the transmission of any signal, aural, visual or digital from any Patron's premises without first obtaining the informed consent of the Patron, which shall not have been obtained from the Patron as a condition of any service for which transmission is not an essential element. The request for such consent shall be contained in a separate document which enumerates and describes the transmissions being authorized and includes a prominent statement that the Patron is authorizing the permission in full knowledge of its provision, and that permission shall be revocable at any time by the Patron without penalty of any kind whatsoever. This provision is not intended to prohibit the use or transmission of signals useful only for the control or measurement of system performance or used only for billing Patrons or providing basic or optional services.

**(b)** The Grantee shall not permit the use of any special terminal equipment in any Patron's premises of two way services utilizing aural, visual or digital signals without first obtaining written permission of the Patron as provided in Paragraph (a) of this section.

**(c)** The Grantee, its agents, or employees shall not, without the specific written authorization of the Patron involved, sell or otherwise make available to any party any list which identifies the viewing habits or responses of individual Patrons.

(Ord. No. 445, '1, 1/8/96, section added)

(Ord. No. 445, '1, 1/8/96, section added; Ord. No. 460, '1, 12/8/97, deleted entire section)



## **Sec. 20-48. Emergency Use of the System by the City & Emergency Audio Override**

The Grantee shall provide an acceptable emergency override system capability for the audio portion of its cable TV channels in order to provide prompt audio warnings of natural disasters or other emergencies in the City, including such systems as may be required by federal law from time to time. This emergency override system will allow the City Manager, or his or her designated representative to broadcast from the City Hall and the Police Station, at a minimum, an audio bulletin, and from the local studio introduce video bulletins, in time of crisis or emergency. In the case of emergency or disaster the Grantee, upon request of the City, shall make available its facilities and shall provide such personnel as may be necessary to operate its facilities under the circumstances to the City for emergency use during the emergency or disaster period. Grantee's obligation under this section shall at a minimum, comply with any and all applicable requirements under federal statutes, rules and regulations.

(Ord. No. 445, '1, 1/8/96, section added; Ord. No. 460, '1, 12/8/97, re-numbered, language added.)

(Ord. No. 445, '1, 1/8/96, section added; Ord. No. 460, sect. deleted)

## **Sec. 20-49. General Operating Standards**

The Grantee shall design, construct, operate, and maintain the system so the signals are delivered to Patrons without material degradation in quality in compliance with technical standards set forth in Sub-part K, Technical Standards of Title 47 Code of Federal Regulations ("CFR"), Part 76 Cable Television Service. A complaint of poor signal quality shall be regarded seriously and shall be responded to as required in subsection 20-42 above. Grantee's system shall meet or exceed all FCC specifications of engineering standards in effect as of the date of the grant of the franchise and shall comply with all future modifications of those engineering standards. Grantee shall operate and maintain its cable television system in compliance with the rules and regulations of the FCC and all other applicable federal, state and local laws. A copy of the semi-annual performance tests conducted to determine the extent to which the system complies with the technical standards as set forth in the FCC regulations shall be filed by the Grantee with the City.

(Ord. No. 445, '1, 1/8/96, section added; Ord. No. 460, '1, 12/8/97, section renumbered.)

## **Sec. 20-50. Removal of Equipment**

The Grantee shall have ninety (90) days to remove all equipment and material from all public property and utility easements within the franchise area upon the discontinuance of use of such equipment and material, unless otherwise directed by the Grantor.

(Ord. No. 445, '1, 1/8/96, section added; Ord. No. 460, '1, 12/8/97, section renumbered.)

## **Sec. 20-51. Franchisee's Obligation as Trustee**

(a) Recognizing that the Patrons are entitled to continuity of service, upon the expiration and non-renewal or revocation of a Grantee's franchise, and until such time as a new franchisee or the City, or its nominee takes possession of the system, the Grantee shall be granted a new temporary franchise effective only for the time period necessary to complete the procedures listed in this section. The Grantee shall, at the option of the City, act as trustee for its successor in interest, continue to operate the cable television system under the terms and conditions of this section and this ordinance and continue to provide the services that were being provided at the time of the termination. During such interim period, Grantee shall not sell any of the system assets nor shall Grantee make any physical, material, administrative or operations changes that would tend to:

- (1) Degrade the quality of service to the patron;
- (2) Decrease income; or
- (3) Increase expenses without the express written permission of the City.

(b) The City shall have legal and equitable relief to enforce the provisions of this section.

(c) For its management services during this interim period, the Grantee shall be entitled to receive as compensation the net profit generated during the period between the expiration or revocation of the terminated franchise and the date of sale and transfer to the new franchisee. Such management services shall not be continued for more than eighteen (18) months without Grantee's consent. Grantee shall not interfere with or otherwise impede any transfer of ownership and control.

(Ord. No. 445, '1, 1/8/96, section added; Ord. No. 460, '1, 12/8/97, section renumbered, language deleted.)

**Sec. 20-52. Rights to Purchase System**

In accord with Section 627 of the Cable Act, upon expiration and non-renewal of the franchise or upon revocation and upon payment to the City or its nominee to the Grantee of the fair market value of the Grantee's cable television system, the City or its nominee may purchase, acquire, takeover, or hold said system. For the purposes of this section "fair market value" shall be determined by valuing the Grantee's system as a going concern. No value shall be assigned to the franchise granted under this Ordinance. The City and Grantee shall attempt to mutually agree upon the fair market value of the system. However, if within a reasonable period of them they cannot agree upon the fair market valuation, then said valuation shall be determined by a three (3) member Board of Appraisers, one selected by the City, one selected by the Grantee, and one selected by the appraisers themselves. The cost of said appraisal shall be borne equally by the City and the Grantee. It is expressly provided, however, that this section is not intended nor shall it be construed as granting to the City an exclusive right to purchase Grantee's system. The Grantee may solicit offers from other potential buyers, and the ultimate decision as to who shall acquire the system shall be made by the Grantee.

(Ord. No. 445, '1, 1/8/96, section added; Ord. No. 460, '1, 12/8/97, language added, renumbered.)

**Sec. 20-53. Franchise Violation**

**(a) Forfeiture of Franchise**

In addition to all other rights and powers pertaining to the City by virtue of this Chapter, a Franchise or otherwise, the City reserves the right to terminate the Franchise and all rights and privileges of the Grantee hereunder in the event that the Grantee:

- (1)** Fails to cure any violation of any provision of this Chapter, or any Franchise granted under this Chapter, or any rule, order or determination of the City or City Council made pursuant to this Chapter, following notice of the violation to Grantee as provided in subsection B below ("Chapter" refers to

terms and provisions of this Chapter as of the date of the particular Franchise in question is granted, together with any subsequent amendments to the Chapter as agreed to, from time to time, in writing by the Grantee);

- (2) Becomes insolvent, unable or unwilling pay its debt, or is adjudged bankrupt;
- (3) Attempts to dispose of any of the facilities or property of its CATV business to prevent the City from purchasing same, as provided for herein;
- (4) Attempts to evade any of the provisions of this Chapter, or any Franchise granted under this Chapter, or practices any fraud or deceit upon the City.

**(b) Procedures in the Event of Alleged Violations**

(1) The City Manager or his designee shall be responsible for monitoring the compliance by Grantee with the terms of this Chapter and the terms of the Franchise. In the event of violations, the City Council shall take action to enforce its rights under the Chapter and Franchise. The Grantee may be penalized by the Grantor for violating any provision of the Chapter ("Chapter" refers to terms and provisions of this Chapter as of the date of the particular Franchise in question is granted, together with any subsequent amendments to the Chapter as agreed to, from time to time, in writing by the Grantee).

(2) If the Grantor concludes a violation has occurred and the Grantee should be penalized for cause, then the following procedure shall be followed:

- (A) The Grantor shall notify the Grantee in writing, by certified mail, of any violation(s) of this Chapter. The Grantee shall be given thirty (30) days from the date of receipt of such notice to respond in writing, stating its explanation for the alleged violation(s) and what action, if any, has been or is being taken to eliminate the alleged violation(s).
- (B) The Grantor may accept the explanation of the Grantee, approve the action taken or being taken to eliminate the alleged violation(s). If the Grantor rejects the explanation of the Grantee or believes the action taken or being taken will not eliminate the alleged violation(s) within a reasonable period of time from the

date of the original notice of the alleged violation(s), it may send the Grantee a "Notice of Intention to Assess Penalty".

- (C) The "Notice of Intention to Assess Penalty" shall state the alleged violation(s), the basis for the assessment of penalty and inform the Grantee that a penalty in the amount of \$200.00 a day will be assessed from the date of receipt of the Notice. The Grantee may appeal the Notice and request a hearing before the City Council.
- (D) If the Grantee desires a hearing, it shall file a written "Notice of Appeal" by certified mail to the City Secretary within ten (10) days after receipt of the Notice of Intention to Assess Penalty. The City Council shall schedule, publicize and conduct a hearing.
- (E) The City Council may rule that the violation(s) has been corrected, that an extension of time may be granted, that other appropriate relief may be granted, or that the Grantee is in violation of this Chapter. If the City Council sustains the assessment of a penalty in whole or part, the Grantee shall pay the assessment within ten (10) days. A penalty in the amount of \$200.00 a day shall be assessed from the date of Notice of Intention to Assess Penalty until such time the violation is eliminated or relief granted or determined by the City Council.
- (F) The Grantee, or any other person who operates or causes to be operated a cable television operation without a valid Franchise or who otherwise is in violation of this Chapter is subject to a suit for injunction as well as prosecution for any criminal violations.

**(c) Appeal of Penalties**

Nothing in this section shall be construed to limit or restrict the Grantee's right to appeal the City's actions to any appropriate state or

federal judicial or administrative forum. If the Grantee officially appeals the decision to the appropriate forum within three months of determination of violation, the City shall hold such penalty in escrow until such time as the appropriate appeal process is completed. The City shall not be liable for any of the Grantee's costs associated with the appeal process, regardless of the outcome of the appeal.

**(d) Excessive or Continuous Violations and Franchise Termination**

**(1)** If the Grantor concludes the Grantee is responsible for excessive or continuous violations of the Franchise agreement and/or this Chapter, and that the Grantor has complied with the procedures in Section B. above, it may conduct a hearing to determine whether or not the Franchise should be terminated. The hearing shall be established, publicized and conducted by the City Council.

**(2)** The Grantee shall be notified in writing by certified mail of the hearing. The Grantee shall be afforded fair opportunity for full participation including the right to introduce evidence that it has substantially complied with the material terms of the Franchise agreement and the Chapter. The Grantee may require the production of evidence and question witnesses. A transcript of the hearing shall be made.

**(e) Sale or Transfer of Franchise Following Termination**

In the event the City denies renewal or revokes the Franchise, and that denial or revocation is upheld by a final judicial determination, the Grantee shall be afforded a period of one hundred and eighty (180) days from the effective date of the final order denying renewal or revoking the Franchise, including the final conclusion of any appeal process, to transfer or convey the assets for the cable system. A sale shall meet all conditions established by the Cable Act. Approval of a such sale or transfer shall not be unreasonably withheld.

(Ord. No. 445, '1, 1/8/96, section added; section substantially changed, renumbered.)

**Sec. 20-54. Franchise Renewal Procedures**

The Grantor will insure that the Franchise Area receives upgrades to the cable system as needed and identified during the renewal procedure such

that the system is maintained at or near current technology. The Grantor will seek the maximum community involvement particularly in the needs assessment and performance review period. All Franchises shall be renewed pursuant to this Ordinance and applicable Federal Law as specified in Section 626, [47 U.S.C. 546] Franchise Renewal in the Cable Act. The following outlined procedure is included as a working guide to the City for administration purposes and is not intended to replace the procedure as presented in Section 626, [47 U.S.C. 546] in the Cable Act.

**(a) Commencement of proceedings; public notice and participation.**

**(1)** The City may, on its own initiative during the six (6) month period which begins with the 36th month before the Franchise expiration, commence a proceeding which affords the public in the Franchise Area appropriate notice and participation for the purpose of:

- (A)** identifying the future cable-related community needs and interest; and
- (B)** reviewing the performance of the cable operator under the Franchise during the then current Franchise term.

**(2)** If the cable operator submits, during such six month period, a written renewal notice requesting the commencement of such a proceeding, the franchising authority shall commence such a proceeding not later than six months after the date such notice is submitted.

**(3)** The cable operator may not invoke the renewal procedures set forth in subsections (b) through (f) of this section unless

- (A)** such a proceeding is requested by the cable operator by timely submission of such notice; or
- (B)** such a proceeding is commenced by the franchising authority on its own initiative.

**(b) Submission of renewal proposals; contents; time**

**(1)** Upon completion of a proceeding under subsection (a) of this section (above), the cable operator seeking renewal of a Franchise may, on its own initiative or at the request of the City, submit a proposal for renewal.

**(2)** The application for renewal shall contain such material as the City may require, including upgrade plans. Upgrade to the cable system shall be required as needed to maintain the system at or near current technology. The time table for such upgrades shall be included.

**(c) Notice of proposal; renewal; preliminary assessment of non-renewal; administrative review; issues; notice and opportunity for hearing; transcript; written decision**

**(1)** Upon submittal by the cable operator of a proposal to the City for renewal of the Franchise, pursuant to subsection (b) of this section, the City shall provide prompt public notice of such proposal and, during the four (4) month period which begins on the date of the submission of the cable operator's proposal pursuant to subsection (b) of this section, renew the Franchise or, issue a preliminary assessment that the Franchise should not be renewed and, at the request of the operator or on its own initiative, commence an administrative proceeding, after providing prompt public notice of such proceeding in accordance with paragraph (2) of this section to consider whether:

- (A)** the cable operator has substantially complied with the material terms of the existing Franchise and with applicable law;
- (B)** the quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix, quality of cable services or other services provided over the system, has been reasonable in light of community needs;
- (C)** the operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and,
- (D)** the operator's proposal is reasonable and meets the future cable related community needs and interest, taking into account the cost of meeting such needs and interest.

**(2)** In any proceeding under paragraph (1), the cable operator shall be afforded adequate notice and the cable operator and the Franchise authority, or its designee, shall be afforded fair opportunity for full participation, including the right to introduce evidence (including evidence related to issues raised in the proceeding under subsection (a) of this section), to require the production of evidence, and to question witnesses. A Transcript shall be made of any such proceeding.

**(3)** At the completion of the above proceeding, the City

Council shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding, and transmit a copy of such decision to the cable operator. Such decision shall state the reasons therefor.

**(4)** If the Franchise expires, is not renewed, or is not renewed by the City following denial of Grantee's request for such renewal and the exhaustion of all appeals of that denial by the Grantee under this Chapter, the Council may invite applications for prospective cable operators to serve the Franchise Area and a new cable operator shall be selected. The Council shall provide for the acquisition of the assets of the former cable operator's Cable Television System by the new cable operator at fair market value. Selections of a new cable operator shall be undertaken in an expeditious manner and with a minimum disruption of service to Subscribers.

**(d) Basis for denial**

Any denial of a proposal for renewal shall be based on one or more adverse findings made with respect to the factors described in subparagraphs (A) through (D) of subsection (c) of this section, pursuant to the record of the proceeding under subsection (c) of this section. The City Council may not base a denial of renewal on a failure to substantially comply with the material terms of the Franchise under subsection (c) (A) of this section or on events considered under subsection (c) (B) of this section unless the City has provided the operator 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 cable operator gives written notice of a failure or inability to cure and the City fails to object with a reasonable time after receipt of such notice.

**(e) Judicial review; grounds for relief**

**(1)** Any cable operator whose proposal for renewal has been denied by a final decision of the City Council made pursuant to this section, or has been adversely affected by a failure of the City to act in accordance with the procedural requirements of this section and Section 626 of the Cable Act, may appeal such final decision or failure in any appropriate state or federal judicial or administrative forum pursuant to the provisions of section 555 of the United States Code ("USC") 47.

**(2)** The court shall grant appropriate relief if the court finds that

**(A)** any action of the franchising authority, other than harmless errors, is not in compliance with the procedural requirements of this section

and Section 626 of the Cable Act; or,

- (B)** in the event of a final decision of the franchising authority denying the renewal proposal, the operator has demonstrated that the adverse findings of the franchising authority with respect to each of the factors described in subparagraphs (c) (1) of this section on which the denial is based is not supported by a preponderance of the evidence, based on the record of the proceeding conducted under subsection (c) of this section.

**(f) Finality of administrative decision**

Any decision of the City on a proposal for renewal shall not be considered final unless all proper administrative review has occurred or the opportunity therefor has lapsed.

**(g) Alternative Renewal Procedures**

Notwithstanding the provisions of subsection (a) through (g) of this section, a cable operator may submit a proposal for the renewal of a franchise pursuant to this subsection at any time, and a franchising authority may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time (including after proceedings pursuant to this section have commenced). The provisions of subsections (a) through (g) of this section shall not apply to a decision to grant or deny a proposal under this subsection. The denial of a renewal pursuant to this subsection shall not affect action on a renewal proposal that is submitted in accordance with subsections (a) through (g) of this section.

**(h)** Notwithstanding the provisions of subsections (a) through (g), any lawful action to revoke a cable operator's franchise for cause shall not be negated by the subsequent initiation of renewal proceedings by the cable operator under this section.

(Ord. No. 460, '1, 12/8/97, added subparagraphs (a) thru (h) to sec.)

**Sec. 20-55. Technical Violations**

In the case of technical violations not posing a substantial safety hazard ("safety hazard" being defined as one posing a reasonable likelihood of causing significant bodily injury if not repaired immediately) the Grantee shall be permitted reasonable time to complete any required repairs and shall not assess penalties or liquidated damages against the Grantee so long as the Grantee makes a satisfactory showing to the City that it is working promptly, diligently and in good faith to correct such technical violations.

(Ord. No. 460, '1, 12/8/97, section added)

[**Note:** Sec. 20-57 (sic) thru and including Sec. 20-79 are intentionally omitted, and are reserved for subsequent expansion.]

### **ARTICLE III. TELEPHONE SYSTEM**

#### **Sec. 20-80. Definitions**

(1) **ATelephone System@** shall mean and include a system composed of equipment for the purpose of producing, receiving, amplifying, distributing, and otherwise transmitting telephone or other electronic or electrical signals designed to or capable of transmission between or among two or more persons, subscribers and/or locations within the Franchise Area by cable (whether consisting of wire, fiber optics, or any other similar or successor technology) including both telephonic communication between persons, subscribers and locations within the Franchise Area and communications between persons within the Franchise Area and those outside the Franchise Area. Telephone systems expressly include, but are not limited to, not only conventional telephonic communication, but also cable communication between and among computers, facsimile equipment, and similar or any successor technology subsequently produced which falls within this definition, broadly construed.

#### **Sec. 20-81. Franchise Fee**

(a) Any Grantee under this Article shall pay a franchise fee for the use, occupancy, oversight, supervision and regulation of the City=s rights-of-way and to compensate the City for all costs associated with administering and

regulating the telephone system. The franchise fee under this section is lieu of and in full compensation for any lawful tax or license or charge or right-of-way permit fee or inspection fee or right-of-way easement or rental or corporate franchise tax for the use and occupancy of the rights-of-way within the City, except for the usual general ad valorem taxes, special assessments in accordance with State law, or sales taxes now or hereafter levied by the State or City in accordance with State law. The amount of the franchise fee shall be determined by the City at the time of the grant of each franchise under this Article. All franchise fees payable hereunder shall be payable in two (2) semiannual installments, with the payment for the second half of any calendar year being due and payable on or before February 1 of the next calendar year and the payment for the first half of the calendar year being payable on or before August 1 of the same calendar year. Failure to pay the franchise fee in full within fifteen (15) days of written demand by the City shall constitute a material breach under Section 20-81.

(b) The franchise fee for any fractional portion of a calendar year included within the term of the franchise shall be prorated, including for the purposes of that proration all of any month during a portion of which the franchise is in effect.

(Ord. No. 432, '1, 4/10/95; Ord. No. 435, '1, 5/15/95; Ord. No. 440, '1, 8/14/95, added amount of fee and changed section reference; Ord. No. 445, '1, 1/8/96, deleted dollar amount; Ord. No. 460, '1, 12/8/97, language added.)

## **ARTICLE IV. ELECTRICITY SALE AND DISTRIBUTION SYSTEMS**

### **Sec. 20-100. Definitions**

In this Chapter and Article, and in all Ordinances granting franchises under this Article, the terms used, unless a clear intent is expressed in writing to the contrary, shall have the meanings and definitions as set forth in Title 2. Subtitle B. Entitled AElectric Utilities@ of the Texas Utilities Code in general and Section 31.002 of that Code in particular, and in Section 25.113 (c) of the PUC Substantive Rule. Specifically, as of the date of the adoption of this Article, the following words and terms, when used in this Article, shall have the following meanings, unless the context clearly indicates otherwise:

*Resident* shall mean any electric customer located within the City, except

the City itself, regardless of customer class.

*Revocation* shall mean the cessation of all REP business operations within the City, pursuant to City order.

*Suspension* shall mean the cessation of all REP business operations within the City associated with obtaining new customers, pursuant to City order.

### **Sec. 20-101. Franchise Fees - Transmission and Distribution Utilities**

Each transmission and distribution utility desiring to use the public rights of way within the City to deliver electricity within the City shall be required to obtain a franchise in accordance with these Chapter, to be evidenced by a franchise granting ordinance under the terms of this Chapter.

### **Sec. 20-102. KWH Right of Way Charge**

Pursuant to Texas Utility Code sections 33.008(a) and 33.008(b), the City imposes on each Electric Utility and/or Transmission and Distribution Utility that provides distribution services within the City limits, a KWH charge as authorized by Texas Utility Code, section 33.008. Such charge shall be paid as is provided for in the franchise ordinance.

### **Sec. 20-103. Periodic Reports**

Upon payment of the per kilowatt hour charge, as authorized by the Texas Utility Code, section 33.008, the Electric Utility or Transmission and Distribution Utility shall also file a report with the City evidencing the kilowatt hours delivered within the City during the applicable period, and other reasonable information as requested in writing by the City, to verify the accuracy of that report.

### **Sec. 20-104. Knowing Misrepresentation Unlawful**

It shall be a violation of this Code of Ordinances for the franchisee to knowingly make a material misrepresentation of any information required to be reported under this Article.

### **Sec. 20-105. Retail Electric Provider Registration**

**A. Non-Discrimination**

The City shall not establish registration requirements that are different for any REP or type of REP or that impose any disadvantage or confer any preference on any REP or type of REP. The City may, however, exclude from the requirements of this section an REP that provides service only to the City=s own electric accounts, and not to any residents of the City.

**B. Notice**

The City shall, at least thirty (30) days before the effective date of the ordinance adopting this Article, file this ordinance, including the effective date, with the PUC as provided under Section 25.113 (e) of the PUC Substantive Rule.

**C. Standards for Registration**

(1) All Retail Electric Providers (AREP@) must pay a \$25.00 administrative registration fee and complete and file with the City Secretary the REP Registration Form approved by the PUC. Registration will be issued in the name of the Retail Electric Provider as registered with the Public Utility Commission of Texas. When any information provided on the City Registration Form changes, the REP must inform the City of the change no more than thirty (30) days after the date the change is made. All REP=s serving residents in the City as of the effective date of this ordinance, shall register with the City within thirty (30) days after the effective date of the ordinance adopting this Article. All other REP=s serving residents in the City must register within thirty (30) days after providing retail electric service to any resident of the City.

(2) The Registration Form shall include:

- (a) The legal name(s) of the retail electric provider and all trade or commercial names;
- (b) The registering REP=s certificate number, as approved under '25.107 of this title and the docket number under which the certification was granted by the commission;
- (c) The Texas business address, mailing address, and principal place of business of the

registering REP. The business address provided shall be a physical address that is not a post office box;

- (d)** The name, physical business address, telephone number, fax number, and e-mail address for a Texas regulatory contact person and for an agent for service of process, if a different person;
- (e)** Toll-free telephone number, fax number and email address for the customer service department or the name, title and telephone number, fax number and email address of the customer service contact person;
- (f)** The types of electric customer classes that the REP intends to serve within the City;
- (g)** The location of each office maintained by the registering REP within the City boundaries, including postal address, physical address, telephone number, hours of operation, and listing of the services available through each office;
- (h)** The name, physical address, telephone number, fax number and email address of the agent for service of process;
- (i)** The signature of an owner, partner, officer or other authorized representative of the registering REP.

**(3)** Registration Forms may be submitted to the City by mail, facsimile, or on-line, when and if such on-line registration is available.

**(4)** The City shall review the REP=s submitted form for completeness, including the remittance of the registration fee. Within 15 business days of receipt of an incomplete registration, the City shall notify the registering REP in writing of the deficiencies in the registration. The registering REP shall have 20 business days from the issuance of the notification to cure the deficiencies. If the deficiencies are not cured within 20 business days, the

City shall immediately send a rejection notice to the registering REP that the registration is rejected without prejudice. Absent such notification of rejection, the registration shall be deemed to have been accepted.

(5) The City shall not deny a REP=s request for registration based upon investigations into the fitness or capability of a REP that has a current certificate from the commission.

(6) The City shall not require a REP to undergo a hearing before the City for the purposes of registration, nor require the REP to send a representative to the City for purposes of processing the registration form.

#### **D. Late Fee**

Any REP which fails to register within the time required under this Article shall, in addition to the registration fee provided above, pay a one time late fee in the amount of \$15.00.

#### **E. Revocation - Reregistration**

In the event an REP=s registration is revoked, and the REP subsequently cures its defects and resumes operations, the REP shall register in the same manner as a new REP.

### **Sec. 20-106. Compliance with Texas Public Utility Commission Center Service Standards and Chapter 39 of the Texas Utility Code**

All REPS that provide electric service to residents shall strictly comply with all requirements of Chapter 39 of the Texas Utility Code, particularly with Section 39.101 on ACustomer Safeguards@ and Section 39.353(c) concerning REP compliance with customer protection provisions and marketing guidelines established by the PUCT; and all PUCT customer protection requirements, including but not limited to PUCT Substantive Rule '25.107(h), which includes the following minimum standards:

(1) A REP may not refuse to provide retail electric service or otherwise discriminate in the provisions of electric service to any customer because of race, creed, color, national original, ancestry, sex, marital status, lawful source of income, disability or familial status; or refuse to provide retail electric service to a customer because the customer is located in an

economically distressed geographic area or qualifies for low-income affordability or energy efficiency services.

**(2)** A REP shall inform its customers whom to contact and what to do in the event of power outage or other electricity-related emergency.

**(3)** A REP shall inform its customers of the customer=s rights and avenues available to pursue a complaint against the REP as afforded by PURA [Texas Utility Code] '39.101.

**(4)** A REP shall not switch, or cause to be switched, the retail electric provider for a customer without first obtaining proper authorization from the customer.

**(5)** A REP shall not bill, or cause to be billed, an unauthorized charge to a customer=s retail electric service bill.

**(6)** A REP shall respond in good faith when notified by a customer of a complaint.

**(7)** A REP shall maintain a customer service staff adequate to handle customer inquiries and complaints.

**(8)** A REP may not release proprietary customer information to any person unless the customer authorizes the release in a manner approved by the commission.

## **Sec. 20-107. Enforcement, Suspension and Revocation of Registration**

The City may suspend or revoke a REP=s registration and authority to operate with the City only upon a commission finding that the REP has committed significant violations of PURA Chapter 39 or rules adopted under that chapter. The City shall not suspend or revoke the registration of the affiliated REP or provider of last resort (POLR) serving residents in the City. The City shall not take any action against a REP other than suspension or revocation of a REP=s registration and authority to operate in the City, or imposition of a late fee in accordance with subsection (h) (2) of this section.

(1) The City may provide a REP with a warning prior to seeking to suspend or revoke a REP=s registration.

(2) The City seeking to suspend or revoke a REP=s registration shall provide the REP with at least 30 calendar days written notice, informing the REP that its registration and authority to operate shall be suspended or revoked. The notice shall specify the reason(s) for such suspension or revocation.

(3) The City may order that the REP=s registration be suspended or revoked only after the notice period has expired.

(4) In its suspension order, the City shall specify the reasons for the suspension and provide a date certain or provide conditions that a REP must satisfy to cure the suspension. Once the suspension period has expired or the reasons for the suspension have been rectified, the suspension shall be lifted.

(5) In its revocation order, the City shall specify the reasons for the revocation.

(6) A REP may appeal the City=s suspension or revocation order to the commission.

(Ord. No. 517, amending and restating Art. IV, 6-9-03.)