Title 4

CABLE SYSTEMS

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Chapter 4.02

LEGISLATIVE FINDINGS AND PURPOSE

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4.02.010 Findings.

The city of Sonora has the authority to regulate the use of streets, public rights-of-way, and to grant access thereto upon certain terms and conditions; and the city has reviewed its authority under state and federal law, and has considered how it may exercise its authority to accomplish the following: protect the public health, safety, and welfare; effect responsible management of the public rights-of-way; meet the obligations of the city to manage and maintain the public rights-of-way; minimize disruption and inconvenience to the use of the public rights-of-way for transportation purposes; and ensure reasonable nondiscriminatory access to the public rights-of-way by secondary users; and

The public rights-of-way within the city are a valuable and scarce community resource physically limited in dimension requiring the city to manage them efficiently and to protect against premature exhaustion of the public rights-of-way as an economic resource, and to minimize the inconvenience to and negative effects upon the public from such facilities' construction, emplacement, relocation, and maintenance in the rights-of-way; and

The right to place privately-owned facilities and fixtures in such rights-of-way for the business of providing cable and related services for hire is a valuable economic right to use a unique public resource that has been acquired and is maintained at great expense to the city and its taxpayers, the economic benefit of which should be shared with the taxpayers of the city.

The city wishes to promote the availability of high-quality and diverse cable services to city residents, businesses, city government, and other public institutions, and to promote the availability of diverse information resources to the community, including through the development of advanced systems that can support public, educational, and governmental programming and high-speed access to the Internet; and

The city wishes to provide opportunities to the public to obtain access to communications facilities for the purpose of disseminating and receiving information, to promote competitive cable rates and services; to take advantage of opportunities presented by cable systems to provide for more open government; to enhance educational opportunities throughout the community and provide opportunities for building a stronger community, and to allow flexibility to respond to changes in technology, subscriber interests, and competitive factors that will affect the health, welfare, and well-being of the community; and

In light of federal and state law, and the changes to local procedures required by them, the city finds that it is necessary to enact the following requirements and further finds it appropriate to apply this title to existing franchisees, permittees, and licensees to the extent possible and to apply it to those with pending or new applications to place facilities in public rights-of-way for cable and other related services; and,

The city finds that it is in the interest of the public to franchise and to establish standards for franchising such operators in a manner that promotes these objectives and otherwise protects the public interest. (Ord. 771 § 1 (part), 2005.)

4.02.020 Purposes.

The purposes of this title are to:

Establish a non-discriminatory local policy concerning cable systems, and private communication systems that use the public rights-of-way,

Promote the availability of diverse, multimedia information resources to the community;

Provide for enhancing educational opportunities throughout the community and building a stronger community;

Encourage the provision of advanced and competitive cable services on the widest possible basis to the businesses, institutions and residents of the city;

Encourage economic development while preserving aesthetic and other community values and preventing proliferation of above-ground facilities; and

Establish the potential for universal access to video programming services for all residents and business. (Ord. 771 § 1 (part), 2005.)

Chapter 4.04

GENERAL

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4.04.010 Definitions.

For the purposes of this title, the following terms, phrases, words, and abbreviations shall have the meanings given herein. Words not defined in this title shall have the same meaning as in Title 47 of the United States Code [521 et seq.], and, if not defined therein, their common and ordinary meaning. References to governmental entities or officials whether persons or entities refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

A. "Access," "PEG access," or "PEG use" refers to the availability of a cable system for public, education or government use (including institutional network use) by various agencies, institutions, organizations, groups, and individuals, including the city of Sonora and its designated access providers, to acquire, create, and distribute programming not under a franchisee's editorial control, including, but not limited to:

1. "Public access" or "public use" means access where organizations, groups, or individual members of the general public, on a nondiscriminatory basis, are the primary or desig-

nated programmers or users having editorial control over their communications.

2. "Education access" or "education use" means access where accredited educational institutions are the primary or designated programmers or users having editorial control over their communications;
3. "Government access" or "government use" means access where government institutions or their designees are the primary or designated programmers or users having editorial control over their communications,

B. "Affiliate" means a person that (directly or indirectly) owns or controls, is owned or that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person.

C. "Basic service" means any service tier regularly provided to all subscribers which includes the retransmission of local television broadcast signals.

D. "Cable Act" means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 , as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996, as further amended from time to time.

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

1. A facility that serves only to retransmit the television signals of one or more television broadcast stations;
2. A facility that serves subscribers without using, or connecting to a facility that uses any public right-of-way within the city of Sonora;

3. A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II (Common Carriers) of the Communications Act of 1934, as amended, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on demand services;
4. Any facilities of any electric utility used solely for operating its electric utility systems; or
5. An open video system that is certified by the FCC.

Any reference to a cable system includes the cable system as a whole, or any part thereof, including all facilities, pedestals, equipment cabinets, electronic equipment and devices appurtenant to the system.

F. "Cable service" means:
   1. The one-way transmission to subscribers of (i) video programming, or (ii) other programming service; and
   2. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

G. "Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television signal whether in an analog or digital format. The definition does not restrict the use of any channel to the transmission of analog television signals or one way transmission.

H. "City" means the city of Sonora and all departments, divisions, and agencies established by state law or by the City of Sonora Ordinance Code.

I. "Construction, operation or repair" and similar formulations of that term means the named actions interpreted broadly, encompassing, among other things, installation, extension, maintenance, replacement of components, relocation, undergrounding,

grading, site preparation, adjusting, testing, make-ready, and excavation.

J. "Downstream channel" means a channel designed and activated to carry a transmission from the headend to other points on a cable communications system, including interconnections.

K. "FCC" means the Federal Communications Commission.

L. "Franchise" refers to an authorization granted by the city to the operator of a cable communications system giving the operator the non-exclusive right to occupy the space, or use facilities upon, across, beneath, or over public rights-of-way in the city, and to provide specified services within a franchise area.

M. "Franchise area" means the area of the city that a franchisee is authorized to serve by the terms of its franchise or by operation of law.

N. "Franchisee" refers to a person holding a cable communications system franchise granted by the city.

O. "Franchise fee." In consideration of the grant and exercise of a franchise to construct, install, operate, or provide services using facilities in the public rights-of-way, a franchisee shall pay to the city a franchise fee expressed as a percentage of gross revenues or some other measure. The franchise shall specify the fee to be paid, and the gross revenues to be included in the fee calculation. If a franchise granted pursuant to this title specifies a franchise fee established as the result of limiting applicable law, the city shall have the option to renegotiate the amount of the franchise fee upon a change in applicable law. Nothing in this chapter requires a person to pay amounts in excess of any limits that may be established by state or federal law.

For an Unaffiliated Video Program Provider ("UVPP") as defined in subsection AA of this section, a UVPP that provides services using a cable system for which charges are assessed to Subscribers, but are not received by the cable system franchisee, shall pay a fee in lieu of a franchise fee on such service

pursuant to the franchise fee calculation contained in the cable system franchise.

P. "Gross revenues" means all cash, credits, property, or other consideration of any kind or nature received directly or indirectly by a franchisee or its affiliates, from any source whatsoever arising from, attributable to, or in any way derived from a franchisee's operation of a cable system within the franchise area. Gross revenues include, but are not limited to, fees charged to subscribers for basic service; fees charged to subscribers for any optional, premium, per-channel, or per-program service; monthly fees charged to subscribers for any tier of service other than basic service, installation, disconnection, reconnection, and change-in-service fees; leased channel fees; fees, payments, or other payment received as consideration from programmers for carriage of programming on the cable system; converter rentals or sales; studio rental, production equipment, and personnel fees; advertising revenues, including a per capita share of advertising revenues for advertising carried on more than one cable system; revenues from home shopping channels; sales of programming guides; and such other revenue sources as may now exist or hereafter develop. The definition shall be interpreted in a manner that permits the city to collect the maximum franchise fee permitted by law, irrespective of the source of revenue. Gross revenues, however, shall not include any bad debt (defined as unpaid subscriber or advertiser accounts), any taxes on services furnished to a franchisee and imposed directly upon any subscriber or user by the state, city, or other governmental unit and collected by a franchisee on behalf of said governmental unit. The amount paid as a franchise fee shall not be deducted from gross revenues unless required to be deducted under federal law.

Q. "Operator" when used with reference to a system, refers to a person (a) who directly or through one or more affiliates provides service over a cable communications system and directly

or through one or more affiliates owns a significant interest in such facility; or (b) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a facility.

R. "Person" includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the city of Sonora.

S. "Public rights-of-way" means the surface of and the space above and below any street, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, drive, or right-of-way or easement primarily dedicated to travel, now or hereafter existing within the city which may be properly used for the purpose of installing, maintaining, and operating a cable communications system, and any other property that a franchisee is entitled by state or federal law to use by virtue of the grant of a franchise.

T. "Public property" means any property that is owned or under the control of the city that is not a public rights-of-way, including, for purposes of this title, but not limited to, buildings, parks, poles, structures in the public rights-of-way such as utility poles and light poles, or similar facilities or property owned by or leased to the city.

U. "Revocation" means the city's affirmative act of terminating a franchise.

V. "School" means any accredited primary school, secondary school, college and university.

W. "Sonora city administrator" means the city administrator or his/her designee.

X. "Subscriber" means the city or any person who is lawfully receiving, for any purpose or reason, any cable service via a cable communications system with a franchisee's express permission, whether or not a fee is paid for such service.

Y. "Termination" means the conclusion of a franchise by any means, including, but not limited to, by expiration of its term, abandonment, or revocation.

Z. "Transfer" means any transaction in which: (1) all or a portion of any facilities or any rights to use or operate facilities located in the public rights-of-way are sold, conveyed, transferred, assigned, encumbered (except as set forth herein) or leased, in whole or in part, directly or indirectly, by one or more transactions to another person, whether voluntarily or by operation of law or otherwise; or (2) there is any change, acquisition, or transfer in the identity of the person in control of the franchisee, or any person that controls the franchisee, including , without limitation, forced or voluntary sale, merger, consolidation, or receivership; or (3) the rights or obligations under the franchise are sold, conveyed, transferred, assigned, encumbered (except as set forth herein) or leased, in whole or in part, directly or indirectly, by one or more transactions to another person, whether voluntarily or by operation of law or otherwise. It will be presumed, for purposes of clause (2) of this subsection, that any transfer or cumulative transfer of a voting interest by a person or group of persons acting in concert of ten percent or more of franchisee, or person that controls the franchisee, or any change in the managing general partners of a franchisee is a change of control. "Transfer" does not include: (1) a lease to a UVPP pursuant to 47 U.S.C. Sections 532 or 573; (2) the transmission of a commodity or electronic signal using facilities on a common carrier basis; (3) a lease or other right to use facilities mandated pursuant to 47 U.S.C. Section 224, or (4) a pledge in trust, mortgage or other encumbrance against the facilities, or any portion thereof, given to a bona ride institutional lender in connection with a loan or other financing required to secure the construction, operation, or repair of the facilities ("loan") provided that such loan is subject to the rights and powers of the city pursuant to the franchise and applicable law, including,

without limitation, the right of the city to approve any transfer upon foreclosure. "Transferring" and "transferee" shall have correlative meanings.

AA. "Unaffiliated Video Programming Provider" or "UVPP" means any person who uses capacity on a franchised cable system to deliver cable service or other communications service (as that term is used in 47 U.S.C. Section 542(h) to subscribers and who is not an affiliate of the franchisee.

BB. "Upstream channel" means a channel designed and activated to carry transmissions from a point on the cable system, other than the headend, to the headend or another point on the cable system.

CC. "User" means a person or the city utilizing a channel, capacity or equipment and facilities for purposes of producing or transmitting video, voice and data materials contrasted with receiving it in the capacity of a subscriber.

(Ord. 771 § 1 (part), 2005.)

4.04.020 Franchise required.

No person may construct or operate a cable communications system in the city of Sonora without first obtaining a city franchise, provided that the following shall not be required to obtain a franchise under this title:

A UVPP that is only delivering cable service or other communications service (as that term is used in 47 U.S.C. Section 542(h)) to subscribers.

(Ord. 771 § 1 (part), 2005.)

4.04.030 Failure to obtain a franchise.

Consistent with the requirements of due process, a person's failure to obtain a franchise as required by this title may, in the city's discretion, result in:

A. Forfeiture, by operation of law, of the person's facilities located in the public rights-of-way that are not authorized by an existing franchise; and/or

B. A city order and/or court order that the facilities be removed, and that penalties and damages be paid as set forth in the city code or in state law.

(Ord. 771 § 1 (part), 2005.)

4.04.040 Existing franchises.

Franchisees existing as of the effective date of this title shall, in addition to all the obligations and duties prescribed by the terms of their existing franchises, be subject to the substantive and procedural requirements herein, except as prohibited by applicable law. Nothing herein is intended to invalidate a lawful, existing franchise or to waive any obligations imposed by such a franchise. Notwithstanding the foregoing, provisions of this title that expressly refer to a "franchise granted pursuant to this title" shall not apply to franchises initially granted prior to the effective date of this title. (Ord. 771 § 1 (part), 2005.)

4.04.050 Form of franchise.

Any franchise shall be issued in the form of a resolution, and must be accepted in writing by the franchisee to become effective. (Ord. 771 § 1 (part), 2005.)

4.04.060 Filing an application.

Any person seeking to: (1) obtain a franchise; (2) extend the term of an existing franchise; (3) renew a franchise; or (4) modify an existing franchise to add new services that are required to be authorized by a franchise pursuant to this title, shall submit a signed original of its application and six copies to the city clerk of the city council. The

clerk of the city council shall make the application available for public inspection. The application must conform to all of the requirements of this title. Requests for other types of franchise modifications may be processed by the city without an application, and submitted for approval. However, nothing herein shall prevent the city from requiring an application in the event the city determines, based on the nature of the requested modification, that the public interest would best be served by the submission of an application pursuant to this title. (Ord. 771 § 1 (part), 2005.)

4.04.070 Application fee.

A. Reasonable Costs. An applicant shall pay all reasonable costs incurred by the city of Sonora related to the processing of any application. Processing costs shall include, but not be limited to, the costs of services rendered by any city employee, agent or representative, including consultants and attorneys.

B. The initial deposit of the application fee for the consideration of an application for issuance, renewal, or modification of a franchise shall be in the amount of five thousand dollars, which deposit shall be submitted with the application. The city may, as costs are incurred, draw upon the deposit to recover its administrative costs, including, but not limited to, the reasonable cost of outside consultants retained by the city related to the city's review and processing of a franchise. The city administrator, at any time, may require the applicant to deposit additional sums if it appears that the initial deposit or subsequent deposits will be exhausted prior to the final action by the city relating to the consideration by the city of an application for issuance, renewal, or modification of a franchise. The application will not be subject to further review and processing until such time as the additional deposit required by the city administrator has been deposited with the city. In the event the amount of the deposit of an applicant is in excess of the amount of the adminis-

trative expenses of the city related to the action requested, then the applicant shall be entitled to a return of any such excess amount. In addition, an applicant that is awarded a franchise shall pay the city a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting of a franchise. Such payment shall be made to the city administrator within thirty days after the city furnishes the franchisee with a statement of such expenses. (Ord. 771 § 1 (part), 2005.)

4.04.080 Nature of franchise.

A. Scope. A franchise granted pursuant to this title shall authorize and permit a franchisee to construct, operate, maintain and repair a cable system to provide cable service in the city of Sonora, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain facilities appurtenant to such system in, on, over, under, upon, across, and along those public rights-of-way that the city may authorize a franchisee to use.

B. Nothing Passes by Implication. A franchise shall not convey rights other than as specified in this chapter or in a franchise agreement; no rights shall pass by implication.

C. Franchise Not In Lieu of Other Authorizations. A franchise shall not include, or be a substitute for:

1. Complying with requirements for the privilege of transacting and carrying on a business within the city, including but not limited to complying with the conditions the city may establish before constructing facilities for, or providing, non-cable services;
2. Any permit, agreement or authorization required in connection with operations on or in public rights-of-way or public property including by way of example and not limitation, street cut permits;

3. Any permits or agreements for occupying any other property of the city or private entities to which access is not specifically granted by the franchise.

D. Franchisee Must Comply With Other Laws. A franchise does not relieve a franchisee of its duty to comply with all city ordinances and regulations, and every franchisee must comply with the same. Likewise, the rights granted under a franchise are subject to the exercise of police and other powers the city now has or may later obtain, including, but not limited to, the power of eminent domain. Every franchise shall be deemed to incorporate all the requirements of the City of Sonora Ordinance Code.

E. Franchise Not a Grant of Property Rights. A franchise does not convey title, equitable or legal, in the public rights-of-way. Rights granted may not be subdivided or subleased.

F. Franchise Nonexclusive. No franchise shall be exclusive, or prevent the city from issuing other franchises or authorizations, or prevent the city from itself constructing, operating, or repairing its own cable communications system, with or without a franchise.

G. Franchise Term. Every franchise shall be for a term of years that shall be specified in the franchise.

H. Costs Borne by Franchisee. Unless otherwise specifically stated in a franchise or required by law, all acts which a franchisee is required to perform under the franchise or applicable law must be performed at the franchisee's expense.

I. Failure to Perform. If a franchisee fails to perform work that it is required to perform within the time provided for performance the city may perform the work and bill the operator therefor. The operator shall pay the amounts billed within thirty days.

(Ord. 771 § 1 (part), 2005.)

4.04.090 Administration of title—Adoption of regulations.

A. Adoption of Regulations. The city of Sonora may from time to time adopt regulations to implement the provisions of this title.

B. Delegation. The city administrator or his/her designee is hereby authorized to administer the provisions of this title and any franchise issued pursuant thereto, and to provide any notices (including noncompliance notices) and to take any action on the city's behalf that may be required hereunder or under applicable law.

C. No Waiver. The failure of the city to exercise a right or to require compliance or performance under a franchise or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance unless such right has been specifically waived in writing.

D. Administration of Public, Educational and Government Access. The city may designate one or more entities, including itself, to control and manage the use of public, educational and government access channels, facilities and equipment.

(Ord. 771 § 1 (part), 2005.)

4.04.100 Transfers.

A. Prior Approval Required. Every franchise shall be deemed to be held in trust, and to be personal to the franchisee. Any transfer that is made without the prior approval of the city of Sonora shall be deemed invalid. A transfer is defined in Section 4.04.010.

B. Transfer Application Fee. The initial deposit of the application fee for the consideration of a transfer application shall be in the amount of five thousand dollars, which deposit shall be submitted with the application. The city may, as costs are incurred, draw upon the deposit or require the applicant to deposit additional funds in the same manner as described herein at Section 4.04.070 (Application Fee).

C. Transfer Application. In addition to any federally-required information required to be filed with the city (e.g., FCC Form 394), the city manager may specify additional information that must be provided in connection with a transfer, and the form in which the information is to be provided. Any proposed transferee's application must include the following:

1. Identification of the applicant showing that the applicant is financially, technically and legally qualified to construct, maintain and operate the cable system;
2. A pro forma financial statement showing capital expenditures, expected income, and expenses for the first five years the applicant is to hold the franchise, and show that the applicant is willing to comply unconditionally with its franchise obligations;
3. A demonstration of how the applicant will reasonably meet the future cable-related needs and interests of the community, including descriptions of any changes to capacity, facilities and support for public, educational, and governmental use of the system (including institutional networks) the applicant proposes to provide and why the applicant believes that the proposal is adequate to meet the future cable-related needs and interests of the community.
4. A demonstration of the financial qualifications of the applicant, including at least the following:
   a. The proposed rate structure, including projected charges for each service tier, installation, converters, and all other proposed equipment or services;
   b. A statement regarding the applicant's financial ability to complete any required construction and to operate the cable system proposed certified by the applicant's chief financial officer; and
5. A demonstration of the applicant's technical ability to construct and/or operate the proposed cable system.

6. A demonstration that the applicant is legally qualified, which proof must include a demonstration that the applicant:
   a. Has received, or is in a position to receive, necessary authorizations from state and federal authorities;
   b. Has not engaged in conduct (fraud, racketeering, violation of antitrust laws, consumer protection laws, or similar laws) that allows the city to conclude the applicant cannot be relied upon to comply with requirements of the franchise, or provisions of this title;
   c. Is willing to enter into a franchise, to pay required compensation and to abide by the provisions of applicable law, including those relating to the construction, operation or repair of its facilities; and has not entered into any agreement that would prevent it from doing so.
7. An applicant may show that it would be inappropriate to deny it a franchise by virtue of the particular circumstances surrounding the acts or omissions at issue; the steps taken by the applicant to cure all harms flowing therefrom and to prevent their recurrence; and the lack of involvement of the applicant's principals, or the remoteness of the acts or omissions from the operation of communications systems.
8. To the extent to which the applicant is in any respect relying on the financial or technical resources of another person, including another affiliate, all relevant information must be provided for that person.
9. A description of the applicant's prior experience in cable system ownership, construction, and operation, and identification of cities and counties in California in which the applicant or any of its principals have a cable franchise or any interest therein.
10. An affidavit or declaration of the applicant or authorized officer thereof certifying the truth and accuracy of the in-

formation in the application, and certifying that the application meets all requirements of applicable law.

D. To be accepted for filing, an original and six copies of a complete application must be submitted. All applications shall include the names and addresses of persons authorized to act on behalf of the applicant with respect to the application.

E. The transferor and transferee shall respond to any request for information from the city, by the time specified by the city.

F. Incomplete Applications. An application may be rejected if it is incomplete, or if the response to requests for information is not timely and complete.

G. Consideration of Application. In determining whether a transfer application should be granted, denied, or granted subject to conditions, the city may consider all of the application material. The proposed transferee shall pay all reasonable costs incurred by the city in reviewing and evaluating the applications. The city may consider a resolution either approving or denying a transfer application within a reasonable period of time, or within the time-frames provided by federal law, whichever is longer. The city and the parties to the transfer may agree in writing to extend any federal time-frame.

H. No application shall be granted unless the transferee agrees in writing that it wall abide by and accept all terms of this title and the franchise, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous franchisee for all purposes.

(Ord. 771 § 1 (part), 2005.)

4.04.110 General conditions upon construction, operation and repair.

A. Franchisee Must Follow Local Rules. The construction, operation, and repair of cable communications systems shall be performed in compliance with all laws, ordinances, departmental

rules, regulations, and practices affecting such system. By way of example, and not limitation, this includes zoning and safety codes, construction standards, regulations for providing notice to persons that may be affected by system construction, and directives governing the time, place and manner in which facilities may be installed in the public rights-of-way. Persons engaged in the construction, operation, or repair of communications facilities shall exercise reasonable care in the performance of all their activities and shall use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.

B. No Permit Without Franchise. A franchise is required before a permit may be issued for work associated with the construction of a cable communications system. Any permit issued for such work to a person that does not hold a franchise shall vest no rights in the permittee, the permit may be revoked at will, and the permittee shall remove all facilities installed under the permit upon the city's demand.

C. Permits Must Be Obtained. Construction, operation, or repair of a cable communications system shall not commence until all required permits have been obtained from the proper city officials and all required fees have been paid. All work performed will be performed in strict accordance with the conditions of the permit. Upon order of the city, any work and/or construction undertaken that is not completed in compliance with the city's requirements, or which is installed without obtaining necessary permits and approvals shall be removed.

D. No Interference. Interference with the use of the public rights-of-way by others, including others that may be installing cable communications systems, must be minimized. The city may require a person using the public rights-of-way to cooperate with others through joint trenching and other arrangements to minimize adverse impacts on the rights-of-way.

E. Plans For and Publicizing Work. Work shall be publicized as the city may direct from time to time. The publication of work may be used to notify the public and operators of other communications systems and utilities of the impending work, in order to minimize inconvenience and disruption to the public.

1. Each franchisee shall provide the city a plan for any initial system construction, or for any substantial rebuild, upgrade or extension of its facility, which shall show its timetable for construction of each phase of the project, and the areas of the city that will be affected.
2. The city public works director may from time to time, when the city receives an application for a permit to use a particular route, or upon the director's own initiative, designate by published order a route or proposed route for installation of communications facilities and may (1) require all persons who wish to replace underground facilities along that route or any part thereof to install them during a specified period, provided all costs are shared equitably; and (2) otherwise prohibit initial placement of such facilities along the route or any part thereof for twenty-four months or after such other, longer period as is necessary to protect the public interest.

F. Existing Poles to be Used. To the extent possible, operators of cable communications systems shall use existing poles and conduit. Additional poles may not be installed in the right-of-way, nor may pole capacity be increased by vertical or horizontal extenders, without the permission of the city public works director.

1. To minimize disruption of public passage or infrastructure, to forestall or relieve exhaustion of public rights-of-way capacity, or to protect environmentally sensitive areas, the city public works director may require as a condition of issuing any rights-of-way permit for erection of new poles or construction of underground conduit, the installation of which

requires excavation of or along any traveled way that the franchisee or holder of the rights-of-way permit provide pole space or empty conduits in excess of its own present and reasonably foreseeable requirements for the purpose of accommodating the city and/or other franchisees.

G. Undergrounding.

1. Whenever all existing utilities are located underground in an area in the city, every franchisee in the same area must locate its cable communications system underground.
2. Whenever the owner of a pole locates or relocates underground within an area of the city, every franchisee in the same area shall concurrently relocate its facilities underground.
3. The city administrator may, for good cause shown, exempt a particular system or facility or group of facilities from the obligation to locate or relocate facilities underground, where relocation is impractical, or where the city and the subscriber's interest can be protected in another manner. Nothing in this section prevents the city from ordering communications facilities to be located or relocated underground unless the franchisee demonstrates to the city administrator's satisfaction that franchisee's ordinary engineering practice would make undergrounding impracticable or infeasible.

H. Prompt Repairs. Any and all public rights-of-way, other public property, or private property that is disturbed or damaged during the construction, operation, maintenance or repair of a cable communications system shall be promptly repaired by the operator. Public property and public rights-of-way must be restored to the satisfaction of the city or to a condition as good or better than before the disturbance or damage occurred.

I. Movement of Facilities for Government.

1. A franchisee shall, by a time specified by the city, protect, support, temporarily disconnect, relocate, or remove any of

its property when required by the city by reason of traffic conditions; public safety; public right-of-way construction and repair (including regrading, resurfacing or widening), public right-of-way vacation; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned system or utility, public work, public facility, or improvement; or for any other purpose where the work involved would be aided by the removal or relocation of the cable communications system. Collectively, such matters are referred to below as the "public work."

2. Except in the case of emergency, the city shall provide written notice describing where the public work is to be performed at least one week prior to the deadline by which a franchisee must protect, support, temporarily disconnect, relocate or remove its facilities. However, in an emergency, or where a cable communications system creates or is contributing to an imminent danger to health, safety, or property, the city may protect, support, temporarily disconnect, remove, or relocate any or all parts of the cable communications system without prior notice, and charge the franchisee for costs incurred.

J. Movement for Others.

1. To accommodate the construction, operation, or repair of the facilities of another person authorized to use the streets or public property, a franchisee shall, by a time specified by such person, protect, support, temporarily disconnect, relocate or remove its facilities. The franchisee must be given written notice describing where the construction, operation or repair is to be performed at least fifteen days prior to the time by which its work must be completed. The city may resolve disputes as to responsibility for costs associated with removal, relaying, or relocation of facilities among entities

authorized to install facilities in the streets or on public property if such entities are unable to do so themselves.

2. A franchisee shall, on the request of any person holding a valid permit issued by a governmental authority, temporarily raise or lower its wires by a time specified to permit the moving of buildings or other objects. Such an operator shall be given not less than seven days advance notice to arrange for such temporary wire changes. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same.

K. Abandonment in Place.

1. A franchisee may abandon any property in place in the public rights-of-way upon written notice to the city. However, if, within ninety days of the receipt of written notice of abandonment, the city determines that the safety, appearance, functioning or use of the public rights-of-way and facilities in the public rights-of-way will be adversely affected, the property must be removed by a date specified by the city.
2. A franchisee that abandons its property must, upon request, transfer ownership of the properties to the city at no cost, and execute necessary quitclaim deeds and indemnify the city against future costs associated with mitigating or eliminating any environmental hazard associated with the abandoned property.

L. System Subject to Inspection. Every cable communications system shall be subject to inspection and testing by the city. Each operator must respond to requests for information regarding its system and plans for the system as the city may from time to time issue, including requests for information regarding its plans for construction, operation and repair and the purposes for which the plant is being constructed, operated, or repaired.

M. Underground Services Alert. Each franchisee that places facilities underground shall be a member of the regional notification

center for subsurface installations (underground services alert) and shall field mark the locations of its underground communications facilities upon request. The operator shall locate its facilities for the city at no charge.

N. Plan for Construction. Every franchise shall specify for the city a construction schedule that will apply to any required construction, upgrade, or rebuild of the cable communications system. The schedule shall provide for the prompt completion of the project, shall show its timetable for construction of each phase of the project, with benchmarks for deliverables and the areas of the city that will be affected. The city shall have the right to impose penalties on the operator for a failure to meet the accepted timetable and benchmarks.

O. Use of Facilities by the City. The city shall have the right to install and maintain, free of charge upon any poles or in any conduit owned by a franchisee any wire and pole fixtures that do not unreasonably interfere with the cable service operations of the franchisee.

(Ord. 771 § 1 (part), 2005.)

4.04.120 Protection of the city and residents.

A. Indemnity Required. No franchise shall be valid or effective until and unless the city obtains an adequate indemnity from the franchisee. The indemnity must:

1. Release the city from and against any and all liability and responsibility in or arising out of the construction, operation or maintenance of the cable communications system. Each franchisee must further agree not to sue or seek any money or damages from the city in connection with the above mentioned matters.
2. Indemnify and hold harmless the city, its trustees, elected and appointed officers, agents, and employees, from and against any and all claims, demands, or causes of action of

any kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees sustained by the city or any third party arising out of, or by reason of, or resulting from or of the acts, errors, or omissions of the franchisee, or its agents, independent contractors or employees related to or in any way arising out of the construction, operation or repair of the system.

3. Provide that the covenant and representations relating to the indemnification provision shall survive the term of the franchise or other authorization and continue in full force and effect as to the party's responsibility to indemnify.

B. Insurance Required. A franchisee (or those acting on its behalf) shall not commence construction or operation of the system without obtaining insurance in amounts and of a type satisfactory to the city. The required insurance must be obtained and maintained for the entire period the franchisee has facilities in the public rights-of-way. If the franchisee, its contractors, or subcontractors do not have the required insurance, the city may order such entities to stop operations until the insurance is obtained and approved.

C. Proof. Certificates and endorsements of insurance, reflecting evidence of the required insurance and naming the city as an additional insured, and other proofs as the city may find necessary, shall be issued to the city. For persons issued franchises after the effective date of this title, certificates and other required proofs shall be filed within thirty days of the issuance of a franchise, prior to the commencement of construction, at policy renewal, and whenever there is any change in coverage. For entities that have facilities in the public rights-of-way as of the effective date of the ordinance codified in this title, the certificate and endorsements shall be issued within sixty days of the effective date of this title, at policy renewal, and whenever there is any change in coverage, unless a pre-existing franchise

provides for filing of certificates in a different manner. In the event that the insurance will terminate or lapse during the term of the franchise, the franchisee shall furnish, at least thirty days prior to the expiration of such insurance, a new or renewed certificate of insurance as proof that the required coverage has been obtained.

D. Certificate Contents. Certificates and/or endorsements shall contain a provision that coverages afforded under these policies will not be canceled until at least thirty days' prior written notice has been given to the city. Policies shall be issued by companies authorized to do business under the laws of the state of California. Financial ratings must be no less than "A" VII in the latest edition of "Bests Key Rating Guide," published by A.M. Best Guide.

E. Insurance Amounts. A franchisee (and those acting on its behalf to construct or operate the system) shall maintain the following minimum insurance. The city shall be named as an additional insured on the general liability and automotive policies; those insurance policies shall be primary and contain a cross-liability clause.

1. Comprehensive General Liability Insurance to Cover Bodily Injury, Death, and Property Damage. Exposures to be covered are: premises, operations, products/completed operations, and certain contracts. Coverage must be written on an occurrence basis, with the following limits of liability:

Bodily Injury	
1. Each Occurrence	$1,000,000
2. Annual Aggregate	$3,000,000
Property Damage	
1. Each Occurrence	$1,000,000
2. Annual Aggregate	$3,000,000
Personal Injury	
1. Annual Aggregate	$3,000,000

Completed operations and products liability shall be maintained for two years after the termination of the franchise (in the case of the cable communications system owner or operator) or completion of the work for the cable communications system owner or operator (in the case of a contractor or subcontractor).

Property damage liability insurance shall include coverage for the following hazards: X - explosion, C - collapse, U - underground.

2. Workers Compensation insurance shall be maintained during the life of this contract to comply with statutory limits for all employees, and in the case any work is sublet, each franchisee shall require the subcontractors similarly to provide workers' compensation insurance for all the latter's employees unless such employees are covered by the protection afforded by each franchisee. Each franchisee and its contractors and subcontractors shall maintain during the life of this policy employers liability insurance. The following minimum limits must be maintained:

Workers' Compensation:	Statutory Limits
Employer's Liability	$1,000,000 per occurrence

3. Comprehensive Auto Liability

Bodily Injury	
1. Each Occurrence	$1,000,000
2. Annual Aggregate	$3,000,000
Property Damage	
1. Each Occurrence	$1,000,000
2. Annual Aggregate	$3,000,000

Coverage shall include owned, hired, and non-owned vehicles. In every franchise, the city shall reserve the right to require any

other insurance coverage it deems necessary depending upon exposures.

F. Construction Bonds. Every franchisee shall obtain and maintain bonds during periods of rebuild or upgrade of the cable communications system to ensure the faithful performance of its responsibilities under this title and any franchise. The amount of the performance and payment bonds shall be set by the city administrator but shall not be less than ten percent of the estimated cost of constructing or (in the case of existing systems) upgrading the system, and including a sufficient amount to cover the removal of facilities and/or restoration of city facilities within the right-of-way. The bond is not in lieu of any additional bonds that may be required through the permitting process. The bond shall be in a form acceptable to the city attorney. Bonds must be obtained prior to the effective date of any franchise, transfer or franchise renewal, unless the city administrator specifically provides otherwise.

G. Security Fund. Every franchisee shall establish and maintain an irrevocable letter of credit in the amount of one hundred thousand dollars to secure the payment of fees owed, to secure any other performance promised in a franchise, and to pay any taxes, fees or liens owed to the city. The letter of credit shall be in a form and with an institution acceptable to the city's treasurer and in a form acceptable to the city attorney. Should the city draw upon the letter of credit, the franchisee shall, within fourteen days, restore the fund or the letter of credit to the full required amount. This letter of credit may be waived or reduced by the city for a franchisee where the city determines in its discretion that a particular franchisee's operations are sufficiently limited that a letter of credit is not necessary to secure the required performance. The city may from time to time require a franchisee to change the amount of the required letter of credit to reflect changed risks to the city and to the public, including delinquencies in taxes or other payments to the city. The letter

of credit must be obtained prior to the effective date of any franchise, transfer or franchise renewal, unless a franchise specifically provides otherwise.

(Ord. 771 § 1 (part), 2005.)

4.04.130 Enforcement and remedies.

A. Franchise Violation—Notice and Procedures. Before revoking a franchise or issuing an order to assess liquidated damages, the city shall follow the procedures set forth below:

1. The city shall notify a franchisee in writing of any alleged violation ("violation notice") of a franchise or this title. The violation notice shall (a) identify the violation, (b) direct the franchisee (hereinafter "operator") to cure the violation or show cause why the violation cannot or should not be cured, and (c) state the time for the operator's response, which shall be at minimum thirty days from the date of issuance of the violation notice, except for violations that present a danger to public health, safety or welfare, in which case the time for response may be shortened.
2. Within the time period designated for response, the operator shall respond in writing to the city indicating that (a) the operator intends to contest the violation notice and describing all facts relevant to its claim, or (b) the operator has completely cured the violation, in which case the operator shall provide documentation demonstrating that the violation has been completely cured, or (c) the operator has begun to correct the violation; however, if the violation cannot be corrected immediately despite the operator's continued due diligence, in which case the operator shall describe in detail the steps already taken and operator's proposed plan and time schedule for completely curing the violation. Correction of the violation is not complete until all damages and penalties owed are paid in full.

3. If the operator contests the violation notice or the city determines that the operator has failed to completely cure the violation, to submit an acceptable plan to cure the violation, or to work diligently to cure the violation, the city shall schedule a hearing ("violation hearing") before the city council. The city shall provide the operator written notice ("hearing notice") of the violation hearing at least twenty days prior to the hearing.
4. The hearing notice shall indicate (a) the time and place of the violation hearing, (b) the nature of the violation, and (c) the operator's right to present oral and written testimony at an open and public meeting.
5. At the violation hearing, the city council shall hear and consider evidence from the operator, city staff and members of the public regarding the alleged violation. The operator shall be given an opportunity to present any and all evidence relating to the alleged violation.
6. If, based upon the evidence presented at the violation hearing, the city council finds that the operator has violated a franchise, this title or any applicable state or federal law, the city council may issue an order assessing liquidated damages if provided for by the operator's franchise, or, subject to the terms of the operator's franchise, revoke or shorten the franchise.

B. Revocation and Termination. The city council may revoke a franchise or reduce the term of a franchise if it finds, after complying with procedures set forth above, that an operator has violated this title or its franchise, has defrauded or attempted to defraud the city or subscribers; or has attempted to evade the requirements of this title or its franchise. Except as to violations that are impossible to cure, and as provided in subsections C and D of this section, the franchise may only be revoked if the franchisee (1) was given notice of the default, (2) thirty days to cure the default, and (3) the franchisee failed to cure the de-

fault, or to propose a schedule for curing the default acceptable to the city where it is impossible to cure the default in thirty days.

C. Exception for Certain Acts. No opportunity to cure is required for repeated violations, and fraud and attempted fraud shall be deemed incurable. Further, the city may declare a franchise forfeited without opportunity to cure where a franchisee:

1. Voluntarily stops providing service it is required to provide; or
2. Transfers its franchise without the prior consent of the city.

D. Exception for Bankruptcy. A franchise will terminate automatically by force of law one hundred twenty 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. However, the franchise may be reinstated within that one hundred twenty day period, if:

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 title and the franchise, and has executed an agreement, approved by any court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of this title and the franchise. In the event of foreclosure or other judicial sale of any of the facilities, equipment or property of a franchisee, the city may revoke the franchise following 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 thereunder will be revoked and will terminate thirty calendar days after serving such notice, unless:

a. The city has approved the transfer of the franchise to the successful bidder; and
b. The successful bidder has covenanted and agreed with the city to assume and be bound by the terms and conditions of the franchise and this title.

E. Effect of Termination or Forfeiture. Upon termination or forfeiture of a franchise, whether by action of the city as provided above, or by passage of time, the franchisee must stop using the cable communications system for the purposes authorized by the franchise. The city may take possession of some or all of franchisee's facilities, or require the franchisee or its bonding company to remove some or all of the franchisee's facilities from the city, and restore affected property to its same or better, condition. This provision does not permit the city to remove facilities that are used to provide another service for which the franchisee holds a valid franchise issued by the city.

F. Remedies Cumulative. Remedies provided for under this title, or under a franchise shall be cumulative. Recovery by the city of any amounts under insurance, the performance bond, or the security fund, does not limit a franchisee's duty to indemnify the city; or relieve a franchisee of its franchise obligations or limit the amounts owed to the city.

G. Liquidated Damages Required in Franchise. A franchise granted pursuant to this title shall require liquidated damages, in an amount to be specified in the franchise, for specified breaches of the franchise including, but not limited to, failure to commence construction, failure to meet construction plan benchmarks, failure to comply with rebuild plan benchmarks, failure to commence service, and material breach of franchise obligation(s). The franchise shall also provide that the city may withdraw liquidated damages owed from the franchisee's security fund. Liquidated damages shall commence on that date that performance was due and/or failed, and continue until the franchisee demonstrates to the satisfaction of the city that the fran-

chisee has fully performed its obligations giving rise to the payment of liquidated damages. Any obligation to pay liquidated damages does not in any way affect the franchisee's obligation to pay franchise fees or perform other obligations in the franchise and such liquidated damages do not constitute franchise fees and are not subject to any limitations on franchise fees contained in 47 U.S.C.§ 542(b). Any obligation to pay liquidated damages are not costs of satisfying franchise requirements as provided in 47 C.F.R. § 76.925. The franchisee agrees it will not pass the cost of any liquidated damages to subscribers through subscriber rates or itemize or otherwise identify on subscriber bills any obligation the franchisee may have to pay liquidated damages.

H. Penalties, Fines and Other Monetary Sanctions.

1. Penalties. In addition to any other remedies provided for in this title or otherwise available by law, the city shall have the power to impose monetary penalties in the event a franchisee violates any provision of this title, a franchise, or any regulation lawfully adopted thereunder. The amounts of such penalties shall be specified in the franchise and shall be based on the following principles:
    a. Penalties shall exceed the financial benefits to a franchisee delaying or failing to comply with the applicable requirement;
    b. Even where such benefits are not easily discernible, the penalties shall be sufficiently high to have a significant deterrent effect on a franchisee; and
    c. Penalties shall be sufficient to protect the city and other affected parties against loss of revenues resulting from violations.
2. Other Monetary Sanctions. A franchise may also provide for fines, liquidated damages and other monetary sanctions, the amounts of which shall also reflect the foregoing principals.

3. Private Suit Against Franchisee.
   a. Any person or organization adversely affected by a violation, or by a pattern and practice of violations, shall have the right to sue a franchisee in a court of competent jurisdiction for damages and for injunctive and other relief to require enforcement of the franchise. Organizations shall be entitled to sue on behalf of themselves or their members.
   b. The remedy herein provided shall be in addition to any remedies provided by law.
   c. Except in emergency situations in which immediate relief is required, private litigants shall notify the city attorney not fewer than ten days prior to filing suit. However, suit by the city shall not preempt the private litigant's right to proceed.
4. Except as otherwise provided herein, a violation of this title is a misdemeanor.

(Ord. 771 § 1 (part), 2005.)

4.04.140 Books and records.

A. Generally. Each franchisee shall provide the city of Sonora access to books and records related in whole or in part to the construction, operation, or repair of the cable communications system, or a group of systems of which the system is a part, so that the city may inspect and copy these books and records. The records include, but are not limited to, revenue records, and other records related to compliance with any provision of this title or a franchise. A franchisee is responsible for obtaining or maintaining the necessary possession or control of all such books and records, so that it can produce the documents upon request. Books and records must be maintained for a period of four years, except that a franchise may specify a shorter period for certain categories of voluminous books and records where the

information contained therein can be derived simply from other materials. The phrase "books and records" shall be read expansively to include information in whatever format stored.

B. Production. Books and records requested shall be produced to the city by a time and at a location in the city designated by the city administrator. However, if the requested books and records are too voluminous, or for security reasons cannot be copied and moved, then the franchisee may request that the inspection take place at some other location mutually agreed to by the city and the franchisee, provided that (1) the franchisee must make necessary arrangements for copying documents selected by the city after its review; and (2) the franchisee must pay all travel and additional copying expenses incurred by the city (above those that would have been incurred had the documents been produced in the city) in inspecting those documents or having those documents inspected by its designee.

(Ord. 771 § 1 (part), 2005.)

4.04.150 Reports.

A. Obligation to Submit. The city administrator may from time to time direct a franchisee to prepare reports and to submit those reports by a date certain, in a format prescribed by the administrator, in addition to those required by this title.

B. Quarterly Reports. Unless an exemption is granted by the city administrator, within forty-five days of the end of each calendar quarter, a franchisee shall submit a report to the city containing the following information:

1. The number of service calls (calls requiring a truck roll) received during the prior quarter and the percentage of service calls compared to the subscriber base; and
2. The total estimated hours of known outages as a percentage of total hours of operation. An outage is a loss of sound or

video on any signal, or a significant deterioration of any signal affecting two or more subscribers.

C. Annual Reports. The city administrator may require a franchisee to submit a report containing the following information within ninety days after the end of the franchisee's fiscal year:

1. A fully audited or certified revenue report from the previous calendar year for the cable communications system, and a certified statement setting forth the computation of gross revenues used to calculate the franchise fee for the preceding year and a detailed explanation of the method of computation showing (i) gross revenues by category (e.g., basic cable tier, expanded basic tier, pay-per-view advertising, installation, equipment, late charges, miscellaneous, other), and (ii) what, if any, deductions were made from gross revenues in calculating the franchise fee (e.g., bad debt, credits and refunds), and the amount of each deduction.
2. A report showing, for each applicable customer service standard, the franchisee's performance with respect to that standard for each quarter of the preceding year. In each case where a franchisee concludes it did not comply fully, the franchisee will describe the corrective actions it is taking to assure future compliance. In addition, the report should identify the number and nature of all the customer service complaints received and an explanation of their dispositions.
3. An ownership report, indicating all persons who at the time of filing control or own an interest in the franchisee of ten percent or more.

D. Contemporaneous Reports. Within ten days of their receipt or (in the case of documents created by the franchisee or its affiliate) filing, a franchisee shall provide the city:

1. Notices of deficiency or forfeiture related to the operation of the system; and
2. Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the fran-

chisee or by any partnership or corporation that owns or controls the franchisee directly or indirectly.

(Ord. 771 § 1 (part), 2005.)

4.04.160 Maps required.

Each franchisee shall maintain accurate maps and improvement plans which show the location, size, and a general description of all facilities installed in the public rights-of-way and any power supply sources (including voltages and connections). Maps shall be based upon post-construction inspection to verify location. Each franchisee shall provide a map to the city of Sonora showing the location of its facilities in such detail and scale as may be reasonably directed by the city and update the map at least annually, and whenever the facility expands or is relocated. Copies of maps shall be provided in hard copy and on disk, in a commercially available electronic format specified by the city. (Ord. 771 § 1 (part), 2005.)

4.04.170 Other records required.

Unless the city administrator waives the requirement, a franchisee shall at all times maintain:

A. Complaint Records. Records of all complaints received, their nature and resolution. The term "complaints" refers to complaints about any aspect of the franchisee's operations.

B. Outage Records. Records of outages known to the franchisee, their cause and duration.

C. Complaint Response. Records of service calls for repair and maintenance indicating the date and time service was requested, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was solved.

D. Installation Records. Records of installation/reconnection and requests for service extension, indicating date of request, date

of acknowledgment, and the date and time service was extended.

E. Customer Service. Records sufficient to show whether the franchisee has complied with each customer service standard that applies to it.

(Ord. 771 § 1 (part), 2005.)

4.04.180 Exemptions.

The city administrator may temporarily exempt any franchisee from its obligations if the administrator determines that the requirement would be unduly burdensome or unnecessary, and that the city and subscriber interests may be adequately protected in some other manner. (Ord. 771 § 1 (part), 2005.)

4.04.190 Privacy.

A franchisee shall take all reasonable steps required so that it is able to provide reports, books and records to the city of Sonora, including by providing appropriate subscriber privacy notices. Each franchisee shall be responsible for redacting data that applicable law prevents it from providing to the city. Nothing in this section shall be read to require a franchisee to violate state or federal subscriber privacy laws. (Ord. 771 § 1 (part), 2005.)

4.04.200 Procedures for paying franchise fees and fees in lieu of franchise fees.

A. Fees Paid Quarterly. The franchise fee paid pursuant to this chapter, or any fee in lieu of the franchise fee shall be paid quarterly unless otherwise specified in a franchise. Payment for each quarter shall be made to the city of Sonora not later than forty-five days after the end of each calendar quarter.

B. Quarterly Statement. Unless a franchise provides otherwise, a franchisee or other entity subject to a fee shall file with the city within forty-five days of the end of each calendar quarter a statement showing gross revenues during the preceding quarter and the number of subscribers served.

C. Acceptance of Payment Not a Release. Acceptance by the city of any payment shall not be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such payment be construed as a release of any claim the city may have for additional sums payable.

D. Fee Not In Lieu of Taxes. No franchise fee paid under provisions of this title is a payment in lieu of any tax, fee or other assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and franchisees or their services, but not including a tax, fee, or assessment which is unduly discriminatory against franchisees or subscribers).

E. Failure to Pay Franchise Fee. In the event that a fee payment is not received by the city on or before the due date set forth in this title or in a franchise, or the fee owed is not fully paid, the person subject to the fee will be charged interest from the due date at an interest rate equal to three percent above the rate for three-month Federal Treasury Bills at the most recent United States Treasury Department sale of such treasury bill occurring prior to the due date of the franchise fee payment.

F. Final Statement of Gross Revenues. Within ninety days of the date a franchisee ceases operations under a franchise (whether because of franchise termination, transfer, bankruptcy or for any other reason), the franchisee shall file a final statement of gross revenues covering the period from the beginning of the calendar year in which the operations ceased to the date operations ceased. The statement shall contain the information and be audited or certified.

(Ord. 771 § 1 (part), 2005.)

Chapter 4.06

SPECIAL RULES APPLICABLE TO CABLE SYSTEMS

Sections:

4.06.010	**Applications—Generally.**
4.06.020	**Application for an initial franchise or renewal franchise.**
4.06.030	**Application for renewal franchise filed pursuant to 47 U.S.C. § 546.**
4.06.040	**Legal qualifications.**
4.06.050	**Franchise fee.**
4.06.060	**No exclusivity.**
4.06.070	**Minimum franchise conditions.**
4.06.080	**Rate regulation and consumer protection.**

4.06.010 Applications—Generally.

A. Application Required. An application must be filed for an initial and renewal cable system franchise. A request for renewal filed under 47 U.S.C. § 546(h) need not contain the information required by Section 4.04.010(B).

B. Application Contents.

1. The city administrator may specify the information that must be provided in connection with an application, and the form in which the information is to be provided. At a minimum, each application must identify the applicant, show that the applicant is financially, technically and legally qualified to construct, maintain and operate the cable system, contain a pro forma showing capital expenditures and expected income and expenses for the first five years the applicant is to hold the franchise, and show that the applicant is willing to comply unconditionally with its franchise obligations. In addition, any application for an initial or re-

newal franchise or rebuild of the cable system and/or facilities, must describe in detail the cable system that the applicant proposes to build, show where it will be located, set out the system construction schedule, and show that the applicant will provide adequate channels, facilities and other support for public, educational and government use (including institutional network use) of the cable system. A detailed description of the physical facilities proposed, which shall include at least the following:

a. A description of the channel capacity, technical design, performance characteristics, headend, access (and institutional network, if required) facilities and equipment;

b. The location of proposed facility and facility design, including a description of the miles of plant to be installed, and a description of the size of equipment cabinets, shielding and electronics that will be installed along the plant route, the power sources that will be used and a description of the noise, exhaust and pollutants, if any, that will be generated by the operation of the same; provided, however, that if some of the descriptive data is not available at the time of application, the franchise may issue subject to conditions that the data be filed and approved by the city before construction begins and that the franchise will be deemed to be forfeited if the data is not supplied and approved; provided, further, that the foregoing proviso does not authorize the grant of a franchise where there is not sufficient information to appraise the impact of the applicant's proposal;

c. A map of the general route the facility will follow; a designation of the portions of the system that will be placed above ground and the portions that will be placed underground, and the construction techniques that the applicant proposes to use in installing the sys-

tem above ground and underground; a schedule for construction of the facility, describing when and where construction will begin, how it will proceed, benchmarks indicating the schedule competition of portions of the system and when construction will be completed, and the expected effect on right-of-way usage, including information on the ability of the public rights-of-way to accommodate the proposed system, including, as appropriate given the system proposed, an estimate of the availability of space in conduits and an estimate of the cost of any necessary rearrangement of existing facilities;

d. A description, where appropriate, of how services will be converted from existing facilities to new facilities, and what will be done with existing facilities;

e. A demonstration of how the applicant will reasonably meet the future cable-related needs and interests of the community, including descriptions of the capacity, facilities and support for public, educational, and governmental use of the system (including institutional networks) applicant proposes to provide and why applicant believes that the proposal is adequate to meet the future cable-related needs and interests of the community;

f. A demonstration of the financial qualifications of the applicant, including at least the following:

   i. The proposed rate structure, including projected charges for each service tier, installation, converters, and all other proposed equipment or services, and

   ii. A statement regarding the applicant's financial ability to complete the construction to meet the time frame proposed and to operate the cable system proposed certified by the applicant's chief financial officer;

g. A demonstration of the applicant's technical ability to construct and/or operate the proposed cable system;

h. A demonstration that the applicant is legally qualified, which proof must include a demonstration that the applicant:

   i. Has received, or is in a position to receive, necessary authorizations from state and federal authorities,

   ii. Has not engaged in conduct (fraud, racketeering, violation of antitrust laws, consumer protection laws, or similar laws) that allows the city to conclude the applicant cannot be relied upon to comply with requirements of the franchise, or provisions of this title, and

   iii. Is willing to enter into a franchise, to pay required compensation and to abide by the provisions of applicable law, including those relating to the construction, operation or repair of its facilities; and has not entered into any agreement that would prevent it from doing so;

i. The applicant must not have submitted an application for an initial or renewal franchise to the city, which was denied on the ground that the applicant failed to propose a cable system meeting the cable-related needs and interests of the community, or as to which any challenges to such franchising decision were finally resolved (including any appeals) adversely to the applicant, within three years preceding the submission of the application;

j. An applicant may show that it would be inappropriate to deny it a franchise by virtue of:

   i. The particular circumstances surrounding the acts or omissions at issue,

ii. The steps taken by the applicant to cure all harms flowing therefrom and to prevent their recurrence, and

iii. The lack of involvement of the applicant's principals, or the remoteness of the acts or omissions from the operation of communications systems;

k. The extent that the applicant is in any respect relying on the financial or technical resources of another person, including another affiliate, proofs should be provided for that person;

l. A description of the applicant's prior experience in cable system ownership, construction, and operation, and identification of cities and counties in California in which the applicant or any of its principals have a cable franchise or any interest therein, provided that an applicant that holds a franchise for the city and is seeking renewal of that franchise need only provide this information for other cities and counties in California where its franchise is scheduled to expire during the twelve-month period prior to the date its application is submitted to the city and for other cities and counties in California where its franchise had been scheduled to expire during the twelve-month period after the date its application is submitted to the city. If an applicant has no other franchise in California, it shall provide the information for its operations in other states; and

m. An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, and certifying that the application meets all requirements of applicable law.

2. To be accepted for filing, an original and six copies of a complete application must be submitted. All applications shall include the names and addresses of persons authorized

to act on behalf of the applicant with respect to the application.

3. An applicant shall respond to any request for information from the city, by the time specified by the city.

C. Incomplete Applications. An application may be rejected if it is incomplete, or if the response to requests for information is not timely and complete.

(Ord. 771 § 1 (part), 2005.)

4.06.020 Application for an initial franchise or renewal franchise.

A. Scope. This section establishes additional provisions that apply to an application for an initial franchise, or a renewal franchise application that is not governed by 47 U.S.C. § 546(a)-(h).

B. Process. Any person may apply for an initial or renewal franchise by submitting an application on that person's own initiative, or in response to a request for proposals issued by the city. If the city receives an unsolicited application, it may choose to issue a request for additional proposals, and require the applicant to amend its proposal to respond thereto. The city shall promptly conduct such investigations as are necessary to act on an application.

C. Consideration of Application. In determining whether to grant a franchise, the city may consider:

1. The extent to which an applicant for renewal has substantially complied with the applicable law and the material terms of any existing cable franchise;
2. Whether an applicant for renewal's quality of service under its existing franchise, including signal quality, response to customer complaints, billing practices, and the like has been reasonable in light of the needs of the community;
3. Where the applicant has not previously held a cable system franchise in the city, whether the applicant's record in other

communities indicates that it can be relied upon to provide high quality service throughout any franchise term;

4. Whether the applicant has the financial, legal, and technical ability to provide the services, facilities, and equipment set forth in an application, and to satisfy any minimum requirements established by the city;
5. Whether the applicant's application is reasonable to meet the future cable-related needs and interests of the city, taking into account the cost of meeting such needs and interests;
6. Whether issuance of a franchise is warranted in the public interest considering the immediate and future effect on streets, public property, and private property that will be used by the applicant's cable system;
7. Whether issuance of the franchise would reduce competition in the provision of cable service in the city;
8. Such other matters as the city is authorized or required to consider.

D. Issuance of Franchise. If the city determines that issuance of a franchise would be in the public interest considering the factors described above, it may proffer a franchise agreement to the applicant. No franchise shall become effective until the applicant unconditionally accepts the franchise, and the franchise agreement is signed.

(Ord. 771 § 1 (part), 2005.)

4.06.030 Application for renewal franchise filed pursuant to 47 U.S.C. § 546.

A. Scope. This section establishes additional provisions that apply to applications for renewal governed by 47 U.S.C. § 546(a)-(g).

B. Process. A franchisee that intends to exercise rights under 47 U.S.C. § 546(a)-g) shall submit a notice in writing to the city of Sonora in a timely manner clearly stating that it is activating the

procedures set forth in those sections. The city shall thereafter commence any proceedings that may be required under federal law, and upon completion of those proceedings, the city may issue a request for proposals and an application may be submitted for renewal. The city may preliminarily deny the application by resolution, and if the application is preliminarily denied, the city may conduct such proceedings and by resolution establish such procedures and appoint such individuals as may be necessary to conduct any proceedings to review the application.

(Ord. 771 § 1 (part), 2005.)

4.06.040 Legal qualifications.

A. Standards.

1. The applicant must be willing to comply with the provisions of this title and applicable laws, and to comply with such requirements of a franchise as the city of Sonora may lawfully require.
2. The applicant must not have had any cable system validly revoked, (including any appeals) by the city within three years preceding the submission of the application.
3. The applicant may not have had an application to the city for an initial or renewal cable system franchise denied on the ground that the applicant failed to propose a cable system meeting the cable-related needs and interests of the community, or as to which any challenges to such franchising decision were finally resolved (including any appeals) adversely to the applicant, within three years preceding the submission of the application.
4. The applicant shall not be issued a franchise if, at any time during the ten years preceding the submission of the application, applicant was convicted of fraud, racketeering, anticompetitive actions, unfair trade practices or other conduct of such character that the applicant cannot be relied upon to

deal truthfully with the city and the subscribers, or to substantially comply with its obligations

5. Applicant must have the necessary authority under California and federal law to operate a cable system or show that it is in a position to obtain that authority.
6. The applicant shall not be issued a franchise if it files materially misleading information in its application or intentionally withholds information that the applicant lawfully is required to provide.
7. For purposes of Section 4.04.050, the term "applicant" includes any affiliate of applicant.

B. Exception. Notwithstanding Section 4.04.050, an applicant shall be provided a reasonable opportunity to show that a franchise should issue even if the requirements of that section are not satisfied, by virtue of the circumstances surrounding the matter and the steps taken by the applicant to cure all harms flowing therefrom and prevent their recurrence, the lack of involvement of the applicant's principals, or the remoteness of the matter from the operation of a cable system.

(Ord. 771 § 1 (part), 2005.)

4.06.050 Franchise fees.

A franchisee shall pay to the city of Sonora a franchise fee in an amount equal to five percent of gross revenues, or such other amount as may be specified in the franchise; provided, however, that if the franchise specifies a legal maximum amount, that amount shall be subject to increase should federal limits on fee payments be eliminated or changed and other franchisees are subject to a higher fee.

A. Bundled Services. In the event that a franchisee shall offer bundled, tied, or combined cable services (which are subject to the franchise fee) with non-cable services (which may not be subject to the franchise fee) to individual subscribers, the combined revenues from such bundled services shall be allocated consis-

tent with the rates or prices advertised by the franchisee through its marketing materials or on its published rate card. In the event the franchisee does not advertise or publish separate prices for the combined services, the percentage that the price for the combined services as discounted from the regular retail rates of the individual services shall be prorated across all the services in the bundled package; provided, however, that the net revenues derived from services subject to mandatory tariff rates imposed by the California Public Utilities Commission (or other governmental entity having such authority) shall be deducted from the combined revenue to determine the revenue subject to the franchise fee. As an example, a franchisee may offer a "bundle" of video, voice and data services for a flat fee of seventy-five dollars where the retail rate for the services purchased on an individual basis would equal one hundred dollars. Assuming that there is no service subject to the mandated tariff rate, the franchisee would apply a twenty-five percent discount to each service. Thus, if the retail rate for the cable service in the bundle were fifty dollars, the franchisee would recognize cable service revenue in the amount of thirty-seven dollars and fifty cents and pay a franchise fee on that revenue.

B. Gross Revenue. The definition of gross revenue is to be as inclusive as possible consistent with existing applicable law. If a change in federal law occurs subsequent to July 20, 2005, such change shall not impact the gross revenues definition in such a way to reduce gross revenues—unless the change specifically preempts the affected portion of the definition above.

(Ord. 771 § 1 (part), 2005.)

40.06.060 No exclusivity.

A franchisee may not require a subscriber or a building owner or manager to enter into an exclusive contract as a condition of providing or continuing service. However, nothing herein prevents a fran-

chisee from entering into an otherwise lawful, mutually desired exclusive arrangement with a building owner or manager of a multiple dwelling unit or commercial subscriber. (Ord. 771 § 1 (part), 2005.)

4.06.070 Minimum franchise conditions.

In addition to satisfying such additional or stricter conditions as the city of Sonora finds necessary based on its investigations, the following elements shall be required in every franchise serving more than one thousand subscribers. A franchisee who provides service in an area that is defined as "isolated rural" may be exempted from the minimum franchise requirements for that area.

A. System Design. Each franchisee shall provide a cable system that uses at least 750 MHz equipment of high quality and reliability. Each franchisee shall install and activate the return portion of the cable system in the sub-low frequency spectrum of 5 MHz to 30 MHz.

B. Public, Educational and Government Use of the System.
   1. A franchisee shall provide a minimum of three channels for PEG Access to each subscriber.
   2. Each franchisee shall install, maintain, and replace as necessary, a dedicated, bi-directional fiber optic link between its headend and a location designated by the city as the primary PEG access center.
   3. Each franchisee shall install, maintain, and replace activated two-way cable plant and all headend, cable plant, and node equipment required to make it operable so that the city, schools, and all designated PEG access centers and access facilities located within the franchise area will be able to send and receive signals (video, audio, and data) using the activated two-way cable plant.
   4. Each franchisee shall ensure that technically adequate signal quality, routing systems, and switching and/or processing equipment are initially and continuously provided for all ac-

cess interconnections both within a franchisee's cable system and with other cable communications systems throughout the duration of its franchise.

5. In the event a franchisee makes any change in the cable system and related equipment and facilities or in the franchisee's signal delivery technology which directly or indirectly substantially affects the signal quality or transmission of access programming, the franchisee shall at its expense take necessary steps or provide necessary technical assistance, including the acquisition of all necessary equipment, to ensure that the capabilities of access programmers are not diminished or adversely affected by such change.
6. A franchisee shall maintain all access channels (both upstream channels and downstream channels) and all interconnections of access channels at the same level of technical quality and reliability as the best commercial channels carried on the franchisee's system.

C. Service to Franchise Area. It is the policy of the city of Sonora to ensure that every cable system provide service in its franchise area upon request to any person or any government building. Each franchisee shall extend service upon request within its franchise area, provided that a franchise may permit a franchisee to require a potential subscriber to contribute a fair share of the capital costs of installation or extension as a condition of extension or installation in cases where such extension or installation may be unduly expensive. Service must be provided within time limits specified in Section 4.04.080(D).

D. Time for Extension. Except as a franchise otherwise provides, service must be extended upon request to any person or to any government building in a franchisee's franchise area (i) within seven days of the request, where service can be provided by activating or installing a drop, (ii) within ninety days of the request where an extension of one-half mile or less is required, or

(iii) within six months where an extension of one-half mile or more is required.

E. Technical Standards. A cable system within the city shall meet or exceed the technical standards set forth in 47 C.F.R. § 76.601 and any applicable state and federal technical standards.

F. Testing. Each franchisee shall perform at its expense such tests as may be necessary to show whether or not the franchisee is in compliance with its obligations under applicable FCC standards, this title or a franchise.

G. Interconnection. Upon request of the city, every cable system shall be required to interconnect with every other cable system within the city, or adjacent to the city, on fair and reasonable terms for purposes of providing PEG and I-Net services.

H. Continuity of Service. Each franchisee shall, during the term of the franchise, ensure that subscribers are able to receive continuous service. In the event the franchise is revoked or terminated, the franchisee may be required to continue to provide service for a reasonable period to assure an orderly transition of service from the franchisee to another entity. A franchise may establish more particular requirements under which these obligations will be satisfied.

(Ord. 771 § 1 (part), 2005.)

4.06.080 Rate regulation.

A. All Rates Subject to Regulation. The city of Sonora may regulate any of a franchisee's rates and charges, except to the extent it is prohibited from doing so by law. The city will regulate rates in accordance with FCC rules and regulations, where applicable. Except to the extent FCC rules provide otherwise, all rates and charges that are subject to regulation, and changes in those rates or charges must be approved in advance. The city administrator may take any required steps to file complaints,

toll rates, issue accounting orders or take any other steps required to comply with FCC regulations. The Sonora city council shall be responsible for issuing rate orders that establish rates or order refunds.

B. No Rate Discrimination. To the extent the city lawfully may enforce such a requirement, a franchisee is prohibited from discriminating in its rates or charges or from granting undue preferences to any subscriber, potential subscriber, or group of subscribers or potential subscribers; provided, however, that a franchisee may offer temporary, bona fide promotional discounts in order to attract or maintain subscribers, so long as such discounts are offered on a non-discriminatory basis to similar classes of subscribers; and a franchisee may offer discounts for the elderly, the disabled, or the economically disadvantaged; and such other discounts as it is expressly entitled to provide under federal law, if such discounts are applied in a uniform and consistent manner.

C. Redlining Prohibited. A franchisee shall not deny access or charge different rates to any group of subscribers or potential subscribers because of the income of the residents of the local area in which such group resides.

(Ord. 771 § 1 (part), 2005.)

Chapter 4.08

CUSTOMER SERVICE AND CONSUMER PROTECTION STANDARDS

Sections:

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4.08.020	**Office availability.**
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4.08.050	**Scheduling work.**
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4.08.010 General.

The franchisee shall comply with the requirements in this chapter. These requirements include, but are not limited to, the requirements set forth in FCC regulations, including 47 C.F.R.§ 76.309 and other applicable law. To the extent the provisions of this chapter differ from applicable FCC regulations or any applicable law, the provision or provisions that impose the highest standard or greatest legal duties or obligations upon the franchisee shall take precedence, unless a differ-

ent order of precedence is expressly set herein. (Ord. 771 § 1 (part), 2005.)

4.08.020 Office availability.

A. Each franchisee will maintain at least one office at a convenient location in close proximity to the city that will be open for walk-in traffic at least ten hours per day (except legal holidays) Monday through Friday, with some evening hours, and at least five hours on Saturday to allow subscribers to pay bills, drop off equipment and to pick up equipment.

B. Each franchisee will perform service calls, installations, and disconnects at least ten hours per day Monday through Saturday, except legal holidays, provided that a franchisee will respond to outages twenty-four hours a day, seven days a week.

(Ord. 771 § 1 (part), 2005.)

4.08.030 Telephones.

All call response statistics shall be measured on the basis of call response statistics in all call centers that serve franchise area subscribers. If the call centers serve subscribers located in other communities, the franchisee shall insure that call center representatives do not give priority or preferential treatment to subscribers located in other communities.

A. Definition of Call Response Terms.

1. "Answer time" is the interval between when the franchisee receives a call and when an interactive voice response (IVR) or agent answers.
2. "Speed of answer" is the amount of time between when the customer is transferred into the agent queue from either an IVR or an agent and the time an agent answers.
3. "Calls abandoned" is the percentage of calls in any agent queue that are abandoned.

4. "Trunks busy" represents the percentage of time customers receive a busy signal when they call customer service during normal business hours.

B. Each franchisee will establish a publicly listed local toll-free telephone number. Customer service representatives must answer the phone at least ten hours per day, Monday through Saturday, except legal holidays, for the purpose of receiving requests for service, inquiries, and complaints from subscribers. After such business hours the phone will be answered so that customers can register complaints and report service problems on a twenty-four hour per day, seven day per week basis, and so that the franchisee can respond to service outages as required.

C. Standards for Call Response.

1. Answer time will not exceed thirty seconds or four rings. Under normal operating conditions the franchisee shall meet this requirement at least ninety percent of the time.
2. The average speed of answer shall not exceed thirty seconds. Under normal operating conditions the franchisee shall meet this requirement at least ninety percent of the time.
3. The percentage of calls abandoned shall not exceed three percent under normal operating conditions.
4. Subscribers shall receive a trunks busy signal less than three percent of the time under normal operating conditions.

D. Call Response Reports.

1. A franchisee shall submit reports on call response statistics every calendar quarter, except as otherwise provided in this section. If any of a franchisee's quarterly call response statistics fail to demonstrate compliance with any applicable requirement, the franchisee must thereafter submit monthly reports on all call response times until the franchisee requests and the city approves resuming quarterly reporting.
2. Information in the reports about call response times shall be determined on the basis of the simple average of results dur-

ing business hours under normal operating conditions for the entire reporting period, and any report submitted at the end of a calendar quarter shall report the total number of calls during the preceding quarter and the average call response times during that quarter.

(Ord. 771 § 1 (part), 2005.)

4.08.040 Other reports.

A. A franchisee shall submit reports on all customer service standards identified in this section during each successive calendar quarter for the term of the franchise except as otherwise might be provided herein. If a franchisee's report for two quarters within a calendar year fail to demonstrate that the franchisee has complied with any customer service standard in Section 4.08.030 of this chapter, the franchisee shall thereafter submit monthly reports about performance of each such requirement until it reports three consecutive months with less than five percent deviation from any minimum required standard unless the franchisee demonstrates to the city's satisfaction that the deviation occurred when it was not operating under normal operating conditions as defined in 47 C.F.R. § 76.309 and reports on the nature and duration of such non-normal operating conditions.

B. Timing. A franchisee shall submit reports within thirty days after the close of the applicable reporting period. Each report shall include data from the applicable reporting period.

C. Each of the reporting requirements in this section is self-executing and the franchisee agrees that the city does not need to provide additional notice or an opportunity to cure in order to establish that the franchisee has committed a breach of these requirements for the purposes of the franchisee's obligation to pay liquidated damages as described in this section.

D. Compliance. If a monthly or quarterly report indicated that a franchisee has failed to meet any of the minimum required stan-

dards, the franchisee shall provide a written explanation of the deviation within ten business days of the report, including steps being taken to cure the deviation, and the time expected to implement the cure. A franchisee must cure within thirty days unless a longer period is agreed to in writing by the city, which agreement shall not be unreasonably withheld.

(Ord. 771 § 1 (part), 2005.)

4.08.050 Scheduling work.

A. All appointments for service, installation, or disconnection will be specified by date. Each franchisee will set a specific time at which the work will be done, or offer a choice of time blocks, which will not exceed four hours in length. A franchisee may also, upon request, schedule service installation calls outside normal business hours, for the express convenience of the customer.

B. If at any time an installer or technician is late for an appointment and/or believes a scheduled appointment time will be missed, an attempt to contact the customer will be made before the time of appointment and the appointment rescheduled at a time convenient to the customer, if rescheduling is necessary. It is the franchisee's burden to prove it met the appointment.

C. The franchisee will offer and fully describe to subscribers who have experienced a missed appointment (where the missed appointment was not the subscriber's fault) that the subscriber may choose between the following options:

1. Installation or service call free of charge, if the appointment was for an installation or service call for which a fee was to be charged;
2. One month of the most widely subscribed to service tier free of charge for other appointments; and
3. An opportunity to elect remedies under California Civil Code 1722, if applicable.

D. If the franchisee makes reasonable and no less than three attempts to confirm an appointment during the scheduled appointment time or appointment window and is unsuccessful in obtaining such confirmation, the franchisee may assume that the customer has cancelled the appointment.

(Ord. 771 § 1 (part), 2005.)

4.08.060 Service standards.

A. Under normal operating conditions, requests for service, repair, and maintenance must be acknowledged by a trained customer service representative within twenty-four hours, or before the end of the next business day, whichever is earlier.

B. A franchisee will respond to all other inquiries (including billing inquiries) within five business days of the inquiry or complaint.

C. Under normal operating conditions, repairs and maintenance for outages or service interruptions must be completed within twenty-four hours after the outage or interruption becomes known to franchisee where the franchisee has adequate access to facilities to which it must have access in order to remedy the problem.

D. When normal operating conditions do not exist, a franchisee will complete the work in the shortest time possible.

E. A franchisee will not cancel a service or installation appointment with a customer within twenty-four hours of the appointment or after the close of business on the business day preceding the scheduled appointment, whichever is earlier.

F. Requests for additional outlets, service upgrades or other connections (e.g., DMX, VCR, A/B switch) separate from the initial installation will be performed within seven business days after an order has been placed.

G. Under normal operating conditions, the service standards set out in subsections A-G of this section will be met at least ninety-five percent of the time, measured on a quarterly basis.

H. The failure of the franchisee to hire sufficient staff or to properly train its staff will not justify a franchisee's failure to comply with this provision.

(Ord. 771 § 1 (part), 2005.)

4.08.070 Disabled services.

With regard to subscribers with disabilities, upon subscriber request, each franchisee will arrange for pickup and/or replacement of converters or other franchisee equipment at the subscriber's address or by a satisfactory equivalent (such as the provision of a postage-prepaid mailer). (Ord. 771 § 1 (part), 2005.)

4.08.080 Notice to subscribers regarding service.

A franchisee will provide each subscriber at the time service is installed, and annually thereafter, clear and accurate written information.

A. On placing a service call, filing a compliant, or requesting an adjustment including when a subscriber is entitled to refunds for outages and how to obtain them;

B. Showing the telephone number of the city office responsible for administering the cable television franchise;

C. Detailing current rates and charges (which must include any senior, disabled or other discounts offered and the least expensive tier of service available), channel positions, services provided, delinquent subscriber disconnect and reconnect procedures, information regarding the availability of parental control devices, the conditions under which they will be provided and the cost (if any) charged;

D. Describing conditions that must be met to qualify for discounts;

E. Describing any other of the franchisee's policies in connection with its subscribers; and

F. Describing any discounts, services, or specialized equipment available to subscribers who are seniors or with disabilities, explaining how to obtain them, and explaining how to use any accessibility features.

(Ord. 771 § 1 (part), 2005.)

4.08.090 Notices to the city.

The franchisee will provide the city with copies of all notices provided to its subscribers pursuant to this chapter. (Ord. 771 § 1 (part), 2005.)

4.08.100 Changes in noticed information.

The franchisee will provide the city administrator (or designee) at least sixty days, and all subscribers at least thirty days, written notice of any material changes in the information required to be provided under this article, except that, if federal law establishes a shorter notice period and preempts this requirement, the federal requirement will apply. (Ord. 771 § 1 (part), 2005.)

4.08.110 Truth in advertising.

Each franchisee will take appropriate steps to ensure that all written franchisee promotional materials, announcements, and advertising of residential cable service to subscribers and the general public, where price information is listed in any manner, clearly and accurately discloses price terms. In the case of telephone orders, a franchisee will take appropriate steps to ensure that price terms are clearly and accurately disclosed to potential customers in advance of taking the order. (Ord. 771 § 1 (part), 2005.)

4.08.120 Other notices.

Each franchisee will maintain a file open for public inspection containing all notices provided to subscribers under these customer service standards, as well as all promotional offers made to subscribers. The notices and offers will be kept in the file for at least one year from the date of such notice of promotional offer. (Ord. 771 § 1 (part), 2005.)

4.08.130 Interruptions of service.

A franchisee shall inform subscribers and the city, three days prior to any scheduled or planned interruption of service for planned maintenance or construction; provided, however, that planned maintenance that does not require more than one hour interruption of service and/or that occurs between the hours of twelve a.m. and six a.m. will not require such notice to subscribers, and notice to the city must be given no less than twenty-four twenty-four hours before the anticipated service interruption. (Ord. 771 § 1 (part), 2005.)

4.08.140 Prorated billing.

A franchisee's first billing statement after a new installation or service change will be prorated as appropriate and will reflect any security deposit. (Ord. 771 § 1 (part), 2005.)

4.08.150 Billing statement.

A. A franchisee's billing statement must be clear, concise, and understandable, must itemize each category of service and equipment provided to the subscriber; and must state clearly the changes therefor.

B. A franchisee's billing statement must show a specific payment due date not earlier than the later of:

1. Fifteen days after the date the statement is mailed; or
2. The tenth day of the service period for which the bill is rendered.

C. A late fee or administrative fee (collectively referred to below as a "late fee") may not be imposed for payments earlier than twenty-seven days after the due date specified in the bill.

D. Subscribers will not be charged a late fee or otherwise penalized for any failure by a franchisee, including failure to timely or correctly bill the subscriber, or failure to properly credit the subscriber for a payment timely made. Payments will be considered timely if postmarked on the due date.

E. A franchisee's bill must permit a subscriber to remit payment by mail or in person at the franchisee's local office.

(Ord. 771 § 1 (part), 2005.)

4.08.160 Credit for service impairment.

A. A subscriber's account will be credited a prorated share of the monthly charge for the service upon the subscriber's request if a subscriber is without service or if service is substantially impaired for any reason for a period exceeding four hours during any twenty-four hour period, or automatically if the loss of service or impairment is for twenty-four hours or longer.

B. A franchisee need not credit subscriber where it establishes that a subscriber will obtain a refund for a loss of service or impairment caused by the subscriber or by subscriber-owned equipment (not including, for purposes of this section, in-home wiring installed by the franchisee).

(Ord. 771 § 1 (part), 2005.)

4.08.170 Billing complaints.

A franchisee will respond to all written billing complaints from subscribers within thirty days. (Ord. 771 § 1 (part), 2005.)

4.08.180 Billing refunds.

Refunds to subscribers will be issued no later than:

A. The earlier of the subscriber's next billing cycle following resolution of the refund request, or thirty days; or

B The date of return of all equipment to franchisee, if cable service has been terminated.

(Ord. 771 § 1 (part), 2005.)

4.08.190 Credits for cable service.

Credits for cable service will be issued no later than the subscriber's next billing cycle after the determination that the credit is warranted. (Ord. 771 § 1 (part), 2005.)

4.08.200 Disconnections.

A franchisee will promptly disconnect from the franchisee's cable system or downgrade any subscriber who so requests. No charges for service may be made after the subscriber requests disconnection. No period of notice before voluntary termination or downgrade of cable service may be required of subscribers by any franchisee. There will be no charge for disconnection, except for the collection fee authorized by state law, and any downgrade charges will conform to applicable law. (Ord. 771 § 1 (part), 2005.)

4.08.210 Security deposit.

Any security deposit and/or other funds due a subscriber that disconnects or downgrades service will be returned to the subscriber within thirty days or in the next billing cycle, whichever is later, from the date disconnection or downgrade was requested except in cases where the subscriber does not permit the franchisee to recover its

equipment, in which case the amounts owed will be paid to subscribers within thirty days of the date the equipment was recovered, or in the next billing cycle, whichever is later. (Ord. 771 § 1 (part), 2005.)

4.08.220 Disconnection due to nonpayment.

A. A franchisee may not disconnect a subscriber's cable service for non-payment unless:
   1. The subscriber is delinquent in payment for cable service;
   2. A separate, written notice of impending disconnection, postage prepaid, has been sent to the subscriber at least twenty days before the date on which service may be disconnected, at the premises where the subscriber requests billing, which notice must identify the names and address of the subscriber whose account is delinquent, state the date by which disconnection may occur if payment is not made, and the amount the subscriber must pay to avoid disconnection, and a telephone number of a representative of the franchisee who can provide additional information concerning the services and charges in question;
   3. The subscriber fails to pay the amounts owed to avoid disconnection by the date of disconnection; and
   4. No pending inquiry exists regarding the bill to which the franchisee as not responded in writing.

B. If the subscriber pays all amounts due, including late charges, before the date scheduled for disconnection, the franchisee will not disconnect service. Service may only be terminated on days in which the subscriber can reach a representative of the franchisee either in person or by telephone.

C. After disconnection (except as noted below), upon payment by the subscriber in full of all proper fees or charges, including the payment of the reconnection charge, if any, the franchisee will promptly reinstate services.

(Ord. 771 § 1 (part), 2005.)

4.08.230 Immediate disconnection.

A. A franchisee may immediately disconnect a subscriber if:

1. The subscriber is damaging, destroying, or unlawfully tampering with or has damaged or destroyed or unlawfully tampered with the franchisee's cable system;
2. The subscriber is not authorized to receive a service, and is facilitating, aiding or abetting the unauthorized receipt of service by others; or
3. Subscriber-installed or attached equipment is resulting in signal leakage that is in violation of FCC rules.
4. After disconnection, the franchisee will restore service after the subscriber provides adequate assurance that it has ceased the practices that led to disconnection, and paid all proper fees and charges, including any reconnect fees and all amounts owed the franchisee for damage to its cable system or equipment. Provided that, no reconnection fee may be imposed on a subscriber disconnected pursuant to this article if the leakage was the result of the franchisee's acts or omissions; or in any case unless the franchisee notifies the subscriber of the leakage at least three business days in advance of disconnection, and the subscriber has failed to correct the leakage within that time.

C. Franchisee's Property. Except as applicable by law may otherwise provide, a franchisee may remove its property from a subscriber's premises within thirty days of the termination of service. If a franchisee fails to remove the property in that period, the property will be deemed abandoned unless the franchisee has been denied access to the subscriber's premises, or the franchisee has a continuing right to occupy the premises under applicable law.

(Ord. 771 § 1 (part), 2005.)

4.08.240 Deposits.

A franchisee may require a reasonable, nondiscriminatory deposit on equipment provided to subscribers. Deposits will be placed in an interest-bearing account, and the franchisee will return the deposit, plus interest earned to the date the deposit is returned to the subscriber, less any amount the franchisee can demonstrate should be deducted for damage to such equipment. (Ord. 771 § 1 (part), 2005.)

4.08.250 Parental control option.

Without limiting a franchisee's obligations under federal law, a franchisee must provide parental control devices at no charge to all subscribers who request them that enable the subscriber to block the video and audio portion of any channel or channels of programming. (Ord. 771 § 1 (part), 2005.)

4.08.260 Penalties.

For violation of standards in this chapter, penalties will be imposed as follows:

A. Two hundred dollars for each day of each material breach, not to exceed six hundred dollars for each occurrence of material breach.

B. If there is a subsequent material breach of the same provision within twelve months, four hundred dollars for each day of each material breach, not to exceed twelve hundred dollars for each occurrence of the material breach.

C. If there is a third or additional material breach of the same provision within twelve months of the first, one thousand dollars for each day of each material breach, not to exceed three thousand dollars for each occurrence of the material breach.

D. Any penalty assessed under this section will be reduced dollar for dollar to the extent any liquidated damage provision of a

franchise imposes a monetary obligation on a franchisee for the same customer service failures, and no other monetary damages may be assessed. The city of Sonora will provide notice, and impose penalties under this section pursuant to the procedures established by California Government Code § 53088.2.

(Ord. 771 § 1 (part), 2005.)

4.08.270 Relief.

Notwithstanding the requirements of this chapter, the city administrator is authorized to relieve a franchisee of its obligations under this chapter if:

A. Franchisee shows that there is an alternative standard that is substantially similar to that established by this chapter;

B. In light of the number of customers served by a cable system operator, the requirements of this chapter are, in the city administrator's sole discretion, unduly burdensome and there is an alternative way to serve the same interest.

(Ord. 771 § 1 (part), 2005.)

Chapter 4.10

MISCELLANEOUS

Sections:

4.10.010	**Captions.**
4.10.020	**Calculation of time.**
4.10.030	**Severability.**
4.10.040	**Connections to cable communications system—Use of antennae.**
4.10.050	**Discrimination prohibited.**
4.10.060	**Transitional provisions.**

4.10.010 Captions.

The captions to sections throughout this title are intended solely to facilitate reading and reference to the sections and provisions of this title. Such captions shall not affect the meaning or interpretation of this title. (Ord. 771 § 1 (part), 2005.)

4.10.020 Calculation of time.

Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this title or any franchise, and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time. (Ord. 771 § 1 (part), 2005.)

4.10.030 Severability.

If any term, condition, or provision of this title shall, to any extent, be held to be invalid or unenforceable by a valid order of any court or regulatory agency, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the city of Sonora and shall thereafter be binding on the franchisee and the city. (Ord. 771 § 1 (part), 2005.)

4.10.040 Connections to cable communications system—Use of antennae.

A. Subscriber Right to Attach. To the extent consistent with federal law, subscribers shall have the right to attach VCR's, receivers, and other terminal equipment to a franchisee's cable communications system. Subscribers also shall have the right to

use their own remote control devices and converters, and other similar equipment.

B. Removal of Existing Antennae. A franchisee shall not, as a condition of providing service, require a subscriber or potential subscriber to remove any existing antenna, or disconnect an antenna except at the express direction of the subscriber or potential subscriber, or prohibit installation of a new antenna, provided that such antenna is connected with an appropriate device and complies with applicable law.

(Ord. 771 § 1 (part), 2005.)

4.10.050 Discrimination prohibited.

A. No Retaliatory Actions. A franchisee shall not discriminate among persons or the city of Sonora or take any retaliatory action against a person or the city because of that entity's exercise of any right it may have under federal, state, or local law, nor may a franchisee require a person or the city to waive such rights as a condition of taking service.

B. Employment and Hiring Practices. A franchisee shall not refuse to employ, discharge from employment, or discriminate against any person in compensation or in terms, conditions, or privileges of employment because of race, color, creed, national origin, sex, sexual orientation, age, disability, religion, ethnic background, or marital status. A franchisee shall comply with all federal, state, and local laws and regulations governing equal employment opportunities, and hiring practices, as the same may be amended from time to time.

(Ord. 771 § 1 (part), 2005.)

4.10.060 Transitional provisions.

A. Persons Operating Without a Franchise. The operator of any cable communications system facility installed as of the effec-

tive date of this title, for which a franchise is required under this title, but for which no franchise has been granted, shall have three months from July 20, 2005 to file one or more applications for a franchise. Any cable communications system facility operator timely filing such an application under this subsection shall not be subject to a penalty for failure to have such a franchise so long as said application remains pending; provided, however, nothing herein shall relieve any cable communications system operator of any liability for its failure to obtain any permit or other authorization required under other provisions of the city code, and nothing herein shall prevent the city from requiring removal of any facilities installed in violation of the city code.

B. Persons Holding Franchises. Any person holding an existing cable system franchise may continue to operate under the existing city code provisions to the conclusion of its present term (but not any renewal or extension thereof) with respect to those activities expressly authorized by the franchise; and provided further that, such franchisee shall be subject to the other provisions of this title to the extent permitted by law.

C. Persons with Pending Applications. Pending applications shall be subject to this title. A person with a pending application shall have thirty days from July 20, 2005 to submit additional information to comply with the requirements of this title governing applications.

(Ord. 771 § 1 (part), 2005.)

Title 4

(RESERVED)