

Title 11

CABLE COMMUNICATIONS

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- 1. Franchise Enabling Law**
- 2. Cable Television Licenses**

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FRANCHISE ENABLING LAW

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Article 1. Title

Sec. 11-1.101. Title.

This chapter shall be known and may be cited as the "Yolo County Cable Communications Law". (§ 1, Ord. 961, eff. October 27, 1983)

Article 2. Purpose and Operation of Chapter

Sec. 11-1.201. Purposes.

The purposes of this chapter include, but are not limited to, the promotion of the general welfare of the citizens of the Yolo County community by:

(a) Establishing a master plan for the franchising of cable communication services within the Yolo County community;

(b) Establishing a regulatory framework for the administration of franchises in order to insure that the potential recreational, educational, social, economic, and other advantages of cable communications will in fact inure to the benefit of the community and the citizens thereof;

(c) Regulating the operations of grantees for the purpose of protecting and promoting the public health, peace, safety, and welfare; and

(d) Encouraging the adoption of goals for systems of cable communications within the County which recognize the advantages of cable services and the benefits of resources of the University of California, the California State University, and neighboring cable communications systems which may be made available to inhabitants of the Yolo County community.

The provisions of this section shall not be deemed to confer any right upon a grantee which is not otherwise conferred by another express provision of this chapter. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.202. Operation.

Territory in the County shall not fall within the operation of this chapter unless the Board by ordinance shall declare this chapter operative within said territory. Such territory shall be known as the "Franchise Area". Any such ordinance shall describe the territory in which this chapter shall become operative. The ordinance may specify any modifications to the provisions of this chapter which shall apply only to the territory described in the ordinance. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.203. East Yolo Franchise Area.

(a) The East Yolo Area shall fall within the operation of this chapter, and the Board declares this chapter operative within said territory on and after October 27, 1983. The territory shall be known as the East Yolo Franchise Area.

(b) The East Yolo Area consists of all the unincorporated territory in the County more particularly described as follows:

East Yolo Area. Beginning at the intersection of the center line of the Sacramento River and at a point 45 feet northerly of the center line of County Road 126; thence westerly along a line parallel to the center line of County Road 126 and the extension thereof to the center line of the

east levee of the East Yolo Bypass; thence southerly and westerly along the center line of the east levee of the East Yolo Bypass to the extension of the center line of Thorpe Road; thence easterly along the extension of the center line of Thorpe Road to the center line of the Sacramento River Deep Water Ship Channel; thence southerly along the center line of the Sacramento River Deep Water Ship Channel to the extension of the center line of the north levee of Lisbon Slough; thence easterly along the westerly extension of the center line of the north levee of Lisbon Slough and along the center line of the north levee of Lisbon Slough and the easterly extension of the center line of Lisbon Slough to the center line of the Sacramento River; thence along the center line of the Sacramento River to the point of beginning.

(c) The East Yolo Franchise Area includes an Imposed Service Area.

(d) The Imposed Service Area consists of all territory within the East Yolo Franchise Area so designated in any request for proposals issued pursuant to Article 4 of this chapter. Any grantee shall provide a system of such design and construction that service can be made available, and such service shall be made available to all residential units as provided in Section 11-1.801 of Article 8 of this chapter. (§ 1, Ord. 961, eff. October 27, 1983)

Article 3. Definitions

Sec. 11-1.301. Scope.

Unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as set forth in this article. Words not defined in this article shall be given their common and ordinary meanings, consistent with the context in which such words are used and the purpose of this chapter. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.302. Applicant.

"Applicant" shall mean any person or corporation submitting an application for a cable communications franchise. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.302.1. Act.

"Act" shall mean the Cable Franchise Policy and Communications Act of 1984 (Title VI of the Communications Act of 1934). (§ 1, Ord. 999, eff. March 7, 1985)

Sec. 11-1.302.2. Broad categories of video programming and other services.

"Broad categories of video programming and other services" shall mean broad categories of video programming (for example, children's programming; local origination programming;

community use programming; programming in a particular foreign language; programming which is of primary interest to a particular minority group; news and public affairs programming; and sports programming and related categories) and other services offered by the grantee in its application and incorporated in the franchise ordinance as a commitment of the grantee. "Broad categories of video programming and other services" shall not include any purported commitment to provide specific programming (for example, a particular news service or particular program) or any item of value not utilized in the operation of the cable system. (§ 1, Ord. 999, eff. March 7, 1985)

Sec. 11-1.303. Basic cable service.

"Basic cable service" shall be defined as provided in subsection (2) of Section 602 of the Act. (§ 1, Ord. 961, eff. October 27, 1983, as amended by § 2, Ord. 999, eff. March 7, 1985)

Sec. 11-1.304. Cable communications system, CATV system, or cable system.

"Cable communications system", "CATV system", or "cable system" shall be defined as provided in subsection (6) of Section 602 of the Act. (§ 1, Ord. 961, eff. October 27, 1983, as amended by § 2, Ord. 999, eff. March 7, 1985)

Sec. 11-1.305. Channel or cable channel.

"Channel" or "cable channel" shall be defined as provided in subsection (3) of Section 602 of the Act. (§ 1, Ord. 961, eff. October 27, 1983, as amended by § 3, Ord. 999, eff. March 7, 1985)

Sec. 11-1.306. Community use, community use programming, and community use channels.

"Community use", "community use programming", and "community use channels" shall mean broad categories of video programming and other services provided by the grantee (other than PEG facilities, PEG funding, and PEG programming) for the purposes of noncommercial cablecasts presented by or on behalf of a grantee, the County, individuals, and local community nonprofit organizations, which programming and services consist of topics of special interest to the Yolo County community or elements thereof, including matters of a political, governmental, sociological, religious, educational, cultural, artistic, health-oriented, ethnic, economic, recreational, charitable, and philanthropic nature, a significant part of such programming having been locally produced. For the purposes of this subsection, "noncommercial" shall mean:

(a) That the contents of such programming shall not be for the purpose of directly selling any product or service for private gain; and

(b) That the programming shall not be associated with or interrupted during presentation by commercial advertising or announcements specifically presented for the purpose of selling products or services for private gain. (§ 1, Ord. 961, eff. October 27, 1983, as amended by § 3, Ord. 999, eff. March 7, 1985)

Sec. 11-1.307. Converter.

"Converter" shall mean an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber and, by an appropriate channel selector, also permits a subscriber to view all signals authorized to be received at a designated location. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.308. County or Yolo County.

"County" or "Yolo County" shall mean the County of Yolo, a political subdivision of the State. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.309. County Administrator.

"County Administrator" shall mean the County Administrative Officer of Yolo County. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.310. Board.

"Board" shall mean the Board of Supervisors of the County of Yolo. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.311. Dwelling unit.

"Dwelling unit" shall mean a residential living unit as distinguished from temporary lodging facilities, such as hotel and motel rooms and dormitories, and shall include single-family residential units and individual apartments, condominium units, mobile homes within mobile home parks, and other multiple-family residential units. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.312. Educational channel.

"Educational channel" shall mean any channel or portion of a channel on which school, library, or governmental educational institutions are the only designated programmers. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.313. Entertainment services.

"Entertainment services" shall mean "cable service" as defined by subsection (5) of Section 602 of the Act. (§ 1, Ord. 961, eff. October 27, 1983, as amended by § 4, Ord. 999, eff. March 7, 1985)

Sec. 11-1.314. Federal Communications Commission.

"Federal Communications Commission" or "FCC" shall mean the present Federal agency of that name as constituted by the Communications

Act of 1934, or any successor agency created by the United States Congress, and any legally appointed, designated, or elected agent or successor thereof. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.315. Franchise or franchise agreement.

"Franchise" or "franchise agreement" shall mean any authorization granted under this chapter in terms of a franchise, privilege, permit, or license to construct, operate, and maintain a cable communications system within the unincorporated area of the County. Any such authorization, in whatever form granted, shall not mean and include any license or permit required for the privilege of transacting and carrying on a business within the County as required by other laws of the County. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.316. Franchise documents.

"Franchise documents", with respect to a franchise for a cable communications system issued pursuant to the provisions of this chapter, shall mean the provisions of this chapter, the map defining any Imposed Service Area for the franchise as adopted, the provisions of any request for proposals issued pursuant to the provisions of this chapter in connection with such franchise, the provisions of the application for the franchise submitted by the grantee, the provisions of the ordinance offering the franchise, and the provisions of the certificate of acceptance by the grantee of the franchise. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.317. Franchise property.

"Franchise property" shall mean all property retained by the grantee in, along, and across streets under the authority of a franchise or business license. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.318. Government channel.

"Government channel" shall mean any channel or portion thereof dedicated to the use of the County or public agencies designated by the County. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.319. Grantee.

"Grantee" shall mean a person or corporation to whom or which a franchise is granted pursuant to this chapter or any person or corporation to whom or which such franchise thereafter may be lawfully transferred. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.320. Grantor.

"Grantor" shall mean the County. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.321. Gross revenue.

(a) "Gross revenue" shall mean all cash, credits, property of any kind or nature, or other consideration derived directly or indirectly by a grantee, and its affiliates, subsidiaries, parent, and any other person or entity in which the grantee has a financial interest or which has a financial interest in the grantee, arising from or attributable to the operation of the cable communications system, including, but not limited to:

(1) Revenue from all charges for those services provided on the subscriber network and institutional network (including leased access fees);

(2) Revenue from all charges for the insertion of commercial advertisements upon the system;

(3) Revenue from all charges for the leased use of studios;

(4) Revenue from all charges for the installation, connection, and reinstatement of the equipment necessary for the utilization of the system and the provision of subscriber and other services; and

(5) The sale, exchange, or cablecast of any programming developed for community use or institutional users.

"Gross revenue" shall include, valued at retail price levels, the value of any goods, services, or other remuneration in non-monetary form received by the grantee or others described in this subsection in consideration for the performance by a grantee or others described in this subsection of any advertising or other service in connection with the cable communications system.

(b) "Gross revenue" shall not include:

(1) Any taxes on services furnished by the grantee which taxes are imposed directly upon any subscriber or user by the United States, the State, or a local agency and collected by the grantee on behalf of the government;

(2) Revenue received directly from the grantee by an affiliate, subsidiary, or parent, or any other person or entity in which the grantee has a financial interest or which has a financial interest in the grantee, when the revenue received has already been included in reported gross revenue as received by the grantee; and

(3) Revenue received by such an affiliate, subsidiary, parent, person, or entity when the revenue received is from the sale of national advertising shown on programs distributed on a national basis by the affiliate, subsidiary, parent, person, or entity and, but for this exception, that portion of the revenue attributable to broadcasts through the cable communications system would be treated as gross revenue. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.322. Institutional network or institutional user network.

“Institutional network” or “institutional user network” shall mean a cable communications network or a specified number of channels on a subscriber network used exclusively for the provision of services to businesses, schools, public agencies, or other nonprofit agencies in connection with the ongoing operations of such enterprises. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.323. Institutional services.

“Institutional services” shall mean services delivered on the institutional network. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.324. Institutional user.

“Institutional user” shall mean a business, public agency, school, or nonprofit corporation receiving the institutional services on the institutional user network. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.325. Interactive services.

“Interactive services” shall mean services provided to subscribers or users where the subscriber either:

(a) Both receives information consisting of either television or other signals and transmits signals generated by the subscriber or user on equipment under his control for the purpose of selecting what information shall be transmitted to the subscriber or user for any other purpose; or

(b) Transmits signals to any other location for any purpose. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.326. Leased access.

“Leased access” shall mean use on a fee-for-service basis of the subscriber network or institutional network by business enterprises (whether profit, nonprofit, or governmental) unaffiliated with the grantee to render services or deliver programming within the Yolo County community. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.327. Local origination channel.

“Local origination channel” shall mean any channel or portion of a channel where the grantee is the only designated programmer and which channel is utilized to provide television programs to subscribers. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.328. Monitoring.

“Monitoring” shall mean observing a communications signal, or the absence of a signal, where the observer is not the subscriber, whether the signal is observed by visual or electronic means, for any purpose whatsoever; provided, however, “monitoring” shall not include system-wide, non-individually addressed sweeps

of the cable communications system for the purposes of verifying system integrity, controlling return path transmissions, or billing for pay services. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.329. Non-basic service.

“Non-basic service” shall mean any communications service in addition to the basic service. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.330. Pay channel or premium channel.

“Pay channel” or “premium channel” shall mean a channel on which television signals are delivered to subscribers for a special fee or charge to subscribers over and above the regular charges for subscriber service, on a per program, per channel, or other subscription basis. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.331. Premium service.

“Premium service” shall mean a pay-per-program, pay-per-channel, or subscription service, that is, delivered to the subscribers for a fee or charge over and above the regular charges for basic service other than those services provided as a part of a tier of service. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.332. Public access channel.

“Public access channel” shall mean any channel or portion of a channel where any member of the general public may be a programmer on a first-come, first-served basis, subject to the appropriate rules formulated by the grantee or its delegate, subject to approval by the grantor. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.332.1. Public, educational, or governmental access facilities or PEG facilities.

“Public, educational, or governmental access facilities or PEG facilities” shall mean:

(a) The channel capacity designated for public, educational, or governmental use; and

(b) The facilities and equipment for the use of such channel capacity. (§ 5, Ord. 999, eff. March 7, 1985)

Sec. 11-1.332.2. Public, educational, or governmental access funding or PEG funding.

“Public, educational, or governmental access funding or PEG funding” shall mean payments, other than payments for capital costs, which are required by this chapter to be made by the grantee during the term of the franchise for, or in support of the use of, public, educational, or governmental access facilities. (§ 5, Ord. 999, eff. March 7, 1985)

Sec. 11-1.332.3. Public, educational, or governmental access programming or PEG programming.

“Public, educational, or governmental access programming or PEG programming” shall mean public, educational, or governmental programming specifically identified in this chapter as being produced by the use of public, educational, or governmental access facilities or public, educational, or governmental access funding. (§ 5, Ord. 999, eff. March 7, 1985)

Sec. 11-1.333. Street.

“Street” shall mean the surface of and the space above and below any street, road, highway, freeway, utility right-of-way, or any other easement which now or hereafter exists for the provision of public and quasi-public services to residential or other properties and in which the County is expressly or impliedly authorized or empowered to permit use for the installation and operation of a cable communications system. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.334. Subscriber.

“Subscriber” shall mean a lawful recipient of service from a cable communications system. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.335. Subscriber network.

“Subscriber network” shall mean a cable communications network which carries television entertainment channels and community use channels (including basic service) and which may carry channels providing commercial or other non-entertainment services and leased access channels. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.336. Tapping.

“Tapping” shall mean the observing of a communications signal exchange where the observer is neither of the communicating parties, whether the exchange is observed by visual or electronic means, for any purpose whatsoever. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.337. Tier of service.

“Tier of service” shall mean a grouping of two (2) or more channels of program services on the subscriber network which is marketed by a grantee to subscribers for a single monthly or other charge. “Basic service”, as defined by subsection (a) of Section 11-1.303 of this article, shall constitute a single tier of service. “Basic service”, as authorized under subsection (b) of said Section 11-1.303, shall constitute a separate and distinct tier of service. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.338. User.

“User” shall mean a party utilizing a cable communications system channel for the purposes of production or the transmission of material to subscribers, as contrasted with the receipt thereof in a subscriber capacity. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.339. Yolo County community or community.

“Yolo County community” or “community” shall mean the entire geographical territory within the unincorporated area of the County or the inhabitants therein. (§ 1, Ord. 961, eff. October 27, 1983)

Article 4. Franchise Grant

Sec. 11-1.401. Authority to grant franchises for cable television.

It shall be unlawful to commence or engage in the construction, operation, or maintenance of a cable communications system without a franchise issued under this chapter. The Board, by ordinance, may award a franchise to construct, operate, and maintain a cable communications system within all or any portion of the unincorporated area of the County to any person, whether operating under an existing franchise or not, who makes an application for authority to furnish a cable communications system which complies with the terms and conditions of this chapter; provided, however, this section shall not be deemed to require the grant of a franchise to any particular person or to prohibit the Board from restricting the number of grantees should the Board determine such a restriction would be in the public interests. Any franchise for the construction, maintenance, and operation of cable communications systems using the public streets, utility easements, other public rights-of-way, or places shall conform to the provisions of this chapter, (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.402. Incorporation by reference.

(a) The provisions of this chapter shall be incorporated by reference in any franchise agreement or license approved pursuant to this chapter.

(b) The provisions of any proposal submitted and accepted by the County shall be incorporated by reference in any applicable franchise or license. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.403. General characteristics of franchises issued.

Any franchise issued pursuant to the provisions of this chapter shall be deemed to:

(a) Authorize utilization of the streets for the public or quasi-public purpose of installing

cables, wires, lines, and other facilities, in order to operate a cable communications system; and

(b) Be nonexclusive and neither expressly nor impliedly be deemed to preclude the issuance of subsequent franchises to operate cable communications systems within the Yolo County community.

Such a franchise shall not be deemed to authorize or either expressly or impliedly permit the grantee, except with the consent of the owners, or as otherwise provided by law, to provide cable communications system service to, or install antennas, cables, wires, lines, towers, waveguides, other conductors, converters, or any other equipment or facilities upon, private property, including, but not limited to, apartment complexes, condominiums, mobile home parks, and residential subdivision developments with private roads. The purpose of this paragraph is to require consent by the owner or as otherwise provided by law for the provision of service. This paragraph shall not be construed to prohibit a grantee from entering or utilizing private property as an incident to its use of the streets to the extent entry or use is expressly or impliedly authorized by the right conferred by this section to occupy the streets. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.404. Franchises as contracts.

A franchise issued pursuant to the provisions of this chapter shall be deemed to constitute a contract between the grantee and the County. Each grantee shall be deemed to have contractually committed itself to comply with the terms, conditions, and provisions of the franchise documents, and with all rules, orders, regulations, and determinations applicable to the franchise which are issued, promulgated, or made pursuant to the provisions of this chapter. The regulatory authority conferred by the provisions of this chapter, including the power to amend the provisions of this chapter, as reserved under Section 11-1.404 of this article, shall constitute as reserved authority under the contract.

All terms, conditions, and provisions of the contract shall be deemed to be embodied in the franchise documents, and conflicts in the terms, conditions, or provisions of the franchise documents shall be resolved as follows:

(a) The express terms of this chapter shall prevail over conflicting or inconsistent provisions in any other franchise document.

(b) The express terms of the ordinance offering the franchise shall prevail over conflicting or inconsistent provisions in any other franchise document, except the express terms of this chapter.

(c) The express terms of the request for proposals shall prevail over conflicting or inconsistent provisions in either the application

for the franchise or the certificate of acceptance of the franchise.

(d) The express terms of the application for the franchise shall prevail over the inconsistent or conflicting provisions in the certificate of acceptance of the franchise.

The provisions of the franchise documents shall be liberally construed in order to effectuate the purposes and objects thereof. Prior to the initial enactment of this chapter, the provisions of this chapter were developed pursuant to public hearings conducted for the purpose of receiving comments from the citizenry, operators interested in applying for a franchise in meetings with staff and through the submission by the operators of public oral and written comments, and the submission of independent staff recommendations. Operators interested in applying for a franchise have either directly or indirectly made it clear that any ordinance must contain minimum terms satisfactory to the operators in order to induce their interest in applying for a franchise. The franchise documents shall not be construed to constitute a contract of adhesion. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.405. Utility poles.

No provision of this chapter or any franchise issued pursuant to the provisions of this chapter shall be deemed to expressly or impliedly authorize the grantee to utilize poles owned by the Pacific Gas and Electric Company, Pacific Telephone, or any other public or private utility which is located within streets without the express consent of the utility. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.406. Notices.

All notices and other writings authorized or prescribed by this chapter to be "mailed" shall be deemed to have been given and served when deposited in the United States mail, postage prepaid, and addressed, with respect to a grantee, to any office maintained by the grantee within the Yolo County community and, with respect to other parties, to the last known address of such party.

Any notice or other writing authorized or required by this chapter to be "filed" shall be deemed "filed" when received in the business office of the party with whom such notice of writing is authorized or required to be "filed".

Whenever a provision of this chapter requires a public hearing to be conducted by the Board, notice of the time, date, place, and purpose of the hearing shall be published at least once not later than ten (10) calendar days in advance of the date of the commencement of the hearing in a newspaper of general circulation which is published within the Yolo County community. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.407. Leases.

Any grantee, or parent, subsidiary, or affiliated company or agent thereof, who leases either real property situated within the Yolo County community or personal property to be located within the Yolo County community for use in connection with the provision of services under a franchise issued pursuant to the provisions of this chapter shall insure that each such lease contains a clause which either:

(a) Authorizes such lessee to assign the lease to the County or its assignee without the consent of the lessor or the payment of additional compensation by virtue of the assignment; or

(b) Authorizes such lessee to so assign such lease without the payment of additional compensation by virtue of the assignment and prohibits the lessor from unreasonably withholding consent to such assignment. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.408. Authority.

It is declared that this chapter is enacted pursuant to the authority conferred by Sections 53066, et seq. of the Government Code of the State. It is also enacted pursuant to the police powers conferred by Section 7 of Article XI of the Constitution of the State for the promotion and protection of the peace, health, safety, and general welfare. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.409. Ordinances: Police powers.

All zoning and other land use laws, building, electrical, plumbing, and mechanical Codes, business license laws, and all other laws of general application now in existence or hereafter enacted by the County shall be fully applicable to the exercise of any franchise issued pursuant to the provisions of this chapter, and the grantee shall comply therewith. In the event of a conflict between the provisions of this chapter and those of such a law of general application, the provisions of such law of general application shall prevail. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.410. Amendments.

The County hereby expressly reserves the right to amend any section or part of this chapter so as to require additional or greater standards of construction, operation, maintenance, or otherwise on the part of a grantee for any reason determined to be desirable or necessary by the Board, including, but not limited to, new developments in the state of the technology of the cable communications industry and changes in Federal or State laws, rules, or regulations. The provisions of 47 CFR Part 76 shall be deemed to be incorporated by this chapter by reference, and any amendments thereto or revisions thereof shall be deemed to be

incorporated into this chapter by operation of law. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.411. Rights reserved to the County.

There is hereby provided and reserved to the County every right and power which is required to be by this chapter reserved or provided by any provision of any law of the County in its exercise of any such right or power.

(a) Neither the granting of a franchise nor any provision of this chapter shall constitute a waiver or bar to the exercise of any governmental right or power of the County, including the regulation of subscription rates as permitted by law.

(b) Nothing in this chapter and/or in the franchise shall be deemed or construed to impair or affect, in any way, to any extent, the right of the County to acquire the property of the grantee, either by purchase or through the exercise of the right to eminent domain, at a fair and just value, which shall not include any amount for the franchise itself or for any of the rights or privileges granted thereby, and nothing contained in this chapter shall be construed to contract away or to modify or abridge, whether for a term or in perpetuity, the County's right of eminent domain.

(c) There shall be reserved to the County every right and power which is required to be reserved or provided by law, and the grantee, by its acceptance of the franchise, agrees to be bound thereby and to comply with any action or agreement of the County in its exercise of such rights or powers theretofore or thereafter enacted or established.

(d) The County hereby reserves to itself the right to intervene in any suit, action, or proceeding involving any provision of this chapter and/or the grantee's franchise. The Board may do all things which are necessary and convenient in the exercise of its jurisdiction under this chapter and/or the grantee's franchise and may determine any question of fact which may arise during the existence of any franchise granted. The County Administrator and the County Counsel, with the approval of the Board, are hereby authorized and empowered to adjust, settle, or compromise any controversy or charge arising from the operations of any grantee under a franchise, either on behalf of the County, the grantee, or any subscriber, in the best interests of the public.

(e) The County, at its option, when for sufficient cause as deemed by the County Administrator, may require that the annual proof-of-performance test, addressed in Article 8 of this chapter, be conducted or observed by a qualified member of the County's staff or its designated representatives, associated with County-observed performance tests, conducted at

County selected test points, and to a greater number of test points than the minimum required by Section 76.601 of the FCC Rules.

(f) Any delegable right, power, or duty of the Board, the County, or any official of the County may be transferred or delegated to an appropriate officer, employee, department, or body designated by the County.

(g) The County reserves the right to negotiate other reasonable technical and operational performance standards for system franchises granted pursuant to this chapter. The grantee shall have the duty to negotiate in good faith with the County.

(h) The County reserves the right to enact reasonable regulations pertaining to franchises granted pursuant to this chapter which may include, but are not limited to:

(1) The construction and use of poles;

(2) The use of poles and conduits by the County;

(3) Common users;

(4) Filing of pole user agreements;

(5) The reservation of street rights;

(6) The restoration of streets;

(7) The movement of facilities; and

(8) The trimming of trees.

(i) The County reserves the right to further regulate the conduct of the grantee in regard to the privacy and property rights of private citizens. Such regulations may include, but are not limited to, the security of all records by the grantee containing privacy sensitive information, personnel practices relating to such records, and any other matters related to privacy and individual rights.

(j) The County reserves the right to establish a cable communications advisory committee and cable communications area advisory commissions to assist the Board in regulating cable activity in the County. The members and duties of any such committee or commissions, if any, shall be established by the Board.

(k) Should the State, or any agency thereof, or the Federal government, or agency thereof, subsequently require the grantee to act in a manner which is inconsistent with any provision of this chapter, the franchise ordinance, or associated resolutions and orders, the grantee shall so notify the County. Upon the receipt of such notification, the County shall determine if a material provision of the franchise is affected. Upon such determination, the County shall have the right to modify or amend any of the sections of the franchise to such reasonable extent as may be necessary to carry out the full intent and purpose of this chapter or the franchise ordinance. In the event the original proposed terms of the franchise have been frustrated by such State or Federal requirement, the grantee shall renegotiate in good faith with the County a new franchise agreement. The County may

terminate the franchise in the event it determines that no satisfactory new franchise agreement can be reached.

(l) No grantee nor any major stockholder of the grantee shall directly or indirectly with the County use the position as cable grantee to gain a competitive advantage in the business of selling, leasing, renting, servicing, or repairing radio or television sets, or other receivers or parts thereof, or data access and transfer equipment which make use of entertainment and information signals; provided, however, nothing set forth in this subsection shall prevent the grantee from making modifications to the tuner input circuit of the subscribers' communications transmitters and/or receivers, and the fine tuning of the customers' operating controls only, to ensure proper operation under conditions of cable connection at the time of installation, or in repairing receivers and other equipment belonging to other cable system operators for use in the conduct of their businesses.

(m) The County shall have the right, free of charge, of installing, maintaining, and operating upon antenna towers and poles, or in underground ducts of the grantee, the antennas, amplifiers, coaxial cable, wire, fixtures, and appurtenances necessary for a County communications system provided such equipment is installed, maintained, and operated so as not to interfere with the property or operations of the grantee, and that the grantee shall not be responsible for any damage without his fault resulting to the signs, wires, cables, and property of the County from such use by the County.

(n) The grantee shall manage all of its operations in accordance with a policy of totally open books and records. The County shall have the right to inspect at any time during normal business hours, at the local parent corporation offices of the grantee, all books, records, maps, plans, income tax returns, financial statements, service complaint logs, performance test results, and other like materials of the grantee which relate to the operation of the grantee. Access to such records shall not be denied by the grantee on the basis that such records contain "proprietary" information.

(o) Copies of all petitions, applications, communications, and reports submitted by the grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other Federal or State regulatory commission or agency having jurisdiction in respect to any matters affecting cable communications operations authorized pursuant to the franchise shall also be submitted simultaneously to the grantor. Copies of responses or any other communications from the regulatory agencies to the grantee shall likewise be furnished simultaneously to the grantor.

(p) Any intrastate intercommunication of interactive services between the system operated by the grantee and any other system shall be subject to the regulatory authority of the County.

(q) The reservation of any particular right shall not be construed to limit the promulgation of other reasonable rules and regulations. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.412. Limitations of actions.

(a) Except as otherwise expressly provided by this chapter, any judicial proceeding, whether for the recovery of damages or otherwise, brought for the purpose of adjudicating the validity of any provision of this chapter or amendment thereof or any provision of the other franchise documents shall be commenced not later than thirty (30) calendar days following the latter of: (1) the effective date of the provisions; or (2) the accrual of the cause of action. Any such judicial proceeding brought for the purpose of adjudicating the validity of any rule, order, regulation, determination, or arbitration award which purports to have been made pursuant to the provisions of this chapter or of any of the other franchise documents shall be commenced not later than thirty (30) calendar days following the date of the adoption, issuance, or making of such rule, order, regulation, determination, or arbitration award or, as to the franchisee, not later than thirty (30) calendar days following the giving and serving of notice of such adoption, issuance, or making of such rule, regulation, determination, or arbitration award pursuant to the provisions of Section 11-1.406 of this article. No judicial proceeding shall be commenced in violation of the limitations prescribed by this section.

(b) The provisions of this section shall not be applicable to any judicial proceeding, whether for the recovery of damages or otherwise, commenced by the County for breach or enforcement of the provisions of this chapter or any regulation, determination, or arbitration award purporting to have been issued thereunder. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.413. Illegal tapping.

(a) It shall be unlawful for any person to make or use any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of a cable communications system for which a franchise has been issued pursuant to the provisions of this chapter for the purpose of taking or receiving or enabling himself or others to receive or use any television signal, radio signal, picture, program, or sound without payment to the owner of such system.

(b) It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, remove, injure, or vandalize any part

of such a cable communications system, including any cable, wire, or equipment used for the distribution of television signals, radio signals, pictures, programs, or sound. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.414. Severability.

If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held illegal, invalid, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The Board hereby declares that it would have adopted this chapter, and each section, subsection, sentence, clause, or phrase of this chapter, irrespective of the fact any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid, or unconstitutional. The invalidity of any portion of this chapter shall not abate, reduce, or otherwise affect any consideration or other obligation required of the grantee of any franchise granted pursuant to this chapter. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.415. Inclusion in municipalities.

The inclusion within a municipality by reason of incorporation, annexation, or other proceedings of territory lying within a cable communications franchise shall not operate to divest the grantee of its authority to install or provide services through its cable communications system within the newly included territory. The terms and conditions of the franchise agreement shall inure to the benefit of and bind the municipality as to any such newly included territory. The terms and conditions of the franchise shall continue to inure to the benefit of and bind the County as to any remaining unincorporated territory. The County and any such municipality may act independently in the exercise of any authority granted or in the claim of any benefits derived from the franchise. Franchise fees based upon subscriber revenues shall be apportioned between the County and the municipality in accordance with the derivation of the subscriber revenue from either incorporated or unincorporated territory. Fees based on other revenues shall be allocated between the County and the municipality in the same proportion as fees based upon subscriber revenue are allocated. (§ 1, Ord. 961, eff. October 27, 1983, as amended by § 2, Ord. 1011, eff. August 8, 1985)

Sec. 11-1.416. Annexations.

(§ 1, Ord. 961, eff. October 27, 1983, repealed by § 1, Ord. 1011, eff. August 8, 1985)

Article 5. Advisory Boards

Sec. 11-1.501. Policy.

It is the policy of the County to create:

(a) An ad hoc cable communications advisory committee to advise the Board as to the granting of any cable communications franchise; and

(b) Cable communications area advisory commissions for each franchise area to advise the Board as to the operation, renewal, and replacement of any cable communications franchise. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.502. Ad hoc cable communications advisory committees.

The Board may create an ad hoc cable communications advisory committee of such composition as it may choose to serve at its pleasure to advise it on such matters as it may prescribe. The Board may prescribe advice as to the following:

- (a) Whether to grant a franchise;
- (b) Whether to grant or deny an application for a franchise;
- (c) Whether to issue a request for proposals and as to the contents of a request for proposals;
- (d) The evaluation of responses to a request for proposals;
- (e) Matters related to the negotiation of franchise documents; and
- (f) Amendments to this chapter. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.503. Cable communications area advisory commissions: Establishment.

The Board shall establish a cable communications area advisory commission for each franchise area in which the Board grants a cable communications franchise. The Board may designate an appropriate existing advisory board, commission, or committee to serve as the cable communications area advisory commission for a particular franchise area; otherwise the Board shall establish a commission as set forth in this article. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.504. Cable communications area advisory commissions: Membership.

The membership of each cable communications area advisory commission shall consist of five (5) rotating members who reside within the franchise area appointed by the Board. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.505. Cable communications area advisory commissions: Membership: Terms.

Initially, the Board shall appoint three (3) rotating members to each cable communications advisory commission, each for a four (4) year term, and two (2) rotating members, each for a

two (2) year term, and the duration of the term shall be measured from February 1 following the initial appointment. Thereafter, all appointments shall be made for a term of four (4) years and shall commence on February 1 and end on January 31. A vacancy shall exist on each cable communications area advisory commission upon the death, resignation, or termination of residence within the franchise area. Vacancies shall be filled for the unexpired term by the Board. Each member shall serve until the appointment and qualification of a successor; provided, however, no member shall serve more than two (2) consecutive four (4) year terms, plus any partial term. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.506. Cable communications area advisory commissions: Meetings: Quorum.

Regular meetings of each cable communications area advisory commission shall be held monthly or at such other time as may be set by the commission. Special meetings shall be held on the call of the chairperson or on a written request by any two (2) members. A quorum shall consist of three (3) members, and the vote of three (3) members shall be required for any motion, resolution, or other action. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.507. Cable communications area advisory commissions: Membership: Termination.

The term of office of a rotating member who has three (3) consecutive unexcused absences from meetings of a cable communications area advisory commission may be terminated by the Board after notification to the member and the commission. The vacancy created thereby shall be filled by appointment by the Board for the remainder of the unexpired term of the member being replaced. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.508. Cable communications area advisory commissions: Meetings: Minutes.

A copy of the minutes of each meeting of a cable communications area advisory commission shall be filed with the Clerk of the Board. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.509. Cable communications area advisory commissions: Officers.

The officers of a cable communications area advisory commission shall be a chairperson and vice-chairperson who shall be members of the commission and who shall serve a term of one year. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.510. Cable communications area advisory commissions: County liaison.

A department designated by the Board shall have the responsibility for providing coordination and liaison between any cable communications advisory commission and the County, and the director or director's designee of such department shall serve as secretary of each commission. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.511. Cable communications area advisory commissions: Duties.

The duties and responsibilities of each cable communications area advisory commission shall be to make recommendations to the Board concerning the following:

- (a) The renewal of a franchise pursuant to Section 11-1.607 of Article 6 of this chapter;
- (b) Exercise of the authority pursuant to Section 11-1.701 of Article 7 of this chapter to purchase a system;
- (c) Orders for repairs or other matters pursuant to Section 11-1.817 of Article 8 of this chapter;
- (d) The operation of any independent body established to administer community use programming as provided in Section 11-1.902 of Article 9 of this chapter;
- (e) The issuance of the final order of completion community except pursuant to a request for proposals and pursuant to Section 11-1.1101 of Article 11 of this chapter;
- (f) Complaints and excuses for violations made pursuant to Sections 11-1.1104 and 11-1.1105 of Article 11 of this chapter;
- (g) The regulation of non-entertainment services pursuant to Section 11-1.1305 of Article 13 of this chapter;
- (h) The production or elimination of educational and entertainment services pursuant to Section 11-1.1306 of Article 13 of this chapter;
- (i) The regulation of educational and entertainment services pursuant to Section 11-1.1307 of Article 13 of this chapter;
- (j) Evaluations conducted pursuant to Section 11-1.1320 of Article 13 of this chapter;
- (k) Regulations pursuant to Section 11-1.1321 of Article 13 of this chapter;
- (l) The provision of community service programming pursuant to Section 11-1.1329 of Article 13 of this chapter or any independent body established pursuant to said section;
- (m) Any action taken by the Board as to rates pursuant to Article 14 of this chapter;
- (n) The assignments and transfers pursuant to Article 16 of this chapter; and
- (o) Any matter upon which a recommendation is sought by the Board. (§1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.512. Cable Communication area advisory commissions: Rules and procedures.

The cable communications area advisory commission may adopt rules and procedures for carrying out its duties and responsibilities; however, such rules shall not become effective until filed with the Clerk of the Board and approved by the Board. (§ 1, Ord. 961, eff. October 27, 1983)

Article 6. Franchise Procedures

Sec. 11-1.601. Initiation.

(a) This chapter itself grants no authority to operate a cable communications system to any person. Such grants are only made by the adoption of a separate ordinance awarding a specific franchise to an applicant who has complied with the provisions of this chapter.

(b) Except with respect to the renewal of a preexisting franchise, no franchise to operate a cable communications system shall be issued within the Yolo County community except pursuant to a request for proposals and the selection of the grantee on the basis of any proposals submitted in response to the request.

(c) Upon the receipt of any unsolicited application containing the information required by Section 11-1.602 of this article, the Board, within ninety (90) days, shall determine whether or not to issue a request for proposals pursuant to this section. The issuance of such a request for proposals shall not require the grant of a franchise pursuant to this chapter. The determination whether or not to issue such a request for proposals shall be made following a noticed public hearing. (§ 1, Ord. 961, eff. October 27, 1983, as amended by § 1, Ord. 965, eff. November 3, 1983)

Sec. 11-1.602. Applications for franchises.

(a) The Board, by advertisement or otherwise, may solicit for any other applications for cable communications system franchises, and may determine and fix the date upon or after which the applications shall be received by the County or the date before which the applications shall not be received, and may make any other determinations and specify any other times, terms, conditions, or limitations respecting the soliciting, calling for, making, and receiving of such applications.

(b) Each application for a franchise to construct, operate, or maintain any cable communications system in the County shall be filed with the Clerk of the Board and shall contain or be accompanied by the following minimum information:

- (1) The name, address, and telephone number of the applicant;

(2) A detailed statement of the corporate or other business entity organization of the applicant, including, but not limited to, the following and to whatever extent required by the County:

(i) The names and residence and business addresses of all officers, directors, and associates of the applicant;

(ii) The names and residence and business addresses of all officers, persons, and entities having control of one percent or more of the ownership of the applicant and the respective ownership share of each such person or entity;

(iii) The names and addresses of any parent or subsidiary of the applicant, namely, any other business entity owning or controlling the applicant in whole or in part and controlled in whole or in part by the applicant, and a statement describing the nature of any such parent or subsidiary business entity, including, but not limited to, cable communications systems owned or controlled by the applicant and its parent and subsidiary and the areas served thereby;

(iv) A detailed description of all previous experience of the applicant in providing cable communications system services in related or similar fields;

(v) A detailed and complete financial statement of the applicant; and

(vi) A statement identifying, by place and date, any and all cable communication franchises awarded to the applicant, or its parent or subsidiary; the status of such franchises with respect to the completion thereof; the total cost of completion of such systems; and the amount of the applicant's, and its parent's or subsidiary's, resources committed to the completion thereof;

(3) A thorough, detailed description of the proposed cable communications system and a plan of operation of the applicant which shall include, but not be limited to, the following:

(i) A detailed map indicating all areas proposed to be served and a proposed time schedule for the installation of all equipment necessary to become operational throughout the entire area to be served;

(ii) A detailed, informative, and referenced statement describing the actual equipment and operational standards proposed by the applicant. In no event shall such operational and performance standards be less than those adopted by the Rules and Regulations of the Federal Communications Commission (contained in Title 47, Subpart K, Sections 76.601, et seq.), and as augmented by this chapter and modified by the franchise awarded;

(iii) A detailed estimate of the cost of constructing the applicant's proposed system;

(iv) A copy of the form of any agreement, undertaking, or other instrument proposed to be entered into between the applicant and any subscriber;

(v) A detailed statement setting forth in its entirety any and all agreements and undertakings, whether formal or informal, written, oral, or implied, existing or proposed to exist between the applicant and any person, firm, or corporation which materially relate or pertain to or depend upon the application and the granting of the franchise; and

(vi) A statement or schedule setting forth all proposed classifications of rates and charges to be made against subscribers and all rates and charges as to each of such classifications, including installation charges and service charges;

(4) A copy of any agreement existing between the applicant and any public utility subject to regulation by the Public Utilities Commission of the State providing for the use of any facilities of the public utility, including, but not limited to, poles, lines, or conduits, within the County's unincorporated area and/or adjacent area;

(5) Any other details, statements, information, or references pertinent to the subject matter of such application which shall be required or requested by the Board or by any provision of any other law of the County; and

(6) An application fee in a sum to be set by the County, which shall be in the form of cash, certified or cashier's check, or money order, to pay the costs of studying, investigating, and otherwise processing such application, and which shall be in consideration thereof and not returnable or refundable in whole or in part, except to the extent such fee exceeds the actual costs incurred by the County in studying, investigating, and otherwise processing the application; provided, however, any applicant who shall deliver to the Clerk of the Board a written withdrawal or cancellation of any application within ten (10) days following the day such application is received by the Clerk of the Board shall be entitled to have returned and refunded the sum of fifty (50%) percent of the fee, less any actual costs or expenses incurred by the County by reason of such application.

(c) Upon the receipt of any application for a franchise, the Board shall refer the application to the County Administrator or expert or cable communications advisory committee, if such exists, who shall prepare a report and make recommendations respecting such application and cause such report and recommendations to be completed and filed with the Board within 120 days.

(d) In making the determinations hereunder as to any application, the Board shall give due consideration to the character and quality of the service proposed, rates to subscribers, income to the County, experience, character, background, and financial responsibility of any applicant and its management and owners, technical and

performance quality of equipment, willingness and ability to meet construction and physical requirements and to abide by policy conditions, franchise limitations, and requirements, and any other considerations deemed pertinent by the Board for safeguarding the interests of the County and the public. The Board, in its sole discretion, shall determine the award of any franchise on the basis of such considerations and without competitive bidding.

(e) If the Board, after public hearings, shall determine to reject an application, such determination shall be final and conclusive, and the application shall be deemed rejected.

(f) If the Board shall determine to further consider an application, the following shall be done:

(1) The Board shall identify a tentative grantee and decide and specify the terms and conditions of any franchise to be granted pursuant to this chapter and as provided in this chapter.

(2) The Board shall give notice of its intention to consider the granting of such a franchise, stating the name of the tentative grantee, that copies of the proposed franchise may be obtained at the office of the Clerk of the Board, fixing and setting forth a time and public place certain when and where interested parties may inspect all the bona fide applications, fixing and setting forth a day, hour, and place certain when and where any persons having any interest therein or objection to the granting thereof may file written protests and appear before the Board and be heard, and directing the Clerk of the Board to publish notice of the resolution's adoption at least once within ten (10) days after the passage thereof in a newspaper of general circulation within the County.

(g) At the time set for the hearing, or at any adjournment thereof, the Board shall proceed to hear all written protests. Thereafter the Board shall make one of the following determinations:

(1) That such franchise be denied; or

(2) That such franchise be granted upon such conditions as the Board deems appropriate, which conditions may include, on a not-to-exceed basis, where in accordance with the Act, applicable FCC regulations, and State laws:

(i) Charges for installations;

(ii) Subscriber rates; and

(iii) Service rates for separate classifications of service, such as additional connections.

(h) If the Board shall determine that a franchise be denied, such determination shall be expressed by resolution; if the Board shall determine that a franchise be granted, such determination shall be expressed by ordinance granting a franchise to the applicant. The action of the Board shall be final and conclusive.

(i) The grantee shall pay to the County a sum of money sufficient to reimburse it for all

expenses incurred by the provisions of this chapter beyond those defrayed by application fees. Such payment shall be made within thirty (30) days after the County furnishes the grantee with a written statement of such expenses. (§ 1, Ord. 961, eff. October 27, 1983, as amended by § 6, Ord. 999, eff. March 7, 1985)

Sec. 11-1.603. Privacy of proposals.

Applications for a franchise submitted in response to a request for proposals shall be sealed at the time of submission by an applicant. Prior to the deadline for the submission of an application, it shall be unlawful for any applicant, and any officer, agent, or employee thereof, whether directly or indirectly, to exchange information concerning proposals, enter into any agreement or understanding, or take any other action for the purpose of reducing or eliminating competition among applicants in the selection process. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.604. Environmental analyses.

For each franchise issued pursuant to the provisions of this chapter, one or more environmental analyses shall be undertaken pursuant to the provisions of the California Environmental Quality Act commencing at Section 21000 of the Public Resources Code of the State. The provisions of this chapter, requests for proposals, and an ordinance offering the franchise shall be subject to amendment for the purpose of implementing any change dictated by the environmental analyses. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.605. Franchise acceptance.

(a) Each franchise issued pursuant to the provisions of this chapter shall be issued by the Board and in the name of the County as the issuing authority. A franchise shall be offered to the successful applicant by ordinance duly adopted by the Board. The ordinance may prescribe terms, conditions, or requirements respecting the franchise which are in addition to those set forth in this chapter but which are not inconsistent with the express terms of this chapter. The ordinance may also prescribe terms, conditions, or requirements respecting the franchise which are in addition to or in conflict with the provisions of the request for proposals and application by the party to whom the resolution offers the franchise.

(b) The ordinance offering the franchise shall be deemed repealed thirty (30) calendar days after its adoption, unless not later than the thirtieth (30th) day following the adoption of the ordinance the party to whom the franchise is offered files a certificate in writing which expressly and unconditionally accepts the franchise in compliance with the terms, conditions, and requirements of such ordinance,

the application, the request for proposals, and this chapter. The certification shall be signed by a person duly authorized to act in behalf of the franchise, shall be acknowledged, shall have attached thereto a certified copy of an order by the board of directors of the grantee directing the execution and filing of the certification, and shall be accompanied by any fee required by the request for proposals, the performance bond, the security deposit, and the policy or policies of insurance prescribed by Sections 11-1.1508, 11-1.1509, and 11-1.1511 of Article 15 of this chapter, respectively. A certification which constitutes a qualified acceptance, or places other limits or conditions thereon, shall be deemed to be repealed. The thirty (30) day period for acceptance prescribed by this section may be extended either prior or subsequent to its expiration by the Board through express action which prescribes the period of extension. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.606. Duration of grant.

(a) A franchise shall be effective on the 31st day after the offer of the franchise agreement provided the grantee has filed, within thirty (30) days after such effective date, a written instrument, in accordance with subsection (b) of Section 11-1.605 of this article, addressed to the Board accepting the franchise and agreeing to comply with all of the provisions thereof. If an extension is granted as set forth in subsection (b) of said Section 11-1.605, the franchise will be effective the first day after the date of acceptance.

(b) A franchise or license shall expire twenty (20) years after the acceptance thereof, unless sooner terminated by ordinance. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.607. Replacement franchises.

(a) The service provided by the grantee under a franchise may be required to continue uninterrupted beyond the expiration or cancellation of a franchise. The procedures for the renewal of a franchise shall be those provided in Section 626 of the Act as supplemented by the provisions of this Section 11-1.607.

(b) Any franchise may be renewed for a term not to exceed twenty (20) years at any time prior to the expiration of the franchise. An application therefor shall be submitted to the County Administrator containing such material as the Board may require, including, but not limited to, proposals for an upgrade of the cable communications system.

(c) In the event the Board decides to offer renewal to the grantee, the Board shall adopt an ordinance offering the renewal of the franchise to the grantee. The franchise agreement may prescribe terms, conditions, or requirements

respecting the franchise which are in addition to those set forth in this chapter, the request for renewal, or the original franchise agreement. In the event of a conflict between the provisions of the request for renewal and the provisions of the franchise agreement adopted pursuant to this section, the provisions of the franchise agreement shall prevail. In the event of a conflict between the provisions of the original franchise agreement and the franchise renewal agreement adopted pursuant to this section, the provisions of the latter shall prevail.

(d) The ordinance offering renewal shall be deemed repealed and the request for renewal rejected thirty (30) calendar days after its adoption unless, not later than the thirtieth (30th) day following the adoption, the grantee files a certification in writing which expressly and unconditionally accepts the renewal of the franchise in compliance with the terms, conditions, and requirements of such ordinance, the request for renewal, and this chapter. The certification shall be signed by a person duly authorized to act in behalf of the grantee, shall be notarized, shall have attached thereto a certified copy of an order by the board of directors of the grantee directing the execution of and filing of the certification, and shall be accompanied by the performance bond, the security deposit, and the policy or policies of insurance prescribed by Sections 11-1.1508, 11-1.1509, and 11-1.1511 of Article 15 of this chapter, respectively. The certification and accompaniments shall be filed with the Clerk of the Board. A certification which constitutes a qualified acceptance, or places other limits or conditions thereon, shall be deemed to be a nullity, and the franchise agreement shall be deemed to be repealed and the request for renewal denied. The thirty (30) day period for acceptance prescribed by this section may be extended either prior or subsequent to its expiration by the Board by resolution which prescribes the period of extension.

The filing of the certification in the manner and within the time prescribed in this section shall renew the franchise. (§ 1, Ord. 961, eff. October 27, 1983, as amended by § 7, Ord. 999, eff. March 7, 1985)

Article 7. Purchases of Systems

Sec. 11-1.701. Authority to purchase systems.

The County, or its designee, shall have the right to purchase real and personal property as described by Section 11-1.702 of this article which property is owned or in which an interest is held by the grantee, any parent company of the grantee, any subsidiary of the grantee, or any other entity in which the grantee, or its parent company or its subsidiary, has a financial interest

and which is utilized to provide service under the franchise. Such right shall not arise except, and shall be exercisable under, the following circumstances:

(a) In the event of the termination of a franchise in advance of the expiration of its terms pursuant to the provisions of Sections 11-1.1208 through 11-1.1212 of Article 12 of this chapter; or

(b) At the expiration of the term of a franchise, if the franchise is not renewed to the grantee by the County pursuant to the provisions of Section 11-1.607 of Article 6 of this chapter. (§ 1, Ord. 961, eff. October 27, 1983, as amended by § 2, Ord. 965, eff. November 3, 1983)

Sec. 11-1.702. Scope of purchases.

(a) The property which is subject to purchase by the County shall consist of the following:

(1) The cable communications system;

(2) Land, buildings, and other improvements situated within the exterior boundaries of the County (including both incorporated and unincorporated areas) and utilized by the grantee to provide services under the franchise including studio facilities;

(3) Cameras and other studio production equipment; mobile production equipment; vehicles for services and repairs; inventories of materials, supplies, and parts; tools; and other personal property dedicated for use within the Yolo County community to provide services under the franchise and which the Board determines is peculiarly designed for that purpose; and

(4) Books, accounts, and records relating to the grantee's business, including subscriber lists.

(b) There shall be excluded from the purchase of any parcel of land and improvements, or leasehold, space which is utilized exclusively for business office purposes and not, for example, repair purposes associated with the operation of the cable communications system.

(c) Notwithstanding any provision to the contrary, the Board, in its sole discretion, shall have the right to exclude from the purchase any real property (including improvements thereon) upon which no component of the cable communications system is situated and which the Board determines is not essential to the system or the provision of services thereunder (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.703. Assignments.

The right to purchase as prescribed by Section 11-1.701 of this article may be exercised by the County for public ownership and use by the County in behalf of a third party, or by any party to whom the County may assign the right to purchase to any third party at any time prior to payment for the purchase and transfer of titles. Written notice of any such assignment shall be

mailed to the grantee. Such an assignee, subsequent to the date of assignment, shall be vested with any and all discretion respecting the purchase which is vested in the Board. The County may condition the grant of a franchise upon agreement by the grantee to accept the assignment of and to exercise a right to purchase the real and personal property of an existing grantee. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.704 Valuation definitions.

(a) As used in this section and Sections 11-1.705 through 11-1.711 of this article, and to the extent consistent with Section 627 of the Act, the following terms shall be ascribed the meanings set forth in this section:

(1) "Fair market value" shall mean the price in terms of money which a property will bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeably, and assuming the price is not affected by undue stimulus.

(2) "Going concern value" shall mean the benefits which attach to the business as a result of its location within the franchise area, the grantee's reputation among subscribers or potential subscribers for dependability and quality of service, and any other circumstances resulting in the probable retention of old subscribers or the acquisition of new subscribers; provided, however, no value shall be assigned to either the franchise itself or any right, privilege, or expectancy arising to the grantee out of the right to transact business under the franchise, and particularly no value shall be allowed for any increase in value arising out of any expectation of revenues from the cable communications system beyond the termination date or expiration date of the franchise, whichever is sooner.

(b) Except to the extent inconsistent with the express provisions of this section and Sections 11-1.705 through 11-1.711 of this article, the words of this section shall be ascribed the meanings and the appraisal and valuation standards, methodology, approaches, and processes respecting the determination of the amount to be paid for property which the Board or its assignee is entitled to purchase and shall comply with and be consistent with those set forth in that 1975 publication entitled "Real Estate and Urban Economic Studies at the University of Connecticut", compiled and edited by Byrl N. Boyce, Ph.D., sponsored jointly by the American Institute of Real Estate Appraisers and the Society of Real Estate Appraisers. (§ 1, Ord. 961, eff. October 27, 1983, as amended by § 8, Ord. 999, eff. March 7, 1985)

(c) Notwithstanding any provision to the contrary, the Board, in its sole discretion, shall have the right to exclude from the purchase any real property (including improvements thereon) upon which no component of the cable

communications system is situated and which the Board determines is not essential to the system or the provision of services thereunder. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.705. Valuation limits.

The property which is purchased shall be valued at its fair market value determined in accordance with subsection (a) of Section 627 of the Act and Section 11-1.704 of this article. (§ 1, Ord. 961, eff. October 27, 1983, as amended by § 8, Ord. 999, eff. March 7, 1985)

Sec. 11-1.706. Date of valuation.

The date of valuation for purchases pursuant to the provisions of this chapter shall be the day immediately following the date of the expiration or termination of the franchise. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.707. Requests for inventories.

Proceedings for the acquisition by the County or its assignee under this chapter shall be commenced by a written notice mailed to the grantee of a request by the County or its assignee for an inventory of the grantee's property. Such a notice shall not be mailed earlier than the following dates:

(a) The date a determination by the Board to terminate the franchise becomes final under Section 11-1.1210 or 11-1.1211 of Article 12 of this chapter when the purchase is made pursuant to the contingency prescribed by subsection (a) of Section 11-1.701 of this article; or

(b) The date of a determination made by the Board not to renew the franchise, or the date renewal is deemed denied, when the purchase is made pursuant to the contingency prescribed by Section 11-1.701 of this article. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.708. Inventories.

Not later than thirty (30) calendar days after the date of the mailing of the notice of a request for an inventory, the grantee shall file with the Clerk of the Board a written inventory which shall include the following:

(a) A complete plan, with specifications, of the entire cable communications system installed at any time during the term of the franchise;

(b) An identification of all real property which is subject to the right of acquisition by the County or its assignee, showing the address and the legal descriptions thereof, and including a description of all buildings (including the square footage thereof) and other improvements thereon;

(c) A list of all cameras and other studio production equipment; mobile production equipment; office and other furnishings; vehicles for services and repairs; inventories of materials, supplies, and parts; tools; and other personal

property utilized within the community to provide services under the franchise (such lists shall show the manufacturers, model and serial numbers, dates of manufacture, and dates of acquisition of such property); and

(d) Copies of all leases, chattel and other mortgages, and other instruments evidencing an interest by any third party in any of the property identified by this section. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.709. Demands for arbitration.

Not later than thirty (30) calendar days after the date on which the grantee files the inventory, the County or its assignee may mail to the grantee written notice of its tentative intention to exercise its right to purchase, including a list of all property which the County or its assignee has tentatively elected to purchase, and a demand for arbitration. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.710. Arbitration of value.

The arbitration panel shall be selected, the hearing scheduled within the time prescribed, notice given, the hearing conducted, a decision made, and the costs divided in the manner prescribed by Sections 11-1.1214 through 11-1.1219 of Article 12 of this chapter. The grantee shall make its cable communications system, other property and books, accounts, and other records available, upon request, for inspection by the County or its assignee or their experts. The discovery provisions of the California Arbitration Act (Sections 1280, et seq. of the Code of Civil Procedure of the State) shall be applicable to the arbitration proceedings under this section.

The questions which may be submitted to the arbitration panel and the jurisdiction of the panel shall be limited to the following:

(a) The amount to be paid by the County or its assignee under the valuation limits prescribed by Section 11-1.705 of this article; and

(b) An interpretation of the provisions of the franchise documents solely in relation to the issues within its jurisdiction.

Upon a request by the County or its assignee or the grantee, or upon its own initiative, the arbitration panel shall appoint and retain one or more independent experts for the purpose of providing advice upon the valuation issues to be determined.

The arbitration award may be judicially enforced, shall be final, binding, and conclusive upon the parties, and shall not be subject to Section 1286.2 of the Code of Civil Procedure of the State. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.711. Subsequent valuations.

With respect to any proceeding in which the arbitration panel makes valuation determinations in advance of the termination or expiration of the franchise, the same panel shall be available to

receive and determine values for any additions to, replacements of, or other acquisitions of property tentatively elected to be purchased which have occurred subsequent to the award made pursuant to Section 11-1.710 of this article. Such determination shall be initiated by a written notice mailed to the arbitration panel by the grantee and filed with the Clerk of the Board and shall be governed by all the standards, procedures, and other provisions of Sections 11-1.704 through 11-1.710 of this article and this section, and written recital thereof shall be mailed to the grantee, Clerk of the Board, and the County's assignee (if any) not later than ninety (90) calendar days following the date of the mailing of the notice initiating the determination. No such notice shall be mailed or filed later than 120 calendar days prior to the date of the expiration or termination of the franchise. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.712. Judicial relief.

In the event a grantee or the County or its assignee fails to comply with any provision contained in Sections 11-1.701 through 11-1.713 of this article, the injured party shall be authorized to either seek judicial relief or relief from the arbitrator during the arbitration proceedings. In the event judicial relief is sought, the provisions of Sections 11-1.710 and 11-1.711 of this article shall not be deemed to deprive the court of jurisdiction to interpret the provisions of this chapter, and any such interpretation shall be binding upon the arbitrator. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.713. Sales: Transfers of title.

No later than thirty (30) calendar days following the date of the expiration or termination of a franchise, the County or its assignee shall notify the grantee of its intention to purchase the property identified in the notice mailed pursuant to the provisions of Section 11-1.709 of this article. The purchase price shall be the value as determined by the arbitration panel. The election to purchase shall be evidenced by a written notice so stating mailed to the grantee not later than thirty (30) calendar days following the date of the expiration or termination of the franchise. The failure to mail such notice within the time prescribed in this section shall conclusively be presumed to constitute an election not to purchase the property pursuant to the provisions of this chapter, and the grantee shall not be entitled to any compensation for such property or other costs or proceedings or otherwise. If any notice, memorandum, or report required by Section 11-1.710 or 11-1.711 of this article has not been received by the date of the expiration or termination of the franchise, the notice of election required by this section need not be mailed until thirty (30) calendar days following the date of the

receipt of such notice, memorandum, or report.

The purchase price shall be deposited into an escrow of a title company named by the County or its assignee. The title company shall be authorized to pay the purchase price as directed by the grantee when it can provide for the County or its assignee grant deeds with respect to real property, bills of sale with respect to personal property, or other evidences of title vesting insured title in the County or its assignee free and clear of all liens and encumbrances, except easements and rights-of-way respecting the real property which do not impair its use for the purposes intended, and assignments of leases, if any, with respect to real or personal property which is leased. The seller or sellers shall pay all title insurance, recording, escrow, and closing fees and costs. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.714. Negotiated acquisitions.

The provisions of this article shall not be deemed to preclude acquisition by the County or its assignee through a negotiated agreement; provided, however, the commencement or existence of such negotiations shall not be deemed to waive or relieve any actions or times therefore prescribed by Sections 11-1.708 through 11-1.713 of this article. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.715. Policy for financing purchases.

It is the policy of the County that no territory or subscriber not served by a franchise shall bear the financial burden of any purchase made pursuant to this article. (§ 1, Ord. 961, eff. October 27, 1983)

Article 8. Operation and Service

Sec. 11-1.801. Service area.

The grantee's system design and construction shall be such that service shall be made available for the normal installation fee to all residential units within the grantee's service area, as defined in the franchise and this chapter, including the system extensions required by Section 11-1.1005 of Article 10 of this chapter. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.802. Establishment of service.

Subject to such regulations as may be adopted by the Board, the grantee shall install cable television service to all persons making a timely and bona fide request for such service at any location within the service area.

After the grantee shall have established service pursuant to a franchise in any area of the County, such service shall not be suspended or abandoned, unless such suspension or

abandonment has been authorized or ordered by the Board. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.803. General capabilities.

A cable communications system, to be installed and operated pursuant to this chapter, and a franchise granted pursuant to this chapter, unless otherwise provided, shall:

(a) Be capable of relaying to subscriber terminals video and audio signals the grantee is now or hereafter authorized to carry by the Federal Communications Commission or the County;

(b) Distribute in color television signals which it receives in color;

(c) Provide, as a minimum, channel capacity and basic equipment for program production in cablecasting for educational, public, and governmental access uses;

(d) If the system is to serve an aggregate of 5,000 or more dwellings, have a minimum capacity of fifty (50) downstream video channels;

(e) If the system is to serve an aggregate of 5,000 or more dwellings, have a two-way (bi-directional) capacity upon the initial activation of the system or at such time as may be extended by the Board;

(f) Make available, upon a request by any subscribers receiving channels showing premium services and pay per view events, a lockout device which prevents the unauthorized viewing of such channels; and

(g) Make available to subscribers, upon request, an RF switch permitting conversions between cable and direct off-air reception. (§ 1 Ord. 961, eff. October 27, 1983, as amended by § 1, Ord. 1007, eff. June 13, 1985)

Sec. 11-1.804. Other capabilities.

The cable communications system permitted to be installed and operated pursuant to this chapter may also engage in the business of:

(a) Transmitting original cablecast programming not received through television broadcast signals;

(b) Transmitting any additional broadcast signals permitted by the Federal Communications Commission;

(c) Transmitting television pictures, films, and videotape programs not received through broadcast television signals, whether or not encoded or processed to permit reception by only selected receivers or subscribers;

(d) Transmitting and receiving all other signals, digital, voice, audio-visual, and the like; and

(e) Transmitting on a nondiscriminatory basis, and for a reasonable rate, burglar, fire, and other non-broadcast services which customers request from persons supplying such services. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.805. Standby power.

Each cable communications system shall include equipment capable of providing standby power for headend facilities and trunk amplifiers for a minimum of two (2) hours. The equipment shall be so constructed as to automatically notify the cable office when it is in operation and to automatically revert to the standby mode when the AC power returns. The system shall incorporate all safeguards necessary to prevent injury to a lineman resulting from a standby generator powering a "dead" utility line. (§ 1, Ord. 961, eff. October 27, 1983, as amended by § 2, Ord. 1007, eff. June 13, 1985)

Sec. 11-1.806. Override capability.

Each cable communications system shall include an "emergency alert capability" which will permit the County, in times of emergency, to override by remote control alternatively the audio and visual of all channels simultaneously. Each cable communications system shall include the capability to broadcast from the County's headquarters for civil defense, disaster, and emergency services. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.807. Interconnections.

The grantee will be required to provide interconnections to other nearby cable communications systems, at the time and to the extent and in the manner specified by the Board, as set forth in any request for franchise proposals issued by the Board. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.808. Plans and specifications.

Each application for a franchise shall include plans and detailed specifications for the cable communications system which is proposed by the applicant. The system shall be constructed and installed by a grantee in compliance with the plans and specifications contained in the application, except as modified by other franchise documents. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.809. Technical standards.

Each grantee shall construct, install, and maintain its cable communications system in a manner consistent and in compliance with all applicable laws, ordinances, construction standards, governmental requirements, FCC technical standards, and detailed standards set forth in the franchise documents. Each grantee shall provide to the County, upon request, written reports of the grantee's annual proof-of-performance tests conducted pursuant to FCC standards and requirements. Standards of cable communications system construction, safety, and operation shall meet, but not be limited to, the following referenced specifications, unless exceptions are agreed upon between the County

and the grantee. Each grantee shall at all times comply with the:

(a) National Electrical Safety Code (National Bureau of Standards);

(b) National Electrical Code (National Bureau of Fire Underwriters);

(c) California Public Utility Commission General Orders 95, 112-d, and 128;

(d) Applicable FCC and other Federal, State, and local regulations; and

(e) The Codes and other laws of the County. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.810 Installation procedures.

The construction, installation, and maintenance of the cable communications system shall be performed in an orderly and workmanlike manner and in close coordination with the public and private utilities serving the Yolo County community following accepted construction procedures and practices and working through existing committees and organizations. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.811. Overall system.

The overall system shall be designed and constructed to meet all FCC technical performance specifications and standards over a temperature range of $\pm 50^{\circ}\text{F}$ from the mean temperature of the County area and to function throughout all environmental extremes expected. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.812. Forward portion.

The forward portion of any cable communications system to serve an aggregate of 5,000 or more dwellings shall be capable of an initial activation of a minimum carriage of fifty (50) Class I television channels, the full FM broadcast band, and pilot carriers or other such auxiliary signals as required for system control. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.813. Combined forward trunk and distribution system.

The combined forward trunk and distribution system shall deliver signals to each and every subscriber's receiver which will meet or exceed the franchise ordinance specifications at the mean system temperature of $\pm 50^{\circ}\text{F}$, unless otherwise indicated. This shall include the effects of drop cable, interior splits, and any terminal equipment, such as descramblers and set top converters. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.814. Reverse portion.

The reverse portion of the cable communications system shall be capable of initial activation of a minimum of twenty-five (25) MHz band width, with return signals from each subscriber and institutional (including all schools)

signal source to the extreme end of any area in compliance with the specifications set forth in the franchise ordinance.

(a) Where applicable, the end of the system specifications shall include the effects of any signal reprocessing equipment necessary to achieve forward transmission.

(b) Any signal at the subscriber's television receiver, after being transmitted to the headend, processed, and retransmitted down a forward channel, shall meet the specifications of the franchise ordinance. (§ 1, Ord. 961, eff. October 27, 1983, as amended by § 3, Ord. 1007, eff. June 13, 1985)

Sec. 11-1.815. Compatibility for signal exchanges.

All cable communications systems authorized to be constructed and operated pursuant to this chapter shall be compatible with respect to signal exchanges between the systems, insofar as financially and technically feasible. One interconnection point shall be specified by the grantees for signal exchanges between any two (2) systems. The interconnection point shall be selected on the most reasonable direct path between the party providing the signal and the party receiving the signal. Signals delivered to an interconnection point by each party shall utilize such electronic parameters as required to be usable by the receiving party. The technical standards set forth in any request for a proposal issued pursuant to Section 11-1.601 of Article 6 of this chapter shall apply to all signals delivered by any party to such interconnection point. (§ 1, Ord. 961, eff. October 27, 1983, as amended by § 4, Ord. 1007, eff. June 13, 1985)

Sec. 11-1.816. Preventive maintenance.

A comprehensive routine preventive maintenance program shall be developed, effected, and maintained for each system by the respective grantees to ensure continued top quality cable communications operating standards in consonance with FCC Part 76 and the technical specifications stipulated in the franchise ordinance. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.817. Testing.

(a) No newly constructed system services shall be offered for sale prior to proof-of-performance testing in accordance with FCC Part 76.601 and the technical specifications and standards listed in the franchise agreement. Such initial proof-of-performance testing, and annual proof-of-performance testing, may be conducted by the County, or its designated representative, at the County's option, when for sufficient cause as deemed by the Board or its designated representative. The County reserves the right to

have the measurements conducted at County selected test points and to a greater number of test points than the minimum required by Section 76.601 of the FCC Rules. Additionally, the grantee shall reimburse the County for all expenses by it in connection with the County conducting or observing the annual performance tests when the results of such tests are deemed by the County to fall below a ninety (90%) percent level of compliance with the technical standards as set forth in FCC Part 76 and in the franchise agreement.

(b) If, after a public hearing, notice of which has been given in the manner prescribed by Section 11-1.406 of Article 4 of this chapter, the Board finds that a grantee has failed to comply with or maintain the technical standards or quality of service set forth in the franchise documents for such franchise, the Board may order the grantee to make specifically enumerated repairs or improvements in the system or changes in the maintenance, repair, or operation of the system. The grantee shall complete such repairs or improvements within a reasonable time and, in any event, not later than six (6) months following the date on which the order requiring repairs or improvements is mailed to the grantee. (§ 1, Ord. 961, eff. October 27, 1983, as amended by § 5, Ord. 1007, eff. June 13, 1985)

Sec. 11-1.818. Testing procedures.

The grantee's proof-of-performance testing procedures shall be approved by the County for implementation prior to the initial proof-of-performance testing addressed in Section 11-1.817 of this article. The results of the proof-of-performance tests shall be retained for at least five (5) years and shall be available for inspection by the County. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.819. Antenna structures.

Any antenna structure used in the cable communications system shall comply with the construction, marking, and lighting of antenna structures required by the United States Department of Transportation. All system antennas and mounts shall be designed, installed, and constructed to withstand 100 mile per hour winds. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.820. Rf leakage.

RF leakage shall be measured adjacent to any proposed or existing aeronautical navigation or communications radio site to prove no interference to such services. (§ 1, Ord. 961, eff. October 27, 1983, as amended by § 6, Ord. 1007, eff. June 13, 1985)

Sec. 11-1.821. Cable installations.

All cables and wires shall be installed, where possible, parallel with electric and telephone lines, and multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering consideration. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.822. Underground cable.

All underground cable should be flooded and armor-clad cable and/or installed in conduit, unless specifically exempted by the Director of Public Works, on a case-by-case basis. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.823. Drop cables.

Residential and institutional drop cables should be a double shielded type and fitted with sealed hex crimp ring high integrity connectors. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.824. Jacketed cable.

Jacketed cable should be used in any and all areas of the plant where airborne heavy chemical particles can be expected. (§ 1, Ord. 961, eff. October 27, 1983, as amended by § 7, Ord. 1007, eff. June 13, 1985)

Sec. 11-1.825. Corrective measures.

A grantee's corrective maintenance program shall render efficient corrective service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruption shall be preceded by notice and shall occur during a period of minimum use of the system. A written log shall reflect the date, time, duration, and reason for each service interruption. The record of the log shall be kept on file for a minimum of three (3) years. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.826. Safety requirements.

A grantee, at all times, shall:

(a) Install and maintain its wires, cables, fixtures, and other equipment in accordance with the requirements of the Building Codes and in such manner that such equipment will not interfere with any installation of the County;

(b) Keep and maintain in a safe, suitable, and substantial condition, and in good order and repair, all its structures, lines, equipment, and connections in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of the County wherever situated or located; and

(c) All working facilities, conditions, and procedures used or occurring during the construction of the cable communications system shall comply with the standards of the Occupational Safety and Health Administration. (§ 1, Ord. 961, eff. October 27, 1983)

Article 9. Community Use Programming

Sec. 11-1.901. Community use proposals.

(a) The purpose of this section and Sections 11-1.902 through 11-1.905 of this article is to permit applicants for each cable communications franchise to propose plans and resources for community use programming in order to permit the community to design, produce, and present programming of local interest and to promote the educational, recreational, and character-building opportunities of the viewing public.

(b) An applicant who chooses not to make such a proposal shall not be disqualified from applying for consideration in the selection of the grantee. It is expressly declared that the factors upon which selection will be based are so numerous and subjective as to make it impossible to know in advance the relative importance of a determination by an applicant to either make or not to make such a proposal in relation to other factors upon which an award of the cable communications franchise will be based. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.902. Application contents.

(a) Applicants for each franchise shall be authorized, alternatively, to propose in their applications:

(1) No community use programming, by making no reference to community use programming therein; or

(2) To propose community use programming in the form of and in accordance with that as described by Section 11-1.903 of this article.

(b) An applicant who proposes community use programming in its application shall include in the application the following:

(1) Any standard of criteria which will be utilized in connection with the following matters:

(i) The time made available for and community use programming covering candidates for public elective offices during election campaigns;

(ii) Program quality control;

(iii) The legality of program content and the violation of the legal rights of others; and

(iv) Any and all pre-conditions of whatever kind or nature relating to use by third parties of studio facilities or production equipment and the broadcast of programming presented thereby; and

(2) The establishment of an independent body proposed by the applicant to administer PEG programming and community use programming other than PEG programming produced by a public agency. Such a body shall not include any officer or employee of the County or a cable communications area advisory committee; nor shall such body include the appointment of officers, employees, governing bodies, or boards or committees of the County. Once formed or created, the body also shall not include any grantee nor any appointee by a

grantee or representative of a grantee. Any such proposal shall specifically identify the following representing such a body:

(i) The legal form of existence;

(ii) How the body will be established and who will be responsible for the establishment;

(iii) The size, composition, and method of selection and appointment of the members;

(iv) The terms of the members and the grounds and procedures for the removal of members, if any;

(v) The specific powers of the body in relation to the administration of community use programming and the means by which such will be exercised and enforced; and

(vi) The sources and amounts of funding for the support and operation of the body. (§ 1, Ord. 961, eff. October 27, 1983, as amended by § 9, Ord. 999, eff. March 7, 1985)

Sec. 11-1.903. Community use programming.

(a) Community use programming constitutes a form of access opportunity to members of the general public to produce programming in separate studio facilities with minimal instructional assistance, direction, and control by a grantee.

(b) Applicants desiring to propose community use programming shall include the following within their applications:

(1) The number of hours per week that one or more (specifying the number) channels on the subscriber network will be made available exclusively for the type of access use programming prescribed by this section;

(2) If two (2) or more channels are to be made available for such use, a specification of the tier or tiers of service in which all channels, except the one included in the basic services, will be placed;

(3) A description of the location, nature, and extent of the separate and independent studio facilities, production equipment, personnel resources, and other resources to be provided in connection with such access use and community use programming, designed in such a manner as to permit operation by members of the public with minimal training and supervision;

(4) A commitment to make the studio facilities, production equipment, personnel resources, other resources, and channels available for use, program production, and broadcasts a specified number of hours per day during the term of the franchise; the actual number of days per week and hours per day such resources will be available for use, program production and broadcasts being subject to regulation from time to time by the independent authority created pursuant to subsection (2) of subsection (b) of Section 11-1.902 of this article;

(5) A commitment to operate and provide the studio facilities, production equipment, personnel resources, other resources, channel broadcast time, and programming opportunity at the sole cost of the applicant without any charge whatsoever;

(6) A statement of the nature and extent of all training to be offered by the applicant respecting the equipment, operation, and training required as a condition of facility and equipment use and operation by members of the public; and

(7) A commitment to allow the use of the studio facilities, production equipment, personnel resources, other resources, and channels for the production and broadcast of community use programming by members of the general public, including individuals and local nonprofit community organizations, on a first-come first-served basis during the term of the franchise. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.904. PEG facilities, PEG programming, and PEG funding.

An applicant may, but shall not be required to, propose, in its application, PEG facilities, PEG programming, or PEG funding. With respect to any such proposal, the application shall contain:

(a) A description of the location, nature, and extent of the PEG facilities, PEG programming, PEG funding, and other PEG resources proposed to be made available by the applicant; and

(b) A statement identifying the parties to whom PEG facilities and PEG funding will be made available by the grantee and whether the apportionment of such facilities and funding will be vested within the sole discretion of the applicant or determined in accordance with standards or criteria and, if so, a statement of all criteria, standards, and requirements proposed to be utilized by the applicant in apportioning the PEG facilities and PEG programming should the demand therefor exceed the facilities and funding proposed by the grantee. (§ 1, Ord. 961, eff. October 27, 1983, as amended by § 10, Ord. 999, eff. March 7, 1985)

Sec. 11-1.905. Compliance with proposals.

A grantee who has included within its application for the franchise a proposal for community use programming or PEG facilities, PEG programming, or PEG funding pursuant to Sections 11-1.901 through 11-1.904 of this article shall comply during the entire term of the franchise with all such commitments contained in its application and the ordinance offering the franchise, including, but not limited to, provision of the specified number of hours of community use programming and/or PEG programming pursuant to the terms and conditions stated, and provision of all studio facilities, production equipment, personnel resources, and other

resources identified for the uses specified pursuant to the terms and conditions stated. During such term, the grantee shall keep and maintain all such facilities, equipment, and resources in good condition and repair and replace any and all such facilities, equipment, and resources as necessary to fulfill the obligation that the foregoing be provided and maintained during the entire term of the franchise. The failure to comply with the commitments and obligations identified by this section shall be deemed to constitute a material violation and breach of the franchise documents. (§ 1, Ord. 961, eff. October 27, 1983, as amended by § 10, Ord. 999, eff. March 7, 1985)

Sec. 11-1906. Resources for public agencies.

(a) Applicants for a franchise shall be authorized, but not required, to include within their applications proposals for services, resources, or benefits to the County, including, but not limited to, free or discounted rates for subscriptions to services on the subscriber network or institutional network, channels or time thereon on the subscriber network or institutional network, electronic or other equipment, the use of the institutional network, staffing resources or other services, and resources or benefits for improvement in the delivery of governmental services or efficiency of governmental operations. A grantee who has proposed such commitments in its application shall comply during the entire term of the franchise with all such commitments contained in its application and the ordinance offering the franchise pursuant to the terms and conditions stated therein, and the failure to provide such services, resources, or benefits pursuant to the terms and conditions stated shall be deemed to constitute a material violation and breach of the franchise documents.

(b) An applicant who chooses not to make such a proposal shall not be disqualified from bidding or consideration in selection of the grantee. It is expressly declared that the factors upon which selection will be based are so numerous and subjective as to make it impossible to know in advance the relative importance of a determination by an applicant to either make or not to make such a proposal in relation to other factors upon which an award of a franchise will be based. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.907. Resources for others.

(a) Applicants for a franchise, for the purpose of promoting improvements in cable services to the community and influencing the motivation of the County to select the particular applicant as the grantee, may include within their applications the commitment of services, resources, or other benefits (including, but not

limited to, on-going financial support, channels or broadcast time thereon, personnel resources, or facilities or equipment) to specifically identified parties other than the County. The application shall contain an identification of any such commitments, including a specific description of the nature and extent of all services, resources, or benefits committed, the names and addresses of all parties to whom the commitments are made, all terms and conditions of the commitments, and copies of the legal instruments, such as contracts, leases, memoranda of understanding, or other documents, by which the commitments, when accepted, and the documents executed by the recipients would be evidenced. Each such legal instrument shall contain provisions requiring that such services, resources, or benefits be utilized exclusively for cultural, educational, scientific, character-building, recreational, or public service purposes and prohibiting the utilization thereof for commercial purposes.

(b) During the hearing conducted pursuant to the provisions of subsection (e) of Section 11-1.602 of Article 6 of this chapter, the Board shall:

(1) Order such changes in the legal instruments by which the commitment of such services, resources, or benefits are to be evidenced as are found necessary in order to fulfill the objectives and purposes of the application submitted by the tentative selectee without altering the nature or scope of the commitments made, or direct the proposed recipients and tentative selectees to meet separately for the purpose of developing mutually acceptable changes in the legal instruments for later review and approval by the Board;

(2) Approve as to form all legal instruments determined to be sufficient to adequately express the commitments and terms and conditions thereof; and

(3) Determine which, if any, of such legal instruments are to be incorporated into the franchise documents made a part of the terms and conditions of the franchise and order such incorporation by reference to the instrument in the ordinance offering the franchise.

(c) With respect to any legal instrument which is made a part of the franchise documents by reference in the ordinance offering the franchise, the violation and breach by the grantee of the obligations therein shall be deemed to constitute a material violation and breach of the franchise documents. The obligations and prohibitions assumed by the recipient under such legal instruments by either the execution of the instruments or the acceptance of the services, resources, or benefits committed shall be enforceable either by the grantee or the County. A violation and breach of the franchise documents by reference in the ordinance offering the franchise shall not be deemed to constitute a

violation or breach of the franchise documents. The incorporation of such a legal instrument into the franchise of any legal instrument which is made a part of the franchise documents by reference in the ordinance offering the franchise shall not be deemed to obligate the County to fulfill any promise contained therein. Services, resources, or benefits committed to specifically identified parties, other than the County, which are not evidenced by separate legal instruments included with the application shall not be considered in the selection process.

(d) An applicant who chooses not to commit services, resources, or benefits as authorized by this section shall not be disqualified from bidding or consideration in the selection of the grantee. It is expressly declared that the factors upon which selection will be based are so numerous and subjective as to make it impossible to know in advance the relative importance of a determination by an applicant to either make or not to make such proposals in relation to other factors upon which an award of a franchise will be based. (§ 1, Ord. 961, eff. October 27, 1983)

Article 10. Street Work, Permits, and Construction

Sec. 11-1.1001. Permits.

(a) Within thirty (30) days after the acceptance of a franchise, the grantee shall proceed with due diligence to obtain all necessary permits and authorizations which are required in the conduct of its business, including, but not limited to, any utility joint use attachment agreements, encroachment permits, microwave carrier licenses, and any other permits, licenses, and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of cable television/communications systems or associated microwave transmission facilities.

(b) In connection with subsection (a) of this section, copies of all petitions, applications, and communications submitted by the grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other Federal or State regulatory commission or agency having jurisdiction in respect to any matters affecting the grantee's cable communications operations, and any and all actions taken thereon by each such commission or agency, shall also be submitted simultaneously to the County Administrator. Upon determining that the grantee has obtained all necessary permits, licenses, and authorizations, including rights of access to poles and conduits, the County Administrator shall issue the notice to proceed.

(c) The County shall be authorized to establish special fees payable by a grantee to defray the costs incurred by the Department of Public Works in supervising and regulating the

installation of a cable communications system within the streets of the respective agencies. The Director of Public Works shall be authorized to formulate reasonable schedules for the installation of a cable communications system within the streets of the County for the purpose of promoting safety, reducing inconvenience to the public, and insuring adequate restoration and repair of the streets, and a grantee, and its officers, agents, contractors, and subcontractors, shall comply with any and all such schedules. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1002. General construction.

(a) Within thirty (30) days after the issuance of a notice to proceed the grantee shall commence the construction and installation of the cable communications system.

(b) Within 180 days after the commencement of the construction and installation of the system, the grantee shall proceed to render service to subscribers, and the completion of the installation and construction shall be pursued with reasonable diligence thereafter so that service to all of the areas designated and scheduled on the map and plan of construction made a part of the franchise shall be provided as set forth in this chapter.

(c) The construction and installation of the cable communications system shall be complete and ready for the issuance of a final order of completion in accordance with Section 11-1.1001 of this article at the time set forth in the ordinance offering a franchise.

(d) Failure on the part of the grantee to commence and diligently pursue each of the requirements of this section and to complete each of the matters set forth in this section shall be grounds for the termination of such franchise. By resolution, the Board, in its discretion, may extend the time for the commencement and completion of the installation and construction for additional periods in the event the grantee, acting in good faith, experiences delays by reason of circumstances beyond his control.

(e) The County shall have the right, free of charge, to make additional use for any public or municipal purpose, whether governmental or proprietary, of any poles, conduits, or other similar facilities erected, controlled, or maintained exclusively by or for the grantee in any street provided such use by the County does not interfere with the use by the grantee. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1003. Erection of poles.

No franchise shall be deemed to expressly or impliedly authorize the grantee to construct or install poles or wire-holding structures within streets for the purpose of placing cables, wires, lines, or otherwise without the written consent of the County within which the street is situated.

Such consent shall be given or withheld in the sole discretion of the County and may be given upon such terms and conditions as the County, in its sole discretion, may prescribe, which shall include a requirement that the grantee perform, at its sole expense, all tree trimming required to maintain the poles clear of obstructions.

With respect to any poles or wire-holding structures which a grantee is authorized to construct and install within streets, the County reserves the privilege of utilizing such poles or wire-holding structures, if such use would enhance the public convenience and would not unduly interfere with the grantee's operations, with the condition that the County, public utility, or public utility district pay to the grantee any or all actual and necessary costs incurred by the grantee in permitting such use. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1004. Underground facilities.

(a) Unless otherwise authorized by the Board, in those areas and portions of the County where transmission and/or distribution facilities of the public utility providing telephone service, and those of the utility providing electric service, are underground or hereafter may be placed underground, or are to be placed underground by a builder, developer, or subdivider as a part of a development or subdivision, then the grantee shall likewise construct, operate, and maintain all of its transmission and distribution facilities underground to the maximum extent that existing technology reasonably permits the grantee to do so.

(b) In new developments or subdivisions, the builder, developer, or subdivider shall be responsible for the performance of all necessary trenching and backfilling of main line and service trenches, including the furnishing of any imported backfill material required. The grantee shall be responsible for the conduct of the engineering and labor to put the cable conduit in the trench. Pre-wiring of new dwellings to franchise specifications while under construction shall be mandatory. The grantee shall be responsible for pulling in the cable and providing the plant electronics and drops to individual homes after occupancy.

(c) In those areas and portions of the County where utility service facilities are currently located underground, the grantee shall be responsible for the undergrounding of cable facilities, including the performance of all necessary trenching, and the furnishing of any imported backfill material required.

(d) Previously installed aerial cable shall be undergrounded in concert, and on a cost-sharing basis, with other utilities pursuant to the general laws of the County or applicable State laws or in the event such action shall be taken by all other utilities on a voluntary basis.

(e) Subject to approval by the Board, incidental appurtenances, such as amplifier boxes and pedestal-mounted terminal boxes, may be placed aboveground but shall be of such size and design and shall be so located as not to be unsightly or hazardous to the public. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1005. System extensions.

(a) The grantee shall be required to extend the subscriber network and, upon an order by the County, the institutional network to any new developments or general areas within the imposed service area and is authorized to do so within the remainder of the Franchise Area pursuant to the following requirements:

(1) The grantee shall extend and make cable communications service available to every dwelling unit within any area reaching the minimum density of at least forty (40) dwelling units per street mile, or five (5) dwelling units within 660 feet, as measured from existing feeder cable.

(2) The grantee shall extend and make cable communications service available to every dwelling unit in all unserved, developing areas having at least forty (40) dwelling units planned per street mile, as measured from the existing system, and shall extend its system simultaneously with the installation of utility lines.

(3) The grantee shall extend and make cable communications service available to any isolated resident requesting a connection at the standard connection charge if the connection to the isolated resident would require no more than a standard 150 foot aerial drop line.

(4) With respect to requests for connections requiring an aerial drop line in excess of 150 feet, the grantee shall extend and make available cable television service to such residents at a connection charge not to exceed the actual installation costs incurred by the grantee for the distance exceeding 150 feet.

(5) Whenever the grantee shall have received written requests for services from at least fifteen (15) assured subscribers within 1,300 cable feet of its aerial trunk cable, the grantee shall extend its system to such subscribers solely for the usual connection and service fees for all subscribers provided such extension is technically and economically feasible. The 1,300 cable feet shall be measured in extension length of the grantee's cable required for service located within a public way or easement and shall not include the length of necessary drop to the subscriber's house or premises.

(b) Nothing set forth in this section shall be construed to prevent the grantee from serving areas not covered by this section upon an agreement with developers, property owners, or residents.

(c) Any violation of this section shall be considered a breach of the terms of this chapter. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1006. Use of streets: Interference.

(a) Each cable communications system, including wires and appurtenances, shall be located and installed and maintained so that none of the facilities endanger or interfere with the lives or safety of persons, or interfere with any improvements the County or State may deem proper to make, or unnecessarily hinder or obstruct the free use of the streets or other public property.

(b) All transmission and distribution structures, lines, and equipment erected or installed by a grantee within the Yolo County community shall be so located as to cause minimum interference with the proper use of streets and other public property and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the streets or other public property. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1007. Restoration of streets and private property.

(a) All disturbances by the grantee of pavement, sidewalks, driveways, landscaping, or other surfacing of streets shall be restored, repaired, or replaced by the grantee at its sole cost in a manner approved by the Director of Public Works, and in compliance with generally applicable standards of the agency vested with jurisdiction thereover, and in as good condition as before the disturbance occurred.

(b) To the extent practicable and reasonable, each grantee shall accommodate the desires of any property owner respecting location within easements or rights-of-way traversing private appurtenances constituting a part of the cable communications system. Any disturbance of landscaping, fencing, or other improvements upon private property, including private property traversed by easements or rights-of-way utilized by a grantee, at the sole expense of the grantee, shall be promptly repaired or restored (including the replacement of such valuables as shrubbery and fencing) to the reasonable satisfaction of the property owner as soon as possible. Each grantee, through authorized representatives, shall make a reasonable attempt to personally contact the occupants of all private property in advance of entering such property for the purpose of commencing any installation of elements of the system within the easements or rights-of-way traversing such property. As used in this subsection, the terms "easements" and "rights-of-way" shall not include easements or rights-of-way for roadway purposes. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1008. Street work.

(a) Upon any failure of the grantee to commence, pursue, or complete any work required by it by law or by the provisions of a franchise to be done in any street, the Board, at its option and according to law, may cause such work to be done, and the grantee shall pay to the County the cost thereof in the itemized amounts reported by the Board to the grantee within thirty (30) days after the receipt of such itemized report.

(b) In the event that:

(1) Any part of such system has been installed in any street or other area without complying with the requirements of this chapter and/or the franchise ordinance; or

(2) The use of any part of the system of the grantee is discontinued for any reason for a continuous period of thirty (30) days without prior written notice to and approval by the County; then

(3) The grantee, at the option of the County, and at the expense of the grantee and at no expense to the County, and upon the demand of the County, shall promptly remove from any street or other area all property of the grantee, and the grantee shall promptly restore the street or other area from which such property has been removed to such condition as the Director of Public Works shall approve. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1009. Relocation.

If during the term of a franchise the County, a city, a community services district, a County service area, a reclamation district, a public drainage district, or any other special public district elects to alter, repair, realign, abandon, improve, vacate, reroute, or change the grade of any street or to replace, repair, install, maintain, or otherwise alter any above-ground to underground cable, wire, conduit, pipe, line, pole, wire-holding structure, structure, or other facility utilized for the provision of utility or other services or the transportation of drainage, sewage, or other liquids, the grantee, except as otherwise provided in this section, at its sole expense, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes, and any other facilities which the grantee has installed. If such removal or relocation is required within a subdivision in which all utility lines, including those for the cable communications system, were installed at the same time, the entities may decide among themselves who is to bear the cost of relocation; provided, however, the County shall not be liable to a grantee for such costs. Regardless of who bears the costs, a grantee shall take action to remove or relocate at such time or times as are directed by the agency or company undertaking the work. Reasonable advance written notice shall be mailed to the

grantee advising the grantee of the date or dates removal or relocation is to be undertaken. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1010. Tree trimming.

The grantee shall not, and shall prohibit any officer, agent, employee, contractor, or subcontractor which it retains, remove or trim any tree or portion thereof (either above, at, or below ground levels) which is located within a street, unless the removal or trimming is done in accordance with a specific tree trimming plan or general tree trimming policy which has the prior written approval of the Director of Public Works. Such approval may be given or withheld upon such terms and conditions as the Director of Public Works deems appropriate. Any such plan or policy shall set forth standards governing tree trimming/removal and shall provide for regulating in special circumstances, including actions taken in violation of the plan or policy. Each grantee shall be responsible for and shall indemnify, defend, and hold harmless the County, and its officers, agents, and employees, from and against any and all damages arising out of or resulting from the removal, trimming, mutilation of, or any injury to any tree proximately caused by the grantee, or its officers, agents, employees, contractors, or subcontractors. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1011. Movement of buildings.

Each grantee, upon a request by any person holding a building moving permit, license, or other approval issued by the County or State, shall temporarily remove, raise, or lower its wires to permit the movement of buildings. The expense of such removal, raising, or lowering shall be paid by the person requesting the same, and a grantee shall be authorized to require such payment in advance. A grantee shall be given not less than forty-eight (48) hours' oral or written notice to arrange for such temporary wire changes. (§ 1, Ord. 961, eff. October 27, 1983).

Sec. 11-1.1012. Removal.

(a) Upon the expiration or termination of a franchise, if the franchise is not renewed and if neither the County nor an assignee purchases the cable communications system, the grantee may remove any underground cable from the streets without trenching or other opening of the streets along the extension of cable to be removed. The grantee shall not remove any underground cable or conduit which requires trenching or other opening of the streets along the extension of cable to be removed, except as provided in this section. The grantee shall remove, at its sole cost and expense, any underground cable or conduit by trenching or opening the streets along the extension thereof or otherwise which is ordered to be removed by

the Board based upon a determination, in the sole discretion of the Board, that removal is required in order to eliminate or prevent a hazardous condition or promote future utilization of the streets for public purposes. Any order by the Board to remove cable or conduit shall be mailed to the grantee not later than ninety (90) calendar days following the date of the expiration of the franchise. A grantee shall file written notice with the Clerk of the Board not later than sixty (60) calendar days following the date of the expiration or termination of the franchise of its intention to remove cable authorized by this subsection to be removed. The notice shall specify the location of all cable intended to be removed and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the Director of Public Works. Removal shall be completed not later than twelve (12) months following the date of the expiration or termination of the franchise. Underground cable and conduit in the streets which are not removed shall be deemed abandoned, and title thereto shall be vested in the County.

(b) Upon the expiration or termination of a franchise, if the franchise is not renewed and if neither the County nor an assignee purchases the system, the grantee, at its sole expense, unless relieved of the obligation by the County, shall remove from the streets all aboveground elements of the cable communications system, including, but not limited to, amplifier boxes, pedestal-mounted terminal boxes, and cable attached to or suspended from poles which are not purchased by the County or its assignee.

(c) The grantee shall apply for and obtain such encroachment permits, licenses, authorizations, or other approvals and pay such fees and deposit such security as required by applicable general laws of the County, shall conduct and complete the work of removal in compliance with all such applicable laws, and shall restore the streets to the same condition they were in before the work of removal commenced. The work of removal shall be completed not later than one year following the date of the expiration of the franchise. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1013. Abandonment of franchise Property.

(a) In the event the use of any franchise property is permanently discontinued, or no franchise has been obtained therefor, upon the expiration of or within twelve (12) months after any termination of a franchise, the grantee shall promptly remove from the streets all property involved, other than any the Board, at its sole option, may permit to be abandoned in place.

(b) A permit to abandon in place shall first be obtained from the Director of Public Works.

Nothing set forth in this section shall be deemed a taking of the property of the grantee, and the grantee shall be entitled to no surcharge by reason of anything set forth in this section.

(c) Franchise property to be abandoned in place shall be abandoned in such manner as the Board shall prescribe. Upon the abandonment of any franchise property in place, the grantee shall submit to the Board an instrument, satisfactory to the County Counsel, transferring to the County the ownership of such property. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1014. System maintenance.

Throughout the life of a grantee's franchise, and in addition to other service regulations adopted by the Board, and excepting circumstances beyond the grantee's control, such as acts of God, riots, and civil disturbances, and in providing such services, a grantee shall:

(a) Maintain all parts of its system in good condition and in accordance with standards generally observed by the cable television industry. The system shall serve individual residents, but also serve as a broad based communications source for County government, other public facilities, including hospitals, public libraries, and schools, and industrial and commercial business users;

(b) Retain sufficient employees to provide safe, adequate, and prompt service for all such residential subscribers, institutional facilities, and business users; and

(c) List system failures to minimum time duration by locating and correcting malfunctioning as promptly as is reasonably possible, irrespective of holidays or other nonbusiness hours. (§ 1, Ord. 961, eff. October 27, 1983)

Article 11. Completion

Sec. 11-1.1101. Completion.

(a) A final order of completion shall be issued by the Board when:

(1) The construction of the cable communications system has been completed within the entirety of the service area in compliance with the construction standards set forth in Article 10 of this chapter and the design and other requirements of the franchise documents;

(2) Basic service and other services identified pursuant to the provisions of Section 11-1.1303 of Article 13 of this chapter have been made available to 100 percent of the dwelling units within the service area;

(3) Any and all studio facilities, equipment, channels, and other services, resources, or benefits required by the franchise documents have been completed and made available;

(4) Any community use programming which the grantee has proposed pursuant to the provisions of Sections 11-1.901 through 11-1.905 of Article 9 of this chapter shall be ready for commencement in compliance with the franchise documents; and

(5) A notice of completion has been filed by the grantee as provided in this section.

(b) For the purposes of Section 11-1.1002 of Article 10 of this chapter and this section, basic service and other services identified pursuant to the provisions of Section 11-1.1303 of Article 13 of this chapter shall be deemed to be made available when the basic service (at rates and charges in amounts proposed within the application for the franchise and as permissibly adjusted pursuant to Section 11-1.1403 of Article 14 of this chapter or, if none are included in the application, at rates and charges in amounts customarily offered by the grantee) and other services identified pursuant to the provisions of said Section 11-1.1303 (at rates and charges in amounts customarily offered by the grantee) are offered for immediate provision to the owner or legal representative of the owner empowered to consent to the use of the property of such individual dwelling units.

(c) For the purpose of determining completion under this section, the total number of dwelling units within the service area shall be deemed to be the actual number of units available for occupancy as of a date forty-five (45) calendar days in advance of the date of the filing by the grantee of the notice of completion provided the grantee files the notice of completion with a good faith belief that it has in fact achieved completion as of the date of filing. Otherwise, the total number shall be determined as of the date on which the Board makes a final decision as to whether a final order of completion will be adopted.

(d) A grantee who asserts completion shall file a written notice of completion with the Clerk of the Board. The notice of completion shall state the total number of dwelling units available for occupancy within the service area forty-five (45) calendar days in advance of the filing of the notice, the total number of dwelling units to which basic service and other services have been made available within the service area as of the date of filing, and shall otherwise certify completion as set forth in subsection (a) of this section. Neither the notice of completion nor the statements, assertions, or certifications contained therein shall be deemed to be binding upon the Board.

(e) During the period of construction of the cable communications system or during the sixty (60) day period following the filing of the notice of completion, all elements and components thereof, and all equipment and studio facilities required by the franchise documents, shall be subject to inspection by the County, or

employees or authorized agents or representatives thereof, for the purpose of determining whether the system and related facilities comply with the franchise documents. The grantee shall authorize such inspection and provide such information and cooperation if required in order to permit an adequate investigation to determine the existence or nonexistence of such compliance. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1102. Hearings and determinations.

(a) No later than forty-five (45) calendar days following the filing of the notice of completion, the Board shall commence a public hearing with respect to the notice of completion. Written notice of the time, date, and place of the hearing shall be mailed to the concerned grantee. Notice of the time, date, place, and purpose of the hearing shall be publicized in the manner prescribed by Section 11-1.406 of Article 4 of this chapter.

During the hearing, any interested person may appear and comment upon the question of whether completion has occurred and a final order of completion should be issued. The public hearing may be continued from time to time. While the hearing is pending, the Board may direct such investigations of issues or questions raised during the hearing as it deems appropriate.

(b) During the public hearing, the Board, by resolution, may identify specific deficiencies respecting completion and decline to adopt a final order of completion pending the correction or elimination of the deficiencies so identified. If, at the conclusion of the public hearing, a final order of completion is not issued, the Board, by resolution, shall identify specific deficiencies respecting completion which shall be corrected in advance of the issuance of a final order of completion.

(c) The final order of completion shall certify completion in compliance with the terms and conditions of the franchise documents. The order shall also designate the actual date when all elements set forth in subsection (a) of Section 11-1.1101 of this article have been completed. The issuance of such a final order of completion shall constitute a determination of completion which shall be conclusive for all purposes of this chapter. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1103. Requests for arbitration.

(a) At any time on or after 120 calendar days following the date of the filing by a grantee of the notice of completion, the grantee, if a final order of completion has not been adopted by the Board, may make a written request for arbitration. If a final order of completion has been issued, and the grantee disagrees with the actual date of completion stated therein, the grantee, within

thirty (30) calendar days following the mailing to the grantee of the order, may make a written request for arbitration. The request shall be in writing, shall state the grounds therefor, and shall be filed with the Clerk of the Board.

(b) If arbitration is requested, the arbitration panel shall be selected, the hearing scheduled within the time prescribed, notice given, the hearing conducted, a decision made, and the costs divided in the manner prescribed by Sections 11-1.1214 through 11-1.1219 of Article 12 of this chapter. The discovery provisions of the California Arbitration Act (Sections 1280, et seq. of the Code of Civil Procedure of the State) shall be applicable to the arbitration proceedings under this section. The questions which may be submitted to the arbitration panel and the jurisdiction of the arbitration panel shall be limited to the following:

(1) The interpretation of the provisions of the franchise documents solely in relation to the decision required by subsection (2) of this subsection; and

(2) Whether a final order of completion should be issued and, if so, the actual date of completion, or, if an order has been issued, the actual date of completion. The jurisdiction of the arbitration panel shall not include questions of enforcement, breach, or remedies, and any such determination concerning enforcement, breach, or remedies shall be inadmissible in and without force or effect in relation to the proceedings conducted pursuant to Sections 11-1.1107 through 11-1.1110 of this article.

(c) If ordered by the arbitration panel, the Board shall issue a final order of completion not later than ten (10) calendar days following the receipt of the arbitration award. The arbitration award may be judicially enforced, shall be final, binding, and conclusive upon the parties, and shall not be subject to judicial review or vacation except on the grounds set forth in Section 1286.2 of the Code of Civil Procedure of the State. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1104. Complaints.

Any citizen who asserts there has been a violation of any of the provisions of Sections 11-1.1002 through 11-1.1014 of Article 10 of this chapter may file a written complaint asserting such violation with the Clerk of the Board. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1105. Excuses for violations.

Except as provided in this section, the violation by a grantee of any of the provisions set forth in Sections 11-1.1002 through 11-1.1014 of Article 10 of this chapter and Section 11-1.1101 of this article caused by circumstances beyond the control of the grantee shall constitute good and sufficient excuse and justification for such violations precluding the grantee from being in

breach of said sections. The following are examples of acts or omissions by a grantee or circumstances which shall be deemed not to be beyond the control of the grantee and which shall not constitute excuses or justifications for violations:

(a) The failure at any time by a grantee, or its officers, agents, or employees, to exercise diligence in planning, organizing, arranging for, or prosecuting the work of construction and installation or in taking any other action necessary to permit or facilitate the work of construction and installation;

(b) Unanticipated cost increases or insufficiency of capital with which to take the actions necessary to comply or facilitate compliance with any of the provisions of said Sections 11-1.1002 through 11-1.1014 and 11-1.1101;

(c) Considerations relating to economy or cost efficiency as respects acts or omissions by a grantee;

(d) Delays occasioned by the failure of the grantee to diligently apply for and prosecute any request for a required certificate, approval, or consent from the FCC;

(e) Delays occasioned by seasonal changes in weather or climatic conditions, such as rain (exclusive of catastrophic conditions in the nature of "acts of God") (rain delays shall not constitute an excuse or justification for violations except with respect to measurable precipitation occurring on more than fifty-nine (59) days during any period commencing July 1 and ending the next following June 30; and only if such is the proximate cause of the violation);

(f) Delays occasioned by failure to obtain approval to attach lines to poles owned by private or public utilities or in the attachment of cable to the poles provided such failure is the result of an act or omission of the grantee; and

(g) Delays occasioned by the customary and usual time required to process and secure approvals under the zoning laws of the County for the location of components of the cable communications system and other installations associated therewith, given the nature of the approval required and magnitude of the project; provided, however, if a grantee submits specific sites and plans for all headends, towers, and transmitters to the County and analyses upon all such facilities as the lead agency, any time consumed by such environmental analyses which is longer than 120 calendar days during a period subsequent to the filing of the certificate of acceptance of the franchise pursuant to Section 11-1.605 of Article 6 of this chapter shall be deemed to excuse the grantee from any violations which are proximately caused by such delay in excess of 120 calendar days.

Notwithstanding the provisions of subsections (a) through (f) of this section, a

grantee shall not be excused from any violation of the provisions of said Sections 11-1.1002 through 11-1.1014 and 11-1.1101, except for causes which are beyond the control of the grantee, and except with respect to violations which have not been contributed to or aggravated by acts or omissions by the grantee.

Except as otherwise provided in this section, violations caused exclusively by acts or omissions by the County, or its officers, agents, or employees, shall constitute an excuse and justification for the failure of a grantee to comply with the provisions of said Sections 11-1.1002 through 11-1.1014 and 11-1.1101 precluding a determination that the grantee is in breach. However, violations as a result of such exclusive causes shall not be deemed to excuse the grantee from other violations, shield the grantee from a determination that it is in breach for violations, or bar any relief for damages or otherwise as a result of such breach. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1106. Examples of excuses for violations.

Examples of circumstances beyond the control of a grantee which excuse a grantee from violation and being in breach of the provisions of Sections 11-1.1002 through 11-1.1014 of Article 10 of this chapter and Section 11-1.1101 of this article, when such violations are caused thereby, include the following: strikes; acts of public enemies; orders by military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; floods; civil disturbances; explosions; and the partial or entire failure of utilities. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1107. Enforcement proceedings.

(a) At any time and from time to time, proceedings may be commenced by the Board.

(b) The purpose of such proceedings shall be, and the powers of the Board shall include, the following:

(1) Determination of whether there has been a violation of any of the terms, conditions, or requirements set forth in Sections 11-1.1002 through 11-1.1014 of Article 10 of this chapter and Section 11-1.1101 of this article or any requirements in relation thereto established pursuant to previously conducted enforcement proceedings;

(2) Establishment of new or revised schedules for compliance with any of the terms, conditions, or requirements which are determined to have been violated;

(3) Determination of whether the grantee is in breach of any of the terms, conditions, or requirements set forth in said Sections 11-1.1002 through 11-1.1014 and 11-1.1101, or of the franchise documents with respect to the violation

of any such terms, conditions, or requirements, and, if so, the nature and extent of any such breach; and

(4) With respect to any finding of breach, determination of the remedy therefor authorized by Sections 11-1.1203 and 11-1.1204 of Article 12 of this chapter.

(c) In connection with determinations by the Board that there has been a violation of any time limit prescribed by said Sections 11-1.1002 through 11-1.1014 and 11-1.1101, the Board shall be authorized to establish new time schedules and time limitations based upon the circumstances, which shall supersede those set forth in said sections. Future enforcement proceedings pursuant to this section and Sections 11-1.1108 and 11-1.1109 of this article may be undertaken in relation to time schedules and time limitations established pursuant to prior enforcement proceedings. In the event the Board finds that a grantee has breached any of the time limitations set forth in said Sections 11-1.1002 through 11-1.1014 and 11-1.1101, or established pursuant to prior enforcement proceedings, the Board shall determine and assess the amount of liquidated damages, if any, which the grantee shall be required to pay as a result of such breach, and whether, and if so, the extent to which the term of the grantee should be reduced with respect to any such breach. Such determinations, without an appeal to arbitration or as affirmed by arbitration, shall be self-executing.

(d) In the event the Board determines that the cable communications system fails to comply with any of the requirements of the franchise documents or that the grantee has failed to provide any of the facilities or services (including those relating to community use) required by the franchise documents, the Board may determine the specific deficiencies and order the correction thereof. Such determinations, without an appeal to arbitration or as affirmed by arbitration, shall be self-executing. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1108. Commencement of enforcement proceedings.

(a) The Board shall commence enforcement proceedings by scheduling a hearing for the purpose of inquiring into the matters specified in Section 11-1.1107 of this article. Written notice of the time, date, and place of the hearing shall be mailed to the grantee and to the grantee's surety on the performance bond filed pursuant to Section 11-1.1508 of Article 15 of this chapter not later than thirty (30) calendar days in advance of the date of the commencement of the hearing. The notice shall state the reasons for the hearing, identify the terms, conditions, or requirements alleged to be violated, and generally describe the areas or subject matter with respect to which the violations are alleged to have been committed.

(b) The hearing may be conducted either by the Board or, at the sole discretion of the Board, by a hearing officer appointed by the Board to conduct the hearing. Any such hearing officer shall be an attorney licensed to practice under the laws of the State who shall not be an officer or employee either of a grantee or the County.

(c) The cost of providing quarters for the hearing, the compensation for the hearing officer, if any, and the per diem cost of any reporter retained to record the proceedings shall be borne by the County. The cost of preparing a transcript and record of the hearing shall be borne by the grantee. All costs incurred by the parties for attorneys' fees, expert witness fees, or other expenses shall be borne solely by the party incurring the costs. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1109. Conduct of hearings.

(a) All witnesses testifying at the enforcement hearing shall be sworn. Witnesses shall be subject to direct and cross examination. However, formal rules of evidence applicable to the trial of civil or criminal proceedings in the trial courts of the State shall not be applicable to the hearing. The provisions of the Administrative Procedure Act, commencing at Section 11500 of the Government Code of the State, or any successor legislative enactment, shall not be applicable to any such hearing. The burden of proving violations by the grantee of the franchise documents shall be borne by the party presenting the charges, and the burden of proving excuses from performance shall be borne by the grantee. The hearing may be continued from time to time.

(b) If the hearing is conducted by a hearing officer, the officer, upon the conclusion of the hearing, shall prepare a recommended decision which includes findings of fact, conclusions, and all determinations authorized by Section 11-1.1107 of this article. The recommended decision shall be filed with the Clerk of the Board and mailed to the parties not later than thirty (30) calendar days after the conclusion of the hearing. Upon the receipt of such a recommended decision, the Board, without a hearing except as otherwise required as follows, may either:

(1) Adopt the findings of fact, conclusions, and determinations contained in the recommended decision;

(2) Adopt the findings of fact and conclusions contained in the recommended decision, modify the determinations, and adopt the recommended decision as so revised;

(3) Based upon the record of the hearing, modify the findings of fact, conclusions, or determinations and adopt the recommended decision as so revised; or

(4) Reject the recommended decision and conduct a new hearing.

(c) If the hearing is conducted by the Board, upon the conclusion of the hearing the Board shall adopt a decision which includes the findings of fact, conclusions, and determinations authorized by Section 11-1.1107 of this article. Copies of the decision adopted by the Board shall be mailed to the parties. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1110. Arbitration of enforcement proceedings.

(a) Not later than thirty (30) calendar days following the date of the mailing to the grantee of the decision by the Board, the grantee shall be authorized to appeal the decision or any portion thereof to arbitration by filing a written notice of appeal with the Clerk of the Board. The notice of appeal shall specifically identify the determination or determinations from which the appeal is taken, and the grounds therefor, and shall be accompanied by a fee equal to the estimate by the Clerk of the Board of the cost of preparing the transcript and record of the hearing or hearings. In the event the grantee fails to file the notice of appeal within the time and in compliance with the requirements prescribed in this subsection, the determinations by the Board shall become final, binding, and conclusive and not subject to review or reversal by any authority. Judicial enforcement of such determinations may be sought.

(b) Except as otherwise provided in this section, the arbitration panel shall be selected, the hearing scheduled within the time prescribed, notice given, the hearing conducted, a decision made, and the costs divided in the manner prescribed by Sections 11-1.1214 through 11-1.1218 of Article 12 of this chapter.

(c) The questions which may be submitted to the arbitration panel and the jurisdiction of the panel shall be limited to a decision as to whether the findings of fact by the Board are supported by substantial evidence in the record and whether the conclusions by the Board are consistent with the provisions of the franchise documents as interpreted by the arbitration panel. The powers of the arbitration panel shall be limited to a conclusion as to whether the decision by the Board from which the appeal is taken should be affirmed, or reversed and remanded to the Board for further determination, and interpretation of the provisions of the franchise documents solely in relation to the review of the decision by the Board.

(d) The hearing by the arbitration panel shall not be a trial de novo, and the sole function of the panel shall be to review the record of the hearing preceding the decision by the Board to decide whether there was substantial evidence in the light of the whole record to support the findings and to interpret the franchise documents in relation to the decision by the Board. No new evidence shall be introduced, received, or

considered by the arbitration panel; provided that where the panel finds there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing preceding the arbitration, the panel may remand the matter to the Board to be reconsidered in the light of such evidence. The determination by the Board shall be sustained by the arbitration panel if it finds that there is substantial evidence in the record to sustain the determination and that the conclusions are consistent with the provisions of the franchise documents. The panel shall not substitute its discretion for that of the Board with respect to the determinations made by the Board or reweigh or otherwise judge the credibility of the evidence presented during the hearing preceding the Board's decision. If the panel decides that the determinations by the Board violate the provisions of the franchise documents, the panel shall remand the matter to the Board for further determinations, reserving jurisdiction to review the determinations. Objections by the grantee to the determinations by the Board which were not presented during the hearing preceding the Board's decision shall be deemed to have been waived.

(e) The decision by the Board as affirmed by an arbitration award may be judicially enforced and shall not be subject to judicial review or vacation, except on the grounds set forth in Section 1286.2 of the Code of Civil Procedure of the State to the extent such grounds are consistent with the express terms of this chapter. (§ 1, Ord. 961, eff. October 27, 1983)

Article 12. Remedies

Sec. 11-1.1201. Crimes.

Violations of the provisions of Sections 11-1.413 of Article 4 of this chapter, 11-1.603 of Article 6 of this chapter, and 11-1.1314 of Article 13 of this chapter shall constitute a misdemeanor. With the foregoing exceptions, a violation of the provisions of this chapter shall not constitute a misdemeanor, infraction, or other crime. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1202. Impracticality of ascertaining damages.

At the time of the issuance of any franchise under the provisions of this chapter, it will be impractical to reasonably ascertain the total extent of damages which may be incurred as a result of the breach by the grantee of its obligations under the franchise documents as prescribed by Section 11-1.1203 of this article. The provisions of said Section 11-1.1203 shall apply in the event of a breach as liquidated damages therefor. Factors relating to the impracticality of ascertaining damages shall include, but are not limited to, the following:

(a) The facts that:

(1) The primary damage resulting from breaches by the grantee of the schedules for the construction and extension of the cable communications system and provision of services prescribed by Sections 11-1.1002 through 11-1.1014 of Article 10 of this chapter and Section 11-1.1101 of Article 11 of this chapter, and of the duty prescribed pursuant to said Section 11-1.1101, and of the duty prescribed pursuant to Section 11-1.817 of Article 8 of this chapter will be to members of the public who are denied services or denied quality or reliable services;

(2) Such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the franchise to individual members of the general public in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms;

(3) That services might be available through the cable communications system which are both necessary and available at a substantially lower cost than alternative services, and the monetary loss resulting from the denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and

(4) The termination of a franchise for such breaches and other remedies is, at best, a means of future correction and not a remedy which makes the public whole for past breaches;

(b) The fact that the failure of a grantee to make timely reports identifying its progress in installing its cable communications system within service areas will make it difficult in ways which are not measureable for the County to administer the construction schedule, delay initiation to enforcement proceedings, and impede compliance with the periods allowed for construction; and

(c) The fact that the failure of a grantee to file timely annual reports will deny information necessary to enable the County to expeditiously, effectively, and efficiently administer the franchise and exercise its regulatory powers in relation thereto for the promotion and protection of the public convenience, health, safety, and welfare.

Without the provisions of Section 11-1.1203 of this article, the actual damages for which a grantee would be liable could greatly exceed the specified amount of liquidated damages. Therefore, the provisions of said Section 11-1.1203 are of benefit to a grantee. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1203. Liquidated damages: Amount.

(a) The Board shall assess a grantee, and the grantee shall be liable, for liquidated damages in the amount of One Thousand and no/100ths (\$1,000.00) Dollars for each calendar day on which a grantee is in breach and for each

breach of any of the provisions of any of the following: Sections 11-1.1002 through 11-1.1014 of Article 10 of this chapter and Section 11-1.1101 of Article 11 of this chapter; the time limitations prescribed pursuant to Section 11-1.1107 of Article 11 of this chapter; or Section 11-1.817 of Article 8 of this chapter. Such liquidated damage sum shall be separately applicable to each calendar day of delay in complying with the provisions of subsections (a) through (e) of said Section 11-1.1002 and separately applicable for each calendar day of delay in complying with any of the provisions of said Section 11-1.1002. Such liquidated damage sum shall be separately applicable to each calendar day of delay in complying with each approval or the conditions thereof issued pursuant to the provisions of said Section 11-1.1005.

(b) The Board shall assess a grantee, and the grantee shall be liable, for liquidated damages in the amount of Five Hundred and no/100ths (\$500.00) Dollars for each calendar day in excess of twenty (20) calendar days the grantee is in breach of any of the provisions of Section 11-1.1316 of Article 13 of this chapter. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1204. Reduction in term.

In addition to the liquidated damages set forth in Section 11-1.1203 of this article, in its sole discretion, the Board may reduce the term of any franchise one calendar month for each cumulative thirty (30) calendar days in excess of the first thirty (30) calendar days a grantee is in breach of any of the provisions of Section 11-1.1002 of Article 10 of this chapter. The purpose of this section is to authorize the Board, after a grantee has been in breach of said provisions of said section for the first thirty (30) calendar days, to reduce the term of the franchise for subsequent delays caused by the grantee's breach on a month-to-month basis. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1205. Collection of damages.

(a) The County Auditor-Controller shall charge and transfer from the security fund established pursuant to Section 11-1.1509 of Article 15 of this chapter to the credit of the County such amounts as are assessed as liquidated damages by determinations of the Board pursuant to Section 11-1.1109 of Article 11 of this chapter which are not appealed to arbitration and become final, or which are affirmed by an arbitration panel under the provisions of Section 11-1.1110 of Article 11 of this chapter.

(b) With respect to breaches of any of the provisions of Sections 11-1.1315 of Article 13 of this chapter or 11-1.817 of Article 8 of this chapter, the Board shall determine the amount of liquidated damages to be assessed and mail

notice thereof to the grantee. Such a notice may provide for assessments for breaches occurring in advance of the notice and for periods of breach subsequent to the issuance of the notice pending compliance by the grantee. The determinations by the Board shall become final, binding, and conclusive, not subject to judicial review or reversal by any authority, and judicially enforceable, unless, within thirty (30) calendar days following the date of the mailing of the notice of the determination, the grantee files with the Clerk of the Board a written notice appealing the determination to arbitration pursuant to the provisions of Section 11-1.1206 of this article. The notice of appeal shall specifically identify the grounds for the appeal. The County Auditor-Controller shall charge and transfer from the special account established pursuant to said Section 11-1.1509 to the credit of the County such amounts as are assessed as liquidated damages by determinations of the Board pursuant to this subsection which are not appealed to arbitration and become final or which are affirmed by an arbitration panel under said Section 11-1.1206.

(c) With respect to breaches of any of the provisions of Section 11-1.1502 or 11-1.1503 of Article 15 of this chapter, the County Auditor-Controller shall charge and transfer from the special account established pursuant to said Section 11-1.1509 to the credit of the County such amounts as are assessed as franchise fees, interests, and liquidated damages by determinations of the Board pursuant to Section 11-1.1506 of Article 15 of this chapter which are not appealed to arbitration and become final or which are affirmed by an arbitration panel under said Section 11-1.1506, or such amounts of franchise fees, interests, and liquidated damages as are prescribed by a judgment of a court.

(d) The County Auditor-Controller shall mail notice to the grantee of transfers from the special account. The notice shall identify the amount of transfer, the balance of the account after transfer (including accumulated interest), and the total amount, if any, which the grantee is required to pay in order to replenish the account in accordance with the requirements of said Section 11-1.1509.

(e) Any amount owing by a grantee in excess of the current balance within the special account established pursuant to said Section 11-1.1509 may be recovered from the surety on the performance bond filed pursuant to the provisions of Section 11-1.1508 of Article 15 of this chapter or from the grantee. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1206. Liquidated damage arbitration proceedings.

(a) With a request for arbitration proceedings conducted pursuant to the provisions of

subsection (b) of Section 11-1.1205 of this article, the arbitration panel should be selected, the hearing scheduled within the time prescribed, notice given, the hearing conducted, a decision made, and the costs divided in the manner prescribed by Sections 11-1.1214 through 11-1.1219 of this article. The questions which may be submitted to the arbitration panel and the jurisdiction of the arbitration panel shall be limited to the following:

(1) The interpretation of the provisions of the franchise documents solely in relation to the decision required by subsection (b) of this section; and

(2) The amount, if any, owing by the grantee. The grantee shall immediately pay any amount determined to be owing by the arbitration panel.

(b) The arbitration award may be judicially enforced, shall be final, binding, and conclusive upon the parties, and shall not be subject to judicial review or vacation, except on the grounds set forth in Section 1286.2 of the Code of Civil Procedure of the State. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1207. Alternative remedies.

Neither the reduction of the term of the franchise nor liquidated damages shall be deemed to be the exclusive remedy for the types of breaches identified in Section 11-1.1203 of this article. Neither the right to assess liquidated damages, nor the assessment of liquidated damages, nor the right to reduce, nor the reduction of the term of the franchise shall be deemed to bar or otherwise limit the right of the County to obtain judicial enforcement of the grantee's obligations by means of specific performance, injunctive relief, mandate, or other remedies at law or in equity, other than monetary damages. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1208. Termination of franchises.

The following material breaches of the obligations of a grantee under the franchise documents shall constitute grounds for the termination of a franchise by the County:

(a) Cumulative unexcused delays in excess of 180 calendar days in complying with the provisions of subsection (c) of Section 11-1.1002 of Article 10 of this chapter or beyond the times prescribed pursuant to Section 11-1.1107 of Article 11 of this chapter in relation to subsection (c) of said Section 11-1.1002;

(b) The failure of a grantee to make any payment to replenish the security fund established under Section 11-1.1509 of Article 15 of this chapter within the time required by said section;

(c) Any violation of Sections 11-1.1601, 11-1.1604, or 11-1.1607 of Article 16 of this chapter;

(d) The failure to make any disclosure of fact within the application for the franchise which is

required by this chapter, or a request for proposals, or the misrepresentation of such a fact in the application;

(e) The willful failure to make any payment required by Section 11-1.1502 of Article 15 of this chapter; or

(f) Any other act or omission by the grantee which materially violates the terms, conditions, or requirements of the franchise documents, or any other directive, rule, or regulation issued thereunder, and which is not corrected or remedied within thirty (30) calendar days following the mailing to the grantee of written notice of the violation or within such period beyond the thirty (30) calendar days as is reasonable. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1209. Commencement of termination proceedings.

(a) The Board shall not determine that a franchise shall be terminated either upon grounds identified by Section 11-1.1208 of this article or pursuant to subsection (k) of Section 11-1.411 of Article 4 of this chapter until a hearing has been conducted upon the matter. Written notice of the time, date, and place of the hearing shall be mailed to the grantee and to the grantee's surety on the performance bond filed pursuant to Section 11-1.1508 of Article 15 of this chapter not later than thirty (30) calendar days in advance of the date of the commencement of the hearing. The notice shall state the reasons for the hearing, describe the basis for termination, and identify the terms, conditions, or requirements with respect to which the breach has occurred, if a breach is the basis for termination.

(b) The hearing may be conducted either by the Board or, at the sole discretion of the Board, by a hearing officer appointed by the Board to conduct the hearing. Any such hearing officer shall be an attorney licensed to practice under the laws of the State.

(c) The cost of providing quarters for the hearing, the compensation for the hearing officer, if any, and the per diem cost of any reporter retained to record the proceedings shall be borne by the County. The cost of preparing a transcript and record of the hearing shall be borne by the grantee. All costs incurred by the parties for attorneys' fees, expert witness fees, and other expenses shall be borne solely by the party incurring the costs. (§ 1, Ord. 961, eff. October 27, 1983, as amended by § 11, Ord. 999, eff. March 7, 1985)

Sec. 11-1.1210. Conduct of hearings.

(a) All witnesses testifying at the hearing concerning termination shall be sworn. Witnesses shall be subject to direct and cross examination. However, formal rules of evidence applicable to the trial of civil and criminal proceedings in the trial courts of the State shall not be applicable to

the hearing. The provisions of the Administrative Procedure Act, commencing at Section 11500 of the Government Code of the State, or any successor legislative enactment, shall not be applicable to any such hearing. The hearing may be continued from time to time.

(b) If the hearing is conducted by a hearing officer, the officer, upon the conclusion of the hearing, shall prepare a recommended decision which includes findings of fact and conclusions. The recommended decision shall be filed with the Clerk of the Board and mailed to the parties not later than thirty (30) calendar days after the conclusion of the hearing. Upon the receipt of such a recommended decision, the Board, without a hearing except as otherwise required as follows, may either:

(1) Adopt the recommended decision, including findings of fact and conclusions submitted by the hearing officer;

(2) Adopt the findings of fact and conclusions contained in the recommended decision, modify the decision, and adopt the recommended decision as so revised; or

(3) Based upon the record of the hearing, modify the findings of fact, conclusions, or decision and adopt the recommended decision as so revised.

(c) If the hearing is conducted by the Board, upon the conclusion of the hearing, the Board shall adopt a decision which includes findings of fact and conclusions.

(d) If the decision by the Board is that there are grounds for the termination of the franchise and that the franchise should be terminated, the Board shall adopt a resolution which terminates the franchise and includes its decision. The effective date of the termination shall be such date as is prescribed by the Board, within its sole discretion, in the resolution, and the effective date may be made variable in relation to whether an appeal to arbitration is filed pursuant to Section 11-1.1211 of this article. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1211. Appeals to arbitration.

(a) Not later than thirty (30) calendar days following the date of the mailing to the grantee of the resolution of termination by the Board, the grantee shall be authorized to appeal to arbitration the determination to terminate the franchise. The appeal shall be taken by filing a written notice thereof with the Clerk of the Board. The notice of appeal shall state the specific reasons for the appeal and shall be accompanied by a fee equal to the estimate by the Clerk of the Board of the cost of preparing the transcript and record of the hearing. In the event the grantee fails to file the notice of appeal with the accompanying fee within thirty (30) calendar days following the date on which a copy of the resolution of termination was mailed to the

grantee, the termination of the franchise shall become final, binding, and conclusive and not subject to review or reversal by any authority. Judicial enforcement of the decision may be sought.

(b) Except as otherwise provided in this section, the arbitration panel shall be selected, the hearing scheduled within the time prescribed, notice given, the hearing conducted, a decision made, and the costs divided in the manner prescribed by Sections 11-1.1214 through 11-1.1219 of this article.

(c) The questions which may be submitted to the arbitration panel and the jurisdiction of the panel shall be limited to a decision as to whether the evidence received during the hearing preceding the determination by the Board established a basis for the termination of the franchise and interpretation of the provisions of the franchise documents solely in relation to the question of whether there was a basis for termination. Under no circumstances shall the arbitration panel have authority to be vested with jurisdiction to review, reverse, or otherwise nullify the exercise of discretion by the Board in terminating the franchise if the panel determines there are grounds for termination.

(d) The hearing by the arbitration panel shall not be trial de novo, and no new evidence shall be introduced, received, or considered, and the sole function of the panel shall be to review the record of the hearing preceding the decision by the Board to decide whether there was substantial evidence in the record to support the findings and to interpret the franchise documents in relation to the decision by the Board. The Board's determination to terminate shall be sustained by the arbitration panel if it finds that there is substantial evidence in the record to sustain the determination and that the conclusions are consistent with the provisions of the franchise documents. In determining whether there is substantial evidence in the record to support the findings, the panel shall conduct an independent review of the evidence in the record and determine the weight of the evidence contained in the record. The panel shall not substitute its discretion for that of the Board with respect to the determination to terminate. If the panel decides that the determination by the Board to terminate violates the provisions of the franchise documents, the panel shall remand the matter to the Board for further determination, reserving jurisdiction to review the determination. However, such remand shall not include a duty to receive further evidence, unless such evidence was initially offered and excluded during the hearing preceding the Board's decision. Objections by the grantee which were not presented during the hearing preceding the Board's decision shall be deemed to have been waived.

(e) The decision by the Board as affirmed by the arbitration award may be judicially enforced, shall be final, binding, and conclusive upon the parties, and shall not be subject to judicial review or vacation, except on the grounds set forth in Section 1286.2 of the Code of Civil Procedure of the State to the extent such grounds are consistent with the express terms of this chapter. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1212. Acquisition of property.

Upon the final determination to terminate the franchise pursuant to Section 11-1.1210 or 11-1.1211 of this article, the Board, in its sole discretion, shall be authorized to purchase the property associated with the franchise as defined by Section 11-1.702 of Article 7 of this chapter. The purchase of the property shall be made in accordance with the standards, procedures, and provisions set forth in Sections 11-1.701 through 11-1.714 of Article 7 of this chapter. No compensation shall be payable by the County or its assignee in relation either to the termination of the franchise or purchase of the property, except pursuant to and in accordance with said Sections 11-1.701 through 11-1.714. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1213. County's right to operate systems.

In the event a grantee fails to operate its cable communications system for seven (7) consecutive days without prior approval by the Board and for reasons which are not beyond its control, the County, through its officers, agents, employees, or contractors, at its option, may enter upon the premises of the grantee, occupy such premises and property constituting the cable communications system, and operate the system until such time as the grantee presents proof satisfactory to the Board that the grantee is ready, willing, and able to renew the operation of the system. In operating the system, the County or its contractor shall be authorized to contract in the name of the grantee, incur expenses in the name of the grantee, and take any and all other actions necessary to enable it to effectuate the purposes of this section. The costs incurred by the Board in undertaking such operation shall be a charge against the assets of the grantee, and the County or its contractor shall be authorized to reimburse itself for the costs incurred from revenues received during the period of operation. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1214. Arbitration proceedings.

Except as otherwise provided by this chapter, arbitration proceedings of matters expressly made arbitrable under the provisions of this chapter shall be conducted in compliance with the provisions of the California Arbitration Act, commencing with Section 1280 of the Code

of Civil Procedure of the State. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1215. Arbitration panel.

(a) Each arbitration panel shall be conducted by a panel of three (3) arbitrators. One arbitrator shall be appointed by the grantee, one arbitrator shall be appointed by the County, and the third arbitrator shall be the chairperson of the panel and shall be appointed by the other two (2) arbitrators. If the other two (2) arbitrators are unable to agree upon an appointment, the third arbitrator shall be appointed by the presiding judge of the Superior Court of the County. Each member of the arbitration panel shall be an attorney licensed to practice within the courts of the State. No member of the panel shall be an officer, employee, or attorney of any grantee, or any affiliate thereof, or of the County.

(b) The grantee and the Board shall each appoint its arbitrator and mail notice to the other of its selection not later than fifteen (15) calendar days following the filing of a notice of appeal to arbitration or the mailing of the initiation of arbitration. The third arbitrator shall be appointed no later than thirty (30) calendar days following the filing of the notice of the appeal to arbitration or the mailing of the initiation of arbitration. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1216. Arbitration hearings.

The chairperson of the arbitration panel shall select the site of the hearing, retain a stenographic reporter to report the hearing, and, in consultation with the other members of the panel and the parties, schedule the hearing. The hearing shall be scheduled to commence not later than seventy-five (75) calendar days following the filing of the notice of appeal to arbitration or the mailing of the initiation of arbitration. The chairperson of the panel shall mail written notice of the time, date, and place of the hearing to the other two (2) arbitrators, the grantee, and the grantee's surety on the performance bond filed pursuant to the provisions of Section 11-1.1508 of Article 15 of this chapter not later than twenty (20) calendar days in advance of the hearing. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1217. Costs of arbitration.

(a) The compensation and expenses of the arbitrator appointed by the grantee shall be borne and paid solely by the grantee. The compensation and expenses of the arbitrator appointed by the Board shall be borne and paid solely by the County. The grantee and County shall each bear and solely pay their own costs of attorneys' fees, expert and other witness fees, and other expenses incurred in preparing and prosecuting their respective cases. In proceedings where the record of a public hearing

of the Board is to be considered by the arbitration panel, the costs of transcribing, typing, and copying the record shall be borne and paid solely by the grantee.

(b) The compensation and expenses of the chairperson of the arbitration panel, rental, if any, for the place of the hearing, per diem costs of the stenographic reporter, costs of transcribing the typing of any transcripts of the arbitration hearing, and any other costs of the arbitration proceeding not identified in subsection (a) of this section shall be divided equally between, borne, and paid by the grantee and the County. The arbitration panel shall not be empowered to order a division of costs, fees, or expenses different from that prescribed by this section. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1218. Arbitration awards.

The arbitration award shall be determined by a majority of the members of the arbitration panel and shall be in writing. If it is necessary for the panel to make determinations of fact, the panel shall include findings of fact and conclusions with the award if requested by any party to the proceeding. The award shall be issued and mailed to the parties not later than ninety (90) calendar days following the close of the arbitration hearing. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1219. Limitations of powers.

The arbitration panel shall have no authority to add to, delete, or alter any provision of the franchise documents but shall limit its interpretation to the express terms of the franchise documents. Under no circumstances shall an arbitration panel be vested with authority or jurisdiction to determine or award monetary damages (by way of setoff, counterclaim, directly, or otherwise) or any other relief against the County, or its officers, agents, or employees, except with respect to proceedings under Section 11-1.710 or 11-1.711 of Article 7 of this chapter to determine the value of property and, in such instances, any of the property according to the expressed terms and standards of the franchise documents. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1220. Alternative remedies.

No provision of this chapter shall be deemed to bar the right of the County to seek or obtain judicial relief from a violation of any provision of the franchise documents or any rule, regulation, requirement, or directive promulgated thereunder. Neither the existence of other remedies identified in this chapter nor the exercise thereof shall be deemed to bar or otherwise limit the right of the County to recover monetary damages (except where liquidated damages are otherwise prescribed) for such violation by the grantee, or judicial enforcement

of the grantee's obligations by means of specific performance, injunctive relief, or mandate, or any other judicial remedy at law or in equity. (§ 1, Ord. 961, eff. October 27, 1983)

Article 13. Franchise Services

Sec. 11-1.1301. Purposes.

(a) Whereas cable communications services have traditionally been limited to television programming primarily for the purposes of entertainment, advancing technology permits the delivery of a new generation of interactive services which invade non-entertainment commercial fields and may extend from the provision of burglar alarm services to services which permit the subscriber to shop or bank from his or her home and receive a vast array of professional, technical, educational, and other information, to medical, fire protection, and other emergency services, and to types of services which are yet unidentified.

(b) Such services promise significant benefit to the Yolo County community. They also potentially generate regulatory needs, the exact nature and scope of which are impossible to predict, and the enforceability of which could be time consuming and expensive should a grantee refuse to comply. The need to regulate could extend to:

- (1) Potentially unfair and unlawful competitive practices by a grantee in operating and utilizing the cable communications system to provide services;
- (2) Inadequate maintenance or repair by the grantee of the cable communications system;
- (3) Invasion of the privacy of subscribers;
- (4) Unethical or unfair business practices in relation to subscribers or others; and
- (5) A variety of other regulatory measures which are necessary to protect the health, safety, or welfare of inhabitants of the Yolo County community.

(c) The provisions of this chapter address such issues by, with few exceptions, placing no limit upon the services which a grantee may provide, mandating few services, prescribing general duties and responsibilities in relation to future public interest issues, and making no attempt, with few exceptions, to limit the services which a grantee may provide to those which may be listed in the grantee's proposal, and reserving broad authority to amend the provisions of this article under Section 11-1.410 of Article 4 of this chapter.

(d) The purposes of this chapter and this article are to:

- (1) Reserve and vest broad regulatory authority in the County in order to enable it to enact future regulations which are tailored to address the problems requiring regulation and to avoid sensitive constitutional issues which may

arise in attempts to regulate the operation of a cable communications system; and

(2) Establish general regulatory guidelines defining the rights, duties, and responsibilities of a grantee and the County which may be made more specific, expanded, or otherwise modified to meet future regulatory needs by regulations enacted by the County or the amendment of this article. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1302. System ownership.

Legal and equitable title to the cable communications system, including any and all studio facilities and production equipment provided for community use, the institutional network, and all channels of whatever kind or nature, shall be vested in the grantee. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1303. Services.

(a) Within a service area, the services provided by the grantee through its cable communications system upon both the subscriber and institutional networks shall be offered uniformly upon nondiscriminatory terms to subscribers and users and shall not differ based upon geographical location.

(b) Each application and renewal application for a franchise shall contain schedules of all home educational and entertainment programming proposed to be shown on either the subscriber network or institutional network. The applications shall show for each service area:

(1) All tiers of service;

(2) The number of activated and the number of programmed channels within each tier of service offered at the subscription rate applicable to the tier, together with an identification of the tier placement of any channels allocated pursuant to Sections 11-1.903, 11-1.904, 11-1.906, and 11-1.907 of Article 9 of this chapter;

(3) A description of all programming from satellite and other sources to be offered on each such channel within each tier of service (including program descriptions) within the times prescribed by Section 11-1.1002 of Article 10 of this chapter;

(4) A statement of the minimum number of hours per day and week programs or types of programming described in subsection (3) of this section will be shown within the times prescribed by said Section 11-1.1002;

(5) A statement of the minimum number of hours per day and week each channel within each tier of service will contain home educational and entertainment programming which has not previously been broadcast within the Yolo County community; and

(6) A statement of all premium services to be offered within each tier of service, together with program descriptions of each such service, and the minimum number of hours per day and week each such service will be available within each

tier of service within the times prescribed by said Section 11-1.1002.

(c) The provisions of subsections (3), (4), (5), and (6) of subsection (b) of this section shall not be applicable to channels described by Section 11-1.303 of Article 3 of this chapter.

(d) Each application for a franchise shall also contain a description of such non-entertainment services (whether or not of an interactive nature) as the applicant offers to provide on either the subscriber network or institutional network throughout the term of the franchise. For each such service, applications shall show:

(1) The nature, scope, and extent of each service;

(2) For each service, any restrictions relating to the geographical location of delivery and the class of customer or recipient of service;

(3) Schedules of all rates and charges under which each service will be offered to customers or recipients;

(4) The names and addresses for each service of the proposed provider of the service. If the County expressly requests, either in the request for proposals or during the review period, the applicant shall provide the County with a copy of the contract or other legal instrument between the grantee and the provider; and

(5) Such other information by amendment to the application as may be required during the public hearing referred to in subsection (e) of this section.

(e) During the public hearings prior to the tentative selection of a grantee conducted pursuant to Section 11-1.602 of Article 6 of this chapter, the Board, in its sole discretion, may determine which, if any, such non-entertainment services shown in the application of the applicant, if selected as the grantee, would be vested with a contractual right and duty to perform throughout the term of the franchise. Any such identification may be accompanied by such conditions as are determined to be appropriate, including, but not limited to, conditions relating to the nature and extent of the service provided, the terms and conditions of the provision, and opportunities for the use of the cable communications system by others, including the circumstances under which leased access for such purposes will be provided. Any services so identified, together with the conditions thereof, shall be prescribed in the ordinance offering the franchise to the extent they appear in the application filed by the grantee. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1304. Non-entertainment service rights and duties.

(a) A grantee's rights and duties respecting the provision of non-entertainment services (whether or not of an interactive nature) on either the subscriber or institutional networks during the term of the franchise shall be as follows:

(1) A grantee shall be authorized, but not vested with a contractual right or duty, to provide services which either:

(i) Have been identified in its application but have not been prescribed by the ordinance offering the franchise; or

(ii) Have not been described, specified, or identified either in the application or ordinance offering the franchise. The authorization shall be subject to modification through regulation or revocation (by prohibiting the service) pursuant to Section 11-1.1305 of this article.

(2) A grantee shall be vested with a contractual right and duty to provide the services prescribed by the ordinance offering the franchise during the entire term of the 11-1.1303 franchise. Such services shall be provided in compliance with all conditions prescribed by the ordinance. Pursuant to said Section 11-1.305, such services may be regulated, and the conditions applicable thereto set forth in the resolution may be modified or expanded; provided, however, no such service shall be prohibited.

(b) A grantee providing a non-entertainment service or desiring to offer or provide such a non-entertainment service which has not been identified in the ordinance offering the franchise (whether or not the service has been described in the grantee's application), at any time during the term of the franchise, may file with the Clerk of the Board a written request for the approval of the vesting thereof. The written request shall contain such information as is required by the Board. Not later than thirty (30) calendar days following the date of the filing of the request for approval, the Board shall commence a public hearing thereon, notice of which shall be given in the manner prescribed by Section 11-1.406 of Article 4 of this chapter. At the conclusion of the public hearing, the Board, in its sole discretion, may either approve or disapprove the proposed service. If the service is approved, the approval may be granted upon such conditions as are described by subsection (e) of Section 11-1.1303 of this article. A grantee, from and after the date of such approval, shall be vested with a contractual right and duty to provide such a service subject to the following limitations. The service shall be provided in compliance with all conditions prescribed by the approval. Pursuant to Section 11-1.1305 of this article, such service may be regulated, and the conditions set forth in the approval may be modified or expanded, but no such service may be prohibited. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1305. Regulation of non-entertainment services.

(a) No non-entertainment service (whether or not of an interactive nature) provided through the cable communications system shall be provided

or operated in a manner which is detrimental to the public peace, health, safety, or welfare.

(b) The Board, from time to time, during the term of a franchise, after public hearings, notice of which is given in the manner prescribed by Section 11-1.406 of Article 4 of this chapter, and subject to the Act, may exercise the following powers:

(1) Prohibit or adopt rules or regulations governing the provision of the manner of operation or the provision of a non-entertainment service which either has been described by the application for the franchise but not identified in the ordinance offering the franchise, or which has not been described, identified, or specified either in the application or ordinance offering the franchise, and which has not been approved pursuant to subsection (b) of Section 11-1.1304 of this article; or

(2) Adopt rules or regulations governing or modifying or adding conditions relating to the provision or manner of operation or provision of a non-entertainment service which has either been identified by the franchise agreement or approved pursuant to subsection (b) of said Section 11-1.1304.

(c) A grantee shall comply with any such conditions, rules, or regulations; provided, however, with respect to any service identified by the ordinance offering the franchise or approved pursuant to subsection (b) of said Section 11-1.1304, a grantee shall be authorized to terminate the service in lieu of complying with the conditions, rules, or regulations applicable thereto adopted pursuant to this section.

(d) The powers of the Board under this section are coextensive with those which are authorized by laws of the State or United States and with those defined by the police power expressed by Section 7 of Article XI of the Constitution of the State. A grantee shall not, in relation to this section, be deemed to have contractually or otherwise waived any constitutional right which would otherwise be applicable to a franchised cable communications operator. (§ 1, Ord. 961, eff. October 27, 1983, as amended by § 12, Ord. 999, eff. March 7, 1985)

Sec. 11-1.1306. Educational and entertainment services.

(a) Subject to the provisions of this section and the authority reserved by Section 11-1.1307 of this article, a grantee shall be deemed to be vested with a contractual right and duty to provide those home educational and entertainment services identified in its application.

(b) It is understood that with respect to home educational and entertainment programming on either the subscriber or institutional networks, the broad categories of video programming which a

grantee has elected to propose in its application are among the material factors which are considered in selecting the grantee.

(c) It is also understood that changing circumstances, including marketing strategy, program availability, and other factors, may require that particular cable services identified in the grantee's application pursuant to Section 11-1.1303 of this article will be rearranged, replaced, or removed from time to time during the term of the franchise.

(d) Therefore, a grantee shall be authorized to alter the particular cable services from time to time during the term of a franchise but may not, in so doing, materially reduce or eliminate the broad categories of video programming which have been identified in the grantee's application and the franchise ordinance without the prior consent of the Board obtained in accordance with subsection (a) of Section 625 of the Act. (§ 1, Ord. 961, eff. October 27, 1983, as amended by § 12, Ord. 999, eff. March 7, 1985)

Sec. 11-1.1307. Regulation of educational and entertainment services.

(a) No home educational or entertainment service provided through a cable communications system shall be provided or operated in a manner which is detrimental to the public peace, health, safety, or welfare. The provisions of this section shall not be self-executing, shall not be deemed to authorize the County or any other public authority to establish bans upon services in advance of the offering thereof, and may be invoked solely pursuant to the procedure set forth in this section.

(b) If the Board determines that there is reason to believe that a particular service provided through a cable communications system is of a type or is otherwise provided in a manner which is detrimental to the public peace, health, safety, or welfare, the Board shall schedule a public hearing. Written notice identifying the service or services or method or provision subject to the determination shall be mailed to the grantee not later than thirty (30) days in advance of the hearing. Notice of the hearing shall be given in the manner prescribed by Section 11-1.406 of Article 4 of this chapter. If, at the conclusion of the public hearing, the Board determines that a service is being provided of a type or in a manner which is detrimental to the public peace, health, safety, or welfare, the Board may enact regulations which prohibit the services or otherwise regulate the manner of the provision thereof, as the case may be, and may enforce the regulation by appropriate action in the courts of the State.

(c) The powers of the Board under this section shall be coextensive with those which are authorized by laws of the State or United States and with those defined by the police power

expressed by Section 7 of Article XI of the Constitution of the State. A grantee shall not, in relation to this section, be deemed to have contractually or otherwise waived any constitutional right or right provided by the Act which would otherwise be applicable to a franchised cable communications operator. (§ 1, Ord. 961, eff. October 27, 1983, as amended by § 12, Ord. 999, eff. March 7, 1985)

Sec. 11-1.1308. Subscriber antennas.

No grantee shall remove or offer to remove any potential or existing subscriber antenna or provide any inducement for removal as a condition respecting the provision of service.

It is not necessarily the County's intention to prohibit the erection or controlled use of individual television antennas, and no one is or will be required to receive cable communications service or connect with a cable communications system.

Nothing in this chapter shall be construed to prohibit any person from constructing or operating any private noncommercial satellite receiving station to the extent permitted by County, State, and Federal laws. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1309. Anti-competitive practices.

(a) No franchise issued pursuant to the provisions of this chapter shall be deemed to expressly or impliedly authorize the grantee to utilize its cable communications system to provide any service in such a manner as to unlawfully damage any business competitor or other third party or violate any statutes or regulations of the United States or the State; nor shall any grantee, by act or omission, engage in any anti-competitive practice in violation of any statutes or regulations of the United States or the State. The provisions of this section shall be enforceable in courts of competent jurisdiction against a grantee by any party who alleges injury as a result of an alleged violation thereof.

(b) Each grantee shall hold harmless, indemnify, and defend the County, and its officers, agents, and employees, from and against any and all suits, claims, and liability for damages, penalties, fines, or other relief arising out of, resulting from, or in any manner relating to any act or omission by the grantee, the allegation of which could constitute a violation of the provisions of this section. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1310. Post franchise services.

(a) In the event the County fails to renew a franchise, a franchise is cancelled in advance of the expiration of its terms, or a new operator succeeds to the grantee by assignment or otherwise, the preceding grantee, without compensation, shall cooperate with the County,

new operator, or new grantee in maintaining continuity of service to all subscribers and users. Such cooperation shall include, but not be limited to, making records available for inspection and review, the provision of advice, and other assistance as requested.

(b) Upon written notice mailed by the County to the grantee for the purpose of insuring the continuity of service to subscribers and users, a grantee, without compensation or other special consideration, shall operate the cable communications system during the period subsequent to the termination of the franchise and shall repair and maintain the system, conduct the business associated with the operation of the system, and provide uninterrupted services during the post franchise period during such time as is requested by the County pursuant to the terms and conditions of the franchise documents for the franchise which has expired or terminated. During such period, the grantee shall be entitled to revenues and profits and shall be solely responsible for any operating losses; provided, however, the franchise fees prescribed pursuant to Article 15 of this chapter shall be payable during such period. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1311. Continuity of quality.

Each grantee shall continue throughout the term of the franchise to maintain the technical standards and quality of service set forth in the franchise documents for such franchise. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1312. Maintenance and repair.

During the term of each franchise, the grantee shall maintain its cable communications system in good condition and repair, render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1313. Subscriber services.

It shall be the right of all subscribers to receive all available services insofar as their financial and other obligations to the grantee are honored. Neither the County nor the grantee, as to rates, charges, service, service facilities, rules, regulations, or in any other respect, shall make or grant any preference or advantage to any person nor subject any person to prejudice or disadvantage. Subject to such regulations as may be adopted by the Board pursuant to this chapter, the grantee shall:

(a) Maintain a high standard of courtesy in customer relations at all times;

(b) Maintain a log showing the date, approximate time and duration, type, and probable cause of all headend, trunk, or distribution line service interruptions and/or

failures due to causes other than routine testing or maintenance; such log shall be subject to review by the Board;

(c) Maintain a conveniently located business office and service center within the service area with toll free telephone numbers so that subscribers may report service outages or deficiencies at any time. The office shall maintain an adequate staff such that subscribers may transact all necessary business, including the payment of bills, during regular business hours;

(d) Keep a written record of all complaints showing at a minimum the date, subscriber's name and address, nature of the complaint, and the action taken by the grantee;

(e) Restore any interruption in service as expeditiously as possible and in accordance with the franchise agreement. Corrective maintenance for institutional services shall be in accord with the contract terms between the grantee and the subscriber;

(f) Before providing cable communications service to any subscriber, the grantee shall provide a written notice to the subscriber substantially as follows:

Subscriber is hereby notified that in providing cable television/communications service the grantee is making use of public rights-of-way within Yolo County and that the continued use of such rights-of-way is in no way guaranteed. In the event the continued use of such rights-of-way is denied to the grantee for any reason, the grantee will make every reasonable effort to provide service over alternate routes. By accepting cable television/communications service, subscriber agrees he will make no claim nor undertake any action against the County, or its officers or its employees, if the service to be provided hereunder is interrupted or discontinued;

(g) There shall be no charge for service calls to subscribers' homes, except as provided by agreement;

(h) In the event the grantee elects to rebuild, modify, or sell the system, or the County revokes or fails to renew the franchise, the grantee shall do everything in its power to ensure that all subscribers receive continuous, uninterrupted service, regardless of the circumstances, during the lifetime of the franchise. In the event of a system purchase by the County, or change of grantee, the current grantee shall cooperate with the County to operate the system for a temporary period in maintaining continuity of service to all subscribers; and

(i) Upon the termination of service to any subscriber, a grantee shall promptly remove all its facilities and equipment from the premises of such subscriber upon his request. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1314. Privacy.

Each grantee, and its officers, agents, employees, contractors, and subcontractors, shall respect, refrain from invading, and take affirmative action to prevent the violation of the privacy of subscribers served by the cable communications system and others.

(a) Neither the grantee nor any other person, agency, or entity shall tap, or arrange for the tapping or monitoring of, any cable, line, signal input device, or subscriber outlet or receiver for any purpose whatsoever, except that the grantee may conduct tests of the functioning of the system where necessary in order to ensure proper maintenance of the system and to collect performance data for agencies regulating the quality of signals, and the grantee may conduct system-wide or individually addressed "sweeps" for the sole purpose of verifying system integrity (including individual security system integrity), controlling return path transmissions, billing for pay services, or collecting aggregate data on viewing patterns by channel. "Tapping" shall mean observing a communications signal exchange where the observer is neither of the communicating parties, whether the exchange is observed by visual, aural, or electronic means, for any purpose whatsoever. The provision of interactive services shall not be construed to be "tapping" or "monitoring" under this subsection.

(b) The grantee shall not place in any private residence or in any institution any equipment capable of two-way communications without the written consent of the subscriber and shall not utilize the two-way communications capability of the system for subscriber surveillance of any kind without the written consent of the subscriber specifying how the data collected will be used and by whom. Tenants who occupy premises connected by the system shall be deemed to be subscribers within the meaning of this subsection, regardless of who actually pays for the service. The written consents shall be, and shall show on their face, that they are revocable by the subscriber at any time by written communication mailed by the subscriber to the grantee. No penalty shall be invoked for a subscriber's failure to provide a written consent or for his or her revocation thereof, and all written consents shall so state on their face. The grantee shall not make such written consent a condition precedent to receipt by a subscriber of noninteractive service. The provisions of this subsection shall not be deemed to require consent as a condition precedent to system-wide or individually addressed "sweeps" for the sole purpose of verifying system integrity, controlling return-path transmissions, billing for pay services, or collecting aggregate data on viewing patterns by channel.

(c) No cable, line, wire, amplifier, converter, or other piece of equipment associated with cable

communications system services shall be attached to any residence or other property of a citizen (except within streets) without first securing the written permission of the owner or tenant of the property. If such permission is later revoked, whether by the original or a subsequent owner or tenant, the grantee shall remove forthwith all of the equipment and promptly restore the property to its original condition. The grantee shall perform all installations in a workmanlike manner and shall be responsible for any damage to residences or other property caused by the installation.

(d) No grantee, or officer, agent, or employee thereof, shall sell, or otherwise make available, lists of the names and addresses of its subscribers, or any list which identifies by name and otherwise individual subscriber viewing habits, to any person, agency, or entity for any purpose whatsoever; except that the grantee, upon a request, shall provide lists of the names and addresses of its subscribers to authorized representatives of the County when the Board deems such information necessary for the performance of the regulatory functions of the County. Names and addresses of subscribers within the possession of the County shall not be subject to public inspection or review.

(e) A grantee may release the number of subscribers but only as a total number and as a percentage of the potential subscribers within the franchise area. When indicating the number of subscribers viewing a particular channel, a grantee shall indicate only the total number of subscribers viewing during the relevant time and the percentage of all subscribers which they represent, but not the identity of any subscriber.

(f) No poll or other two-way response of subscribers shall be conducted, whether for commercial purposes, in connection with community use, or otherwise, unless the program of which the poll is a part contains an explicit disclosure of the nature, purpose, and prospective use, of the results of the poll. The grantee shall supervise and monitor all polls in which responses are received through the cable communications system and shall adopt and enforce measures which ensure that personally identifiable information concerning a subscriber, including his or her viewing habits and response or responses to the inquiry or inquiries, is not received by any third party, including the party sponsoring the poll.

(g) A grantee shall not tabulate any test results, nor permit the use of the system for such tabulation, which would reveal the commercial product preference or opinions of individual subscribers, or members of their families or their invitees, licensees, or employees, without advance written authorization by the subscriber. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1315. Records.

Each grantee shall maintain for a period of five (5) years and make available for inspection and copying by authorized representatives of the County the following:

(a) A permanent service log which shows the name and address of each person requesting maintenance or repair service, the nature of the service requested, the date and time the request was received, and the disposition (including the date on which the repair was made or the request otherwise resolved and the method of resolution);

(b) A permanent record of each request for a subscription to basic service, including the name and address of the person making the request, and the date of the request; and

(c) A permanent record of each written complaint received by the grantee pursuant to the provisions of Section 11-1.1319 of this article, together with the name and address of the complainant, the nature of the complaint, and the dates and descriptions of any and all investigatory, corrective, or other actions taken as a result thereof. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1316. Reports.

During the term of any franchise issued pursuant to the provisions of this chapter, each grantee, not less frequently than annually, shall file a written report with the Clerk of the Board. The report shall be filed not later than forty-five (45) calendar days after the end of the grantee's fiscal year. The report shall include the following:

(a) A summary of the activities of the grantee during its previous fiscal year in the development and operation of the cable communications system, including, but not limited to: a description of all services provided through the cable communications system as of the conclusion of the fiscal year; a statement of the number of subscribers by category of services rendered as of the end of the fiscal year; and a summary of the facilities, channels, and resources made available during the fiscal year for community use, including a list of the persons and organizations which have produced, sponsored, and broadcast programming upon community use channels, a description of the types of programming provided through such channels, and any recommendations by the grantee for improvements in community use;

(b) A specific detailed description of all components, elements, and extensions of the cable communications system which have been installed during the grantee's previous fiscal year, showing the locations of all such installations, and including copies of the plans, specifications, and drawings showing the components, elements, and extensions as installed;

(c) A statement showing the grantee's investments in property within the Yolo County community during the grantee's previous fiscal year, including an identification of all real property or interests therein within the Yolo County community acquired or transferred by the grantee and the amounts which the grantee paid for the acquisition of property or interests, a description of all buildings or other improvements which the grantee constructed upon or added to real property within the Yolo County community, together with the cost of such construction or additions, and an itemization by component category of all costs of components, elements, and extensions of the cable communications system;

(d) An audited statement signed by a public or certified public accountant of all income received by the grantee during its previous fiscal year, including an itemization of all services provided through the cable communications system, the unit or regular rates or charges for such services, and the amount of income received attributable to each service, and all other income from whatever sources, including an identification of each source and the amount of income attributable thereto; and

(e) Audited financial statements for the grantee's previous fiscal year signed by a public or certified public accountant, including a balance sheet and profit and loss statement.

A grantee shall prepare and furnish to the Board, at the time and in the form prescribed by the Board, such other reports with respect to its operations, affairs, transactions, or property as the Board may deem necessary or appropriate to the performance of its functions. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1317. Discrimination in services prohibited.

No grantee shall deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, or sex.

It shall be the right of all subscribers, subject only to the payment of the lawful rates and reasonable terms and conditions established by a grantee or the Board, to receive and continue to receive services. Initial subscriptions to services shall not be denied to any person on the basis of the person's credit rating or for other reasons relating to economic conditions. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1318. Grantees' rules.

(a) Each grantee shall have the authority to promulgate rules and conditions governing the conduct of its business. No such rules or conditions shall conflict with the franchise documents applicable to the franchise, the

provisions of Federal or State statutes or regulations, or County laws.

(b) Such rules or conditions shall be reasonable and subject to approval as to reasonableness by the Board after public hearings, notice of which has been given in the manner prescribed by Section 11-1.406 of Article 4 of this chapter, and shall not conflict with rules and regulations enacted by the Board. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1319. Complaints.

The County and each grantee shall separately designate representatives whose responsibility it is to receive and investigate complaints relating to violations of the franchise documents.

As subscribers are connected or reconnected to a cable communications system, and at least annually as respects continuing subscriptions, each grantee, by appropriate means, such as cards or brochures, shall furnish information concerning the opportunity to make complaints, including the names, addresses, and telephone numbers of the representatives designated by the grantee and the County.

Each grantee shall make available for inspection and copying all records relating to complaints and make such other information available to the County's representatives as necessary to permit a complete investigation of the complaints by the representatives. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1320. System and services reviews.

To provide for technological, economic, and regulatory changes in the state of the art of cable communications, to facilitate renewal procedures, to promote the maximum degree of flexibility in the cable system, and to provide on a continuing basis an advanced, modern system, the grantor and the grantee shall comply with the following system and services review provisions:

(a) At the grantor's sole option, the grantor and grantee shall hold a system and services review session on or about the third anniversary date of the franchise agreement. Subsequent system review sessions shall be scheduled by the grantor each three (3) years thereafter.

(b) Sixty (60) days prior to the scheduled system and services review session, the grantee shall submit a report to the grantor indicating the following:

(1) A survey of cable system services which are being provided on an operational basis, excluding tests and demonstrations, to cities in the United States of similar size and complexity; and

(2) A plan for the provision of such services not provided by the grantee or an explanation

indicating why such services are not feasible for the franchise area.

(c) Topics for discussion and review at the system and services review sessions shall include, but shall not be limited to, services provided, the rate structure, the application of new technologies, system performance, programming (including access opportunities), subscriber complaints, user complaints, rights of privacy, amendments to the franchise, undergrounding processes, and developments in the law.

(d) Either the grantor or the grantee may select additional topics for discussion at any review session.

(e) Not later than sixty (60) days after the conclusion of each system and services review session, the grantor shall issue findings, including specifically a listing of any cable services not then being provided to the grantor, which are considered technically and economically feasible. The grantor may request the grantee to provide such services within a reasonable time, under reasonable rates and conditions. Failure to provide such requested services may be considered a breach of the franchise, subject to remedies as provided in this chapter. (§ 1, Ord. 961, eff. October 27, 1983, as amended by § 3, Ord. 965, eff. November 3, 1983)

Sec. 11-1.1321. Rules and regulations.

At any time, the Board may adopt reasonable rules, regulations, and standards governing the operation of cable communications systems in the County, consistent with the provisions of this chapter and the franchise ordinance. Such rules, regulations, and standards shall apply to and shall govern the operations of the grantee of any cable communications franchise and are expressly declared to be a part of any such franchise. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1322. Hearings.

Prior to adopting any such rule, regulation, or standard, the Board shall conduct a duly noticed hearing thereon. At the time set for such hearing, or at any adjournment thereof, the Board shall proceed to hear any relevant evidence relating to the matter. Thereafter, the Board, by resolution, may adopt, amend, or modify such rules and regulations. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1323. Standards.

To the extent not prompted by Federal or State laws or regulations, the standards adopted by the Board may govern the engineering, construction, installation, service, and maintenance of all cable communications systems in the County, including, but not limited to, standards governing carrier levels, signal-to-noise ratios, hum modulation, distortion levels,

channel interactions and interreactions, and composite beat levels. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1324. No discrimination.

In the carrying out of the construction, maintenance, and operation of the cable communications system, the grantee shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, or national origin. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1325. Affirmative action.

The grantee shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex, or national origin. Such action shall include, but not be limited to, the following: employment upgrading, recruitment or recruitment advertising, rates of pay or other forms of compensation, and selection for training, including apprenticeship. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1326. Posting nondiscrimination notices.

The grantee shall post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of such nondiscrimination clause. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1327. Solicitations.

The grantee, in all solicitations or advertisements for employees placed by or on behalf of the grantee, shall state that all qualified applicants will receive compensation for employment without regard to race, creed, color, sex, or national origin. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1328. Incorporation of nondiscrimination provisions in contracts.

The grantee shall incorporate the requirements of this article relating to nondiscrimination in all of its contracts for work relative to the construction, maintenance, and operation of the cable communications system, other than contracts for standard commercial supplies or raw materials, and shall require all of its contractors for such work to incorporate such requirements in all subcontracts for such work. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1329. Community use programming.

(§ 1, Ord. 961, eff. October 27, 1983; repealed by § 13, Ord. 999, eff. March 7, 1985)

Article 14. Rates and Charges

Sec. 11-1.1401. Applicability.

To the extent permitted by Federal and State laws, the Board expressly reserves the right to take such action as is authorized by law to regulate the rates and charges associated with the providing of services under this chapter and any franchise issued pursuant to this chapter. (§ 1, Ord. 961, eff. October 27, 1983, as amended by § 14, Ord. 999, eff. March 7, 1985)

Sec. 11-1.1402. Board approval.

(§ 1, Ord. 961, eff. October 27, 1983; repealed by § 15, Ord. 999, eff. March 7, 1985)

Sec. 11-1.1403. Petitions.

(§ 1, Ord. 961, eff. October 27, 1983; repealed by § 15, Ord. 999, eff. March 7, 1985)

Sec. 11-1.1404. Board determinations.

(§ 1, Ord. 961, eff. October 27, 1983; repealed by § 15, Ord. 999, eff. March 7, 1985)

Sec. 11-1.1405. Hearings: Representatives.

(§ 1, Ord. 961, eff. October 27, 1983; repealed by § 15, Ord. 999, eff. March 7, 1985)

Sec. 11-1.1406. Hearings:

Recommendations.

(§ 1, Ord. 961, eff. October 27, 1983; repealed by § 15, Ord. 999, eff. March 7, 1985)

Sec. 11-1.1407. Separate rates.

No rate established shall afford any undue preference or advantage among subscribers, but separate rates may be established for separate classes of subscribers, and installation charges may reflect the increased cost of providing service to isolated or sparsely populated areas. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1408. Termination of services.

A grantee may require subscribers to the subscriber network to pay for each month of basic service in advance at the beginning of the month. Service shall not be terminated for delinquencies in making a monthly advance payment earlier than forty-five (45) calendar days following the date upon which the advance payment is due, and monthly statements to subscribers shall provide notice of the grantee's policy respecting the termination of service for delinquencies in making advance payments. With the foregoing exception, and except as otherwise expressly authorized by this chapter, a grantee, without advance approval by the Board, shall not require any other advance payment or deposit of any kind with respect to the provision of basic service to subscribers. (§ 1, Ord. 961, eff. October 27, 1983)

Article 15. Compensation and Guarantees to the County

Sec. 11-1.1501. Franchise fees.

For the use of the streets and for the purposes of providing revenue with which to defray the costs of regulation arising out of the issuance of franchises under this chapter and promoting, assisting, and financing community use programming, PEG programming, and other cable services of a public character, each grantee shall pay franchise fees in the amount prescribed by Section 11-1.1502 of this article. (§ 1, Ord. 961, eff. October 27, 1983, as amended by § 16, Ord. 999, eff. March 7, 1985)

Sec. 11-1.1502. Amount and payment of franchise fees.

(a) During the term of each franchise, each grantee shall pay to the County an amount equal to five (5%) percent per year of the grantee's annual gross revenues derived from the operation of the cable communications system.

(b) Such fees shall be paid quarterly not later than August 1, November 1, February 1, and May 1 for the preceding three (3) month period ending, respectively, June 30, September 30, December 31, and March 31. Not later than the date of each payment, each grantee shall file with the Clerk of the Board a written statement signed under penalty of perjury by an officer of the grantee which identifies in detail the sources and amounts of gross revenues received by a grantee during the quarter for which the payment is made.

(c) No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the County may have for further or additional sums payable under the provisions of this section. (§ 1, Ord. 961, eff. October 27, 1983, as amended by § 16, Ord. 999, eff. March 7, 1985)

Sec. 11-1.1503. Future laws.

(a) The County does not have or expect in the foreseeable future to receive sufficient funds with which to defray the costs of administering and regulating cable communications franchises within the Yolo County community. The ability to finance such costs through franchise fees pursuant to the provisions of Section 11-1.1502 of this article constitutes a material inducement to initiate a cable communications program within the community, because the County would not be willing to reduce or eliminate other public programs in order to make public funds available with which to defray the costs of administering and regulating the cable communications program.

(b) Therefore, should any future law or regulation limit or prevent the County from imposing a franchise fee in the amount provided for in this article, each grantee shall make a good faith effort to obtain any possible waiver or permission to pay the full amounts provided for in this article and, to the extent such future law or regulation permits a grantee discretion to make the limitation or prohibition applicable or inapplicable, each grantee shall elect to make the limitation or prohibition inapplicable.

(c) The failure of the County to receive the fees prescribed by Sections 11-1.1501 and 11-1.1502 of this article, and as otherwise permitted by law, shall be deemed to constitute a substantial and material failure to comply with the franchise documents. (§ 1, Ord. 961, eff. October 27, 1983, as amended by § 4, Ord. 965, eff. November 3, 1983)

Sec. 11-1.1504. Auditing and financial records.

(a) The County Auditor-Controller, from time to time, during the term of a franchise, may prescribe standards governing the nature, extent, and type of accounting system and accounting procedures utilized by a grantee and require changes in accounting standards or procedures utilized by a grantee for the purpose of promoting the efficient administration of the franchise pursuant to the provisions of this chapter. Any such standards shall be in writing, shall be filed with the Clerk of the Board, and shall be mailed to the grantee to whom directed. A grantee shall promptly comply with all such standards.

(b) During the term of each franchise, the County, not more frequently than once each year, may conduct an audit of the books, records, and accounts of the grantee for the purpose of determining whether the grantee has paid franchise fees in the amounts prescribed by Section 11-1.1502 of this article. The audit may be conducted by the County Auditor-Controller or by an independent certified public accounting firm retained by the County and shall be conducted at the sole expense of the County. The party conducting the audit shall prepare a written report containing its findings, and the report shall be filed with the Clerk of the Board. Notwithstanding the provisions of this subsection, the County shall conduct such an audit at any time if requested to do so by the County. The cost of such an audit so requested shall be borne by and at the sole expense of the County, and the cost shall be paid within thirty (30) calendar days following the receipt of the billing therefor by the County. The report of the audit shall be filed and mailed as prescribed in this subsection.

(c) At any time during the term of a franchise, the County, through its County Auditor-Assessor or a certified public accounting firm which it retains, and at its sole expense, may

conduct an audit of the books, records, and accounts of the grantee for the purpose of identifying any information which the Board deems necessary to obtain for the purpose of administering the franchise under the provisions of this chapter. A written report of such audit shall be filed with the Clerk of the Board and mailed to the grantee. The grantee shall comply with any recommendations or directives set forth in such report respecting changes in its accounting system.

(d) Each grantee shall make available for inspection by authorized representatives of the County its books, accounts, and all other financial records at reasonable times and upon reasonable advance notice for the purpose of permitting the exercise of the authorities conferred by this section. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1505. Delinquent fees: Limitations: Damages.

The period of limitation for the recovery of any franchise fees payable pursuant to the provisions of Section 11-1.1502 of this article shall be five (5) years after the date on which payment by the grantee is due. Unless within five (5) years after said date the County initiates recovery pursuant to the provisions of Section 11-1.1506 of this article, recovery shall be barred. Delinquent franchise fees shall bear interest at an annual rate equivalent to that Federal Reserve Discount Rate on advances to member banks in effect on January 2, April 1, July 1, and October 1 for the succeeding quarter of delinquency. The interest shall be compounded quarterly at the end of each quarter. In addition to interest as prescribed in this section, a ten (10%) percent per annum penalty shall be paid on all delinquent franchise fees in recognition of the fact that fluctuating interest rates on borrowed funds make it impossible to establish a reliable interest rate standard as a measure of damages for delinquencies in the payment of franchise fees, and other elements of damages resulting from delinquencies, such as the inadequacy of revenue with which to adequately administer and enforce the franchise, arising out of such delinquencies are subjective and impossible to estimate. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1506. Delinquent fees: Arbitration.

(a) In the event a grantee fails to pay franchise fees pursuant to Section 11-1.1502 of this article, or the Board determines that a grantee has paid franchise fees in a lower amount or amounts than prescribed, written notice thereof shall be mailed to the grantee. The notice shall show the basis for the determination that fees are owing, and the amount thereof, if known, and may show the amount of interest and penalties accumulated to date.

(b) Within thirty (30) calendar days following the date of the mailing of such notice, the grantee may pay any amount stated in the notice, plus interest and penalties, without protest. Any payment made without the accompaniment of a written statement of protest shall constitute a waiver of the right to request arbitration or other relief respecting any and all amounts so paid.

(c) Within thirty (30) calendar days following the date of the mailing of such notice, the grantee, alternatively, may file a written request for arbitration with the Clerk of the Board objecting to the payment, and specifically identifying why an objection is made, and wherein the grantee disagrees with the determination. At the time of filing such a request for arbitration, the grantee may deposit with the County, under protest, any amount, including interest and penalties, which the grantee estimates to be in dispute. Any such deposit shall be accompanied by a written statement by the grantee stating that the amount deposited is pursuant to protest and a request for arbitration. From and after the date of any such deposit, interest and penalties on such amount shall accrue subsequent to the date of the deposit. In the event it is finally determined that the whole or any portion of an amount so deposited under protest was not owing by the grantee, such amount, without interest, shall be credited against and reduce the amount of the franchise fees which become owing by the grantee subsequent to the date of such final determination; provided, however, no such future payment shall be reduced as such a credit by an amount greater than ten (10%) percent of the franchise fee payment otherwise owing; and provided, further, in no event shall the County become or be liable to the grantee for the reimbursement of any portion of an amount so deposited under protest, except as a credit against any future franchise fees which become owing.

(d) If the notice to the grantee by the County shows the amount of franchise fees owing, including interest and penalties, the Board's determination shall become final and conclusive, not subject to judicial review or reversal by any authority and judicially enforceable, unless the grantee requests arbitration within the time and in the manner prescribed in this section.

(e) If the grantee fails to either pay the franchise fees without protest or requests arbitration, and if the notice by the County does not specify the amount of franchise fees, including interest and penalties, owing, or if the grantee pays an amount without protest, and the Board disagrees that the amount paid is the amount owing, the Board, at its sole discretion, may request arbitration by mailing a written notice of its election to arbitrate to the grantee.

(f) If arbitration is requested, the arbitration panel shall be selected, the hearing scheduled

within the time prescribed, notice given, the hearing conducted, a decision made, and the costs divided in the manner prescribed by Sections 11-1.1214 through 11-1.1219 of Article 12 of this chapter. The discovery provisions of the California Arbitration Act (Sections 1280, et seq. of the Code of Civil Procedure of the State) shall be applicable to the arbitration proceedings under this section. The questions which may be submitted to the arbitration panel and the jurisdiction of the arbitration panel shall be limited to the following:

(1) The interpretation of the provisions of the franchise documents solely in relation to the decision required by subsection (g) of this section; and

(2) The amount, if any, owing by the grantee.

(g) The grantee shall immediately pay any amount determined to be owing by the arbitration panel. The arbitration award may be judicially enforced, shall be final, binding, and conclusive upon the parties, and shall not be subject to judicial review or vacation, except on the grounds set forth in Section 1286.2 of the Code of Civil Procedure of the State. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1507. Increases in franchise fees: Arbitration.

(a) The amount of the franchise fees prescribed by Section 11-1.1502 of this article has been established pursuant to limitations set forth in Section 602 of the Act.

(b) In the event such limitations upon the amount of franchise fees, during the term of any franchise issued pursuant to the provisions of this chapter, should be increased or eliminated, the grantee, upon a request by the County, shall enter into negotiations with the County for the purpose of formulating a mutually agreeable increase in the franchise fees prescribed by said Section 11-1.1502.

(c) Any agreement relating to such an increase shall be embodied in a written contract between the County and the grantee, which shall be deemed to amend said Section 11-1.1502 respecting the amount of the fees. If, within ninety (90) calendar days following the date of a request by the County for negotiations, mutual agreement has not been reached respecting an amendment of the provisions of said Section 11-1.1502 increasing the fees, the Board may cause written notice of its request to arbitrate to be mailed to each concerned grantee and the County. The notice shall specifically identify the amount of increase in fees which the Board desires to submit to arbitration and shall describe the nature and amount of uncompensated costs which the County incurs or desires to incur in administering the franchise or franchises and promoting, assisting, and regulating the various types of access use.

(d) The arbitration panel shall be selected, the hearing scheduled within the time prescribed, notice given, the hearing conducted, a decision made, and the costs divided in the manner prescribed by Sections 11-1.1214 through 11-1.1219 of Article 12 of this chapter. Parties to the arbitration proceeding may include each grantee who would be affected by an amendment of said Section 11-1.1502 and the County. The questions which may be submitted to the arbitration panel and the jurisdiction of the panel shall be limited to:

(1) The interpretation of the provisions of the franchise documents solely in relation to the determination required by subsection (e) of this section; and

(2) The amount, if any, by which the franchise fees prescribed by said Section 11-1.1502 may be increased.

(e) The arbitration panel shall authorize an increase in the franchise fees by an amount which the panel finds is justified by actual (including past uncompensated) or proposed costs incurred by the County in administering each franchise issued pursuant to the provisions of Sections 11-1.901 through 11-1.905 of Article 9 of this chapter provided that the annual franchise fee shall under no circumstances exceed ten (10%) percent per year of a grantee's annual gross revenues. In the event more than one franchise is issued pursuant to the provisions of this chapter, the arbitration panel shall establish such an amount with respect to each grantee. Any increase ordered by the arbitration panel shall be deemed to amend the provisions of said Section 11-1.1502 respecting the amount of fees. The County shall be authorized to amend said Section 11-1.1502 by increasing the franchise fees by any amount authorized under the decision of the arbitration panel.

(f) Negotiations and arbitration proceedings pursuant to this section may be initiated by the County not more frequently than once each year during the remainder of the term of any franchise issued pursuant to the provisions of this chapter following the increase of or elimination of the statutory and regulatory limitations upon the amount of franchise fees which may be charged under State and Federal laws.

(g) The arbitration award pursuant to this section may be judicially enforced, shall be final, binding, and conclusive upon the parties, and shall not be subject to judicial review or vacation, except on the grounds set forth in Section 1286.2 of the Code of Civil Procedure of the State. (§ 1, Ord. 961, eff. October 27, 1983, as amended by § 17, Ord. 999, eff. March 7, 1985)

Sec. 11-1.1508. Performance bonds.

(a) Each grantee shall file with the certificate of acceptance which it files pursuant to the provisions of Section 11-1.605 of Article 6 of this

chapter, and at all times thereafter maintain in full force and effect, an acceptable corporate surety bond in the amount of Seven Hundred Fifty Thousand and no/100ths (\$750,000.00) Dollars, effective for the entire term of the franchise, and conditioned that in the event the grantee shall fail to comply with any one or more of the provisions of the franchise documents, whether or not the franchise is terminated, then there shall be recoverable jointly and severally from the principal and surety of such bond any damages suffered by the County as a result thereof, including, but not limited to, the full amount of any liquidated damages, delinquent franchise fees, compensation and costs of repairing or completing the cable communications system, and compensation and costs of the removal or abandonment of property and the repair of streets and other public or private improvements, up to the full amount of the bond. Such condition shall be a continuing obligation for the duration of the franchise and thereafter until the grantee has satisfied all of its obligations which may have arisen from the acceptance of the franchise or from its exercise of any privileges thereunder. Neither the provisions of this section, any bond accepted pursuant thereto, nor any damages recovered thereunder shall be construed to excuse faithful performance by the grantee or to limit the liability of the grantee under the franchise or for damages, either to the full amount of the bond or otherwise. The bond shall contain a provision which prohibits cancellation by the surety during the term of the franchise, whether for failure to pay a premium or otherwise, without thirty (30) calendar days' advance written notice mailed by the surety to the Clerk of the Board.

(b) The form of the bond and surety shall be subject to approval by the County Counsel.

(c) On or after the date of the issuance of the final order of completion pursuant to the provisions of Section 11-1.1101 or 11-1.1102 of Article 11 of this chapter, the Board, in its sole discretion, may reduce, for the remainder of the term of the franchise, the required amount of the bond to a sum not less than Two Hundred Fifty Thousand and no/100ths (\$250,000.00) Dollars. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1509. Security deposits.

(a) Each grantee shall file with the certificate of acceptance which it files pursuant to the provisions of Section 11-1.605 of Article 6 of this chapter a certified or cashier's check in the amount of Five and no/100ths (\$5.00) Dollars for each dwelling to be served, made payable to the order of the County. The check shall be cashed and the proceeds retained by the Treasurer-Tax Collector in a special account. Such sum shall be maintained by the Treasurer-Tax Collector as security for the faithful performance by the

grantee of all the provisions of the franchise documents, any damages, including, but not limited to, liquidated damages, delinquent franchise fees, compensation and costs of completing or repairing the cable communications system, and compensation and costs of the removal of abandoned property and the repair of streets and other public or private improvements incurred as a result of the failure of the grantee to comply with the provisions of the franchise documents, and shall be payable from the account upon the terms, conditions, and under the procedures prescribed by Section 11-1.1502 of this article. Interest earned upon the sum shall accrue to the credit of the account; provided, however, the County shall pay to the grantee any sums in the account in excess of the amount required for the original deposit.

(b) Within ten (10) calendar days after notice is mailed to the grantee that any amount has been withdrawn from the special account, the grantee shall deposit with the Treasurer-Tax Collector such sum as may be necessary to restore the account to its required amount.

(c) On the date of the issuance of the final order of completion pursuant to Section 11-1.1101 or 11-1.1102 of Article 11 of this chapter, the County shall reduce the amount of such security deposit by paying so much thereof to the grantee as will reduce the amount of said deposit retained to Two and 50/100ths (\$2.50) Dollars for each dwelling to be served, unless on said date there are scheduled or pending, or intended to be scheduled or pending, proceedings relating to the alleged violation by the grantee of any of the provisions of Section 11-1.1002 of Article 10 of this chapter. In such event, the reduction shall not occur, and payment shall not be made until such proceedings are terminated and any damages determined to be owing compensated. Subsequent to such reduction and payment, such deposit shall be maintained at Two and 50/100ths (\$2.50) Dollars, plus interest accumulations credited thereto during the remainder of the term of the franchise.

(d) Upon the termination of the franchise and the satisfaction of any damages, including liquidated damages, which may be due, the balance of the special account, including all interest credited thereto, shall be returned to the grantee.

(e) The rights reserved with respect to the special account are in addition to all rights of the County, whether reserved by the franchise documents or authorized by law, and no action, proceeding, or exercise of a right with respect to such account shall affect any other right which the County may have; nor shall the amount of the special account constitute a monetary limit on the liability for any actual or liquidated damages resulting from a breach of the franchise documents. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1510. Indemnification by grantees.

(a) Each grantee, at its sole expense, shall fully indemnify, defend, and hold harmless the County, and, in their capacity as such, the officers, agents, and employees thereof, from and against any and all claims, suits, actions, liability, and judgments for damages or otherwise:

(1) For actual or alleged injuries to persons or property, including the loss or use of property due to an occurrence, whether or not such property is physically damaged or destroyed, in any way arising out of or through, or alleged to arise out of or through, the acts or omissions of the grantee, or its officers, agents, employees, or contractors, or to which the grantee's, or its officers, agents, employees, or contractors, acts or omissions in any way contribute;

(2) Arising out of, or alleged to arise out of, any claim for damages for invasion of the right of privacy, defamation of any person, firm, or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark, or patent, or of any other right of any person, firm, or corporation; and

(3) Arising out of, or alleged to arise out of, the grantee's failure to comply with the provisions of any statute, regulation, or ordinance of the United States, State, or any local agency applicable to the grantee in its business.

(b) The indemnification and hold harmless provisions of this section shall include those prescribed by Section 11-1.1309 of Article 13 of this chapter.

(c) Nothing set forth in this section shall be deemed to prevent the parties indemnified and held harmless from participating in the defense of any litigation by their own counsel at the grantee's sole expense. Such participation shall not under any circumstances relieve the grantee from its duty of defense against liability or of paying any judgment entered against such party. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1511. Public liability and property

The grantee at all times shall maintain in full force and effect a policy of insurance in such form as the County may require, executed by an insurance company authorized to write the required insurance, and approved by the Insurance Commissioner of the State, insuring the payment of any sum which the grantee or the County, or its officers, boards, commissioners, agents, and employees may become obligated to pay by reason of any liability imposed upon them by law for damages because of personal injury or death, or injury to or destruction of property that may result to any person or property arising out of the construction, operation, or maintenance of any facilities pursuant to a franchise. The sums, payment of which shall be so insured, shall not be less than Two Million and no/100ths (\$2,000,000.00) Dollars combined single limits,

including bodily injury liability and property damage liability. Such policy of insurance shall be filed with the Board and approved as required by County ordinance. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1512. Workers' compensation insurance.

Upon being granted a franchise, and upon the filing of the acceptance required under Section 11-1.605 of Article 6 of this chapter, the grantee shall file with the Clerk of the Board and shall thereafter, during the entire term of such franchise, maintain in full force and effect workers' compensation insurance coverage in at least the minimum amounts required by law. If a grantee shall fail to obtain or maintain such required insurance coverage, the County, without notice to the grantee, may obtain at the grantee's sole expense such coverage or forthwith terminate, without prior notice, the franchise as granted. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1513. Waivers of subrogation.

Each grantee shall cause each insurance policy obtained by it to provide that the insurance policy obtained by it provide that the insurance company waives all right of recovery by way of subrogation against the County, and, in their capacities as such, the officers, agents, and employees thereof, in connection with any damage covered by any policy. The County, and, in their capacities as such, the officers, agents, and employees thereof, shall not be liable to the grantee for any damage caused by any of the risks insured against under an insurance policy obtained by the grantee. (§ 1, Ord. 961, eff. October 27, 1983)

Article 16. Assignments and Transfers

Sec. 11-1.1601. Transfers prohibited.

Except as provided by either Section 11-1.1602 or 11-1.1603 of this article, no part or element of a cable communications system or any other real or personal property which is mandatorily included by Section 11-1.702 of Article 7 of this chapter within a purchase which the County or its assignee is authorized to make shall be sold, transferred, assigned, mortgaged, pledged, leased, sublet, or otherwise encumbered for any purpose whatsoever, nor shall title thereto, either legal or equitable, or any right or interest therein, pass to or vest in any party.

Except as provided by either said Section 11-1.1602 or 11-1.1603, a franchise issued pursuant to the provisions of this chapter, either in whole or in part, shall not be sold, transferred, assigned, mortgaged, pledged, leased, sublet, or otherwise encumbered for any purpose whatsoever; nor shall title thereto, either legal or

equitable, or any right or interest therein, pass to or vest in any party.

Any such sale, transfer, assignment, mortgage, pledge, lease, sublease, or other encumbrance of whatever kind or nature made in violation of the provisions of this section shall be void. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1602. Encumbrances for financing purposes.

Upon a written application by a grantee, the lender, and any and all signators or guarantors upon the proposed loan, the Board, in its sole discretion, from time to time, may consent by duly adopted resolution to the sale, transfer, assignment, mortgage, pledge, lease, sublease, or other encumbrance upon real or personal property mandatorily included by Section 11-1.702 of Article 7 of this chapter within a purchase which the County or its assignee is authorized to make, or upon a franchise issued pursuant to the provisions of this chapter, for the purpose of securing a loan or capital or constituting a purchase money security interest. Such information concerning the identity and background of the lender, terms of the transaction, intended expenditure of the capital, and other matters relating to the transaction shall be provided as is required by the Board or its authorized representative. If, in its sole discretion, the Board elects to approve such encumbrance or encumbrances, such approval may be granted upon such terms and conditions as the Board determines to be appropriate, including, but not limited to, the following:

- (a) The purpose for which the capital to which the encumbrance relates will be utilized, including guarantees relating to the expenditure or disposition of such capital;
- (b) The terms and conditions of the encumbrance instruments relating to such matters as default and the rights of the lender and successors in interest in relation thereto;
- (c) The amount of the encumbrance and types of properties encumbered;
- (d) The subordination of the encumbrance to the rights of the County, under the franchise, consistent with the terms and conditions of the encumbrance approved by the Board; and
- (e) An agreement by any party in whose name the loan secured by the encumbrance is made or any signator or guarantor thereon to be bound by the terms, conditions, provisions, and requirements of the franchise documents, in addition to the party or parties in whose names the franchise is issued by the franchise agreement and certificate of acceptance.

The Board by resolution shall be authorized to delegate its power to consent in writing to such encumbrance for financing purposes of individual items of property described by said Section 11-

1.702, subject to the limitations prescribed. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1603. Transfers of systems or franchises.

The Board, pursuant to the provisions of Section 11-1.1605 of this article, may consent by duly adopted resolution to the sale, transfer, assignment, mortgage, pledge, lease, sublease, or other transfer of right, title, or interest in property mandatorily included by Section 11-1.702 of Article 7 of this chapter within that authorized to be purchased, or in a franchise issued pursuant to the provisions of this chapter, when such transfer is for a purpose other than securing a loan of capital. Any such transfer shall be subject and subordinate to the rights of the County under the franchise documents for the franchise, and the transferee shall acknowledge in writing such subordination and agreement to comply with and be bound by the terms, conditions, provisions, and requirements of the franchise documents. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1604. Transfers of control.

Every change, transfer, or acquisition of control of the grantee or of any owner of the grantee who is named in the ordinance offering the franchise shall render the franchise subject to cancellation by the Board, unless the Board consents thereto by duly adopted resolution pursuant to the provisions of Section 11-1.1605 of this article. As used in this section, the word "control" shall mean the acquisition of sufficient dominance to determine the operational and financial policies of the grantee, including the disposition of its assets. A rebuttable presumption that a transfer of control has occurred shall arise upon:

- (a) The acquisition or accumulation by any party or association of parties of ten (10%) percent or more of the voting shares of stock of the grantee or named owner of the grantee;
- (b) A change in the general partners of a grantee or named owner of the franchise; or
- (c) A merger or consolidation of the grantee or named owner of such grantee. The presumption shall be subject to rebuttal only by determination by the Board. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1605. Determinations of proposed transfers.

(a) A grantee shall file written notice with the Clerk of the Board as soon as the grantee acquires knowledge of any impending transaction or other event consent to which by the Board is required by Section 11-1.1603 or 11-1.1604 of this article. The written notice shall be filed not less than ninety (90) calendar days in advance of

the proposed effective date of the transaction or event for which consent is required.

(b) The notice shall state the name or names and address or addresses of the party or parties who are interested in the transaction or event and describe the details of the transaction or event. In the event of a voluntary assignment, transfer, lease, sublease, mortgage, or other encumbrance, a copy of the executed or proposed agreement shall be filed with the notice. Any written acknowledgment of subordination to the rights of the County under the franchise documents and agreement to comply with and be bound thereby required by the provisions of said Section 11-1.1603 shall be filed with the notice.

(c) The grantee shall immediately submit such additional information concerning such a transaction as the Board or other authorized representative of the County may request.

(d) The Board shall schedule a public hearing to determine whether the consent required by the provisions of said Section 11-1.1603 or 11-1.1604 will be given. Notice of the hearing shall be given in the manner prescribed by Section 11-1.406 of Article 4 of this chapter. The hearing shall be commenced not later than sixty (60) calendar days following the filing of the notice by the grantee pursuant to this section. At the conclusion of the hearing the Board shall determine whether consent will be given.

(e) In the hearing to determine whether consent will be given, the grantee (proposed transferor) shall have the burden of proving by clear and convincing evidence each of the following factors:

(1) That the reputation, responsibility, integrity, and reliability of the party or parties to whom the transfer is contemplated, and of the directors, officers, employees, and agents thereof, is equal to that of the parties obligated under the franchise documents;

(2) That the financial capability and capacity of the party or parties to whom the transfer is contemplated is equal to that of the parties obligated under the franchise documents;

(3) That the terms, conditions, or other circumstances of the transfer are not likely to result in an increase in the rates or charges for services;

(4) That at the time of the transfer the grantee is in compliance with the terms, conditions, and requirements of the franchise documents and any rules, regulations, or determinations promulgated thereunder;

(5) That the installation of the cable television system has been completed in the manner and within the times prescribed by Section 11-1.1002 of Article 10 of this chapter. In the absence of extraordinary circumstances, a transfer shall not be approved in advance of such completion; and

(6) That the transaction would not detrimentally affect the public interest.

(f) The determination by the Board as to whether to give such consent shall be vested within the sole discretion of the Board but shall be based exclusively upon the factors prescribed by subsection (e) of this section. Such consent may be given upon such express conditions relating to such factors, including the maintenance or operation of the cable communications system, services to be provided, rates and charges for services, management of the franchise business, and other requirements relating to the franchise, as the Board, in its sole discretion, may order.

(g) In the event the Board does not consent, and the grantee seeks a judicial review of the Board's decision, the grantee agrees, by the filing of the certificate of acceptance, that the decision of the Board shall be upheld by a trial or appellate court if there is any substantial evidence supporting the decision of the Board as to any of the prescribed factors set forth in subsection (e) of this section. (§ 1, Ord. 961, eff. October 27, 1983, as amended by §§ 5 and 6, Ord. 965, eff. November 3, 1983)

Sec. 11-1.1606. Purchases of grantees' property.

(§ 1, Ord. 961, eff. October 27, 1983; repealed by § 7, Ord. 965, eff. November 3, 1983)

Sec. 11-1.1607. Receiverships.

The Board shall have the right to cancel a franchise 120 calendar days after the appointment of a receiver, or trustee, to take over and conduct the business of the grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 calendar days, or unless within such 120 calendar day period the receiver or trustee shall both:

(a) Have fully complied with all of the provisions of the franchise documents and any rules, regulations, or determinations promulgated thereunder; and

(b) Have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee acknowledges that its rights are subject and subordinate to those of the County under the franchise documents and any orders, directives, rules, or regulations issued thereunder. (§ 1, Ord. 961, eff. October 27, 1983, as amended by § 18, Ord. 999, eff. March 7, 1985)

Sec. 11-1.1608. Recording and filing.

Each grantee shall execute a document in a form determined by the County evidencing the franchise documents appropriate for recording in

the office of the Clerk of the Board and a financial statement in a form determined by the County for filing pursuant to the provisions of Sections 9401 through 9403 of the Commercial Code of the State. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1609. No recourse against agencies.

No grantee shall have any recourse whatsoever against the County, or its officers, agents, or employees, for any loss, costs, expenses, or damages arising out of or resulting from any provision or requirement of the franchise documents, or any rule, regulation, requirement, or directive promulgated thereunder, or because of the enforcement of any provision of the franchise documents, or any rule, regulation, requirement, or directive promulgated thereunder, or in the event any provision of the franchise documents, or any rule, regulation, requirement, or directive promulgated thereunder, is determined to be invalid. (§ 1, Ord. 961, eff. October 27, 1983)

Sec. 11-1.1610. Nonenforcement.

A grantee shall not be relieved of any obligation to comply with any of the provisions of the franchise documents, or any rule, regulation, requirement, or directive promulgated thereunder, by reason of any failure of the County, or its officers, agents, or employees, to enforce prompt compliance. (§ 1, Ord. 961, eff. October 27, 1983)

Chapter 2

CABLE TELEVISION LICENSES*

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Article 1. General Provisions

Sec. 11-2.101. Purposes.

The purposes of this chapter include, but are not limited to, the promotion of the general welfare of the citizens of the County by:

(a) Establishing a plan for the licensing of cable television services within the County;

(b) Establishing a regulatory framework for the administration of licenses in order to insure that the potential recreational, technical,

* Sections 11.2-110 through 11-2.812, added by Ordinance No. 1095, effective July 27, 1989, were renumbered by codifier to conform to the existing code numbering system.

educational, social, economic and other advantages of cable television will in fact inure to the benefit of the citizens of the County;

(c) To provide for the equal and uniform provision of cable television services throughout the County;

(d) To insure that licensees have the requisite financial qualifications to promptly complete and operate the Cable Television System proposed to be constructed hereunder;

(e) To allow a mechanism whereby licensees may provide certain limited types of cable television service with lesser public benefits and burdens than they would incur if they chose to obtain a franchise pursuant to the provisions of Chapter 1 of this title.

(f) To regulate the operations of licensees for the purpose of protecting and promoting the public health, peace, safety, and welfare.

The provisions of this section shall not be deemed to confer any right upon a licensee which is not otherwise conferred by another express provision of this chapter. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.102. Title.

This chapter shall be known and may be cited and referred to as "The Cable Television Licensing Ordinance of the County of Yolo." (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.103. Definitions.

As used in this chapter, the following terms, phrases, and words shall be ascribed the following meanings, unless the context indicate otherwise. The word "shall" is mandatory, and the word "may" is permissive. Words not defined herein shall be given their common and ordinary meanings, consistent with the context in which such words are used and the purposes of this chapter.

"County" shall mean the County of Yolo, a political subdivision of the State of California.

"Cable television system" shall mean a system of antennae, cables, wires, lines, towers, waveguides, or other conductors, converters, amplifiers, headend equipment, master controls, earth stations, equipment and facilities designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio, video, and other forms of electronic or electrical signals within the County.

"CCPA" shall mean the Cable Communications Policy Act of 1984 (47 USC 521, et seq.).

"Encroachment permit" shall mean a permit issued to a licensee by the County pursuant to Division 2, Chapter 5.5 of the California Streets and Highways Code.

"Gross revenues" shall mean all cash, credits, property of any kind or nature or other consideration derived directly or indirectly by a

licensee, its affiliates, subsidiaries, parents, and any other person or entity in which the licensee has a financial interest or which has a financial interest in the licensee, arising from or attributable to operation of the cable television system, including, but not limited to: (1) revenue from all charges for service provided to subscribers of entertainment and nonentertainment services (including leased access fees); (2) revenues from all charges for the insertion of commercial advertisements upon the Cable Television System; (3) revenue from all charges for the leased use of studios; (4) revenue from all equipment necessary for the utilization of the cable television system and the provision of subscriber and other services; and (5) the sale, exchange, or use of cablecast of any programming developed for community use or institutional users.

"Gross revenues" shall include, valued at retail price levels, the value of any goods, services, or other remuneration in nonmonetary form received by the licensee or others described above in consideration for performance by a licensee or others described above of any advertising or other service in connection with the cable television system.

"Gross revenues" shall not include (1) any taxes on services furnished by the licensee which are imposed directly upon any subscriber or user by the United States, State of California or government; (2) revenue received directly from the licensee by an affiliate, subsidiary or parent of the licensee or any other person or entity in which the licensee has a financial interest or which has a financial interest in the licensee, when the revenue received has already been included in the reported gross revenues as received by the licensee; and (3) revenue received by such an affiliate, subsidiary, parent, person or entity when the revenue received is from the sale of national advertising shown on programs distributed on a national basis by the affiliate, subsidiary, parent, person or entity and, but for this exception, that portion of the revenue attributable to broadcasts through the cable television system would be treated as gross revenues.

"Leased access" shall mean the use of a fee-for-service basis of the cable television system by business enterprises (whether profit, nonprofit, or governmental) to render services to the citizens of the County and shall include without limitation all use pursuant to Section 612 of the CCPA.

"Licensee" shall mean a person or entity to whom a license to construct and operate a cable television system is issued pursuant to the provisions of this chapter.

"Streets" shall mean the surface of and the space above and below any street, road, highway, freeway utility right-of-way or any other easement which now or hereafter exists for the

provision of public or quasi-public services to residential or properties, and in which the county is expressly or impliedly authorized or empowered to permit use for the installation and operation of a cable television system.

"Subscriber" shall mean a lawful recipient of service from a cable television system.

"User" shall mean a party utilizing a cable television system channel for purposes of production or transmission of material to subscribers, as contrasted with receipt thereof in a subscriber capacity. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.104. License or franchise required.

Except as otherwise provided by this chapter, streets within the county shall not be occupied by or used for a cable television system except under (1) a license issued pursuant to the provisions of this chapter, or (2) a franchise issued pursuant to the provisions of Chapter 1 of this title. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.105. Utility poles.

No license issued pursuant to the provisions of this chapter shall be deemed to expressly or impliedly authorize the licensee to utilize poles owned by Pacific Gas and Electricity Company and Pacific Telephone or any public or private utility which are located within the streets, without the express consent of the utility. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.106. Notices.

All notices and other writings authorized or prescribed by the provisions of this chapter to be "mailed" shall be deemed to have been given and served when deposited in the United States mail, postage prepaid, and addressed, with respect to a licensee to the office set forth in the license application as the main office for the licensee within the County, and with respect to other parties to the last known address of such party.

Any notice or other writing authorized or required by the provisions of this chapter to be "filed," shall be deemed "filed" when received in the business office of the party with whom such notice or writing is authorized or required to be filed. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.107. Authority.

It is declared that the provisions of this chapter are enacted pursuant to the police power authority conferred by Article 11, Section 7 of the California Constitution for the promotion and protection of the peace, health, safety, and general welfare of the citizens of the County. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.108. Ordinances: Police powers.

All zoning and other land use ordinances, building, electrical, plumbing and mechanical codes, business license ordinances and all other ordinances of general application now in existence or hereafter enacted by the County shall be fully applicable to the exercise of any license issued pursuant to provisions of this chapter, and the licensee shall comply therewith. In the event of a conflict between the provisions of this chapter and those of such an ordinance of general application, the provisions of such ordinance of general application shall prevail. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.109. Communications with regulatory agencies.

Copies of all petitions, applications, communications, and reports submitted by a licensee to the FCC or any other Federal or State regulatory commission or agency having jurisdiction in respect to any matters affecting construction or operation of a cable television system or services provided through such a system, shall be filed simultaneously with the Clerk of the Board of Supervisors. Copies of responses or any other communications from the regulatory agencies to a licensee likewise shall be filed immediately on receipt with said Director. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.110. Limitation of actions.

Except as otherwise expressly provided by this chapter, any judicial proceeding, whether for the recovery of damages or otherwise, brought for the purpose of adjudicating the validity of any provision of this chapter or amendments thereof shall be commenced not later than thirty (30) calendar days following the latter of: (1) the effective date of the provisions; or (2) the accrual of the cause of action. Any such judicial proceeding brought for the purpose of adjudicating the validity of any rule, order, regulation or determination which purports to have been made pursuant to the provisions of this chapter shall be commenced not later than thirty (30) calendar days following the date of adoption, issuance or making of such rule, order, regulation or determination. No judicial proceeding shall be commenced in violation of the limitations prescribed by this section.

The provisions of this section shall not be applicable to any judicial proceeding for the recovery of damages or otherwise, commenced by the County for breach or enforcement of the provisions of this chapter or any regulation or determination purporting to have been issued thereunder. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.111. Possessory interest taxation.

The County hereby declares that as a result of the ordinance codified in this chapter and any license issued pursuant hereto, a possessory

interest subject to property taxation may be created and any such property interest may be subject to property taxation if it is created. The licensee, as the party in whom the possessory interest will be vested, may be subject to the payment of property taxes levied upon such an interest. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.112. Inclusion in municipalities.

The inclusion within a municipality by reason of incorporation, annexation or other proceedings of territory lying within the licensed area of a license issued under this chapter shall not operate to divest the licensee of any authority granted by the license within the newly included territory. The terms and conditions of the license shall inure to the benefit of and bind the municipality as to any such newly included territory. The terms and conditions of the license shall continue to inure to the benefit of and bind the County as to any remaining unincorporated territory. The County and any such municipality may act independently in the exercise of any authority granted or in the claim of any benefits derived from the license. License fees based upon subscriber revenues shall be apportioned between the County and the municipality in accordance with the derivation of the subscriber revenue from either incorporated or unincorporated territory. License fees based upon other revenues shall be allocated between the County and the municipality in the same proportion as fees based upon subscriber revenue are allocated. (§ 1, Ord. 1095, eff. July 27, 1989)

Article 2. Issuance of Licenses

Sec. 11-2.201. Application for license.

Applications for a license under the provisions of this chapter shall be made to the Board of Supervisors upon a form as established from time to time for that purpose by the Board of Supervisors or in the absence of such action, shall set forth the contents required by this article. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.202. Contents of application.

Applications for a license shall include at a minimum:

(a) A clear description of the identity of the applicant, including but not limited to the name of the applicant, the address of the applicant, the nature of the business entity, evidence of the compliance of the business entity with all applicable law;

(b) Evidence that the applicant has applied (including the payment of all applicable fees) to the Department of Public Works for all applicable encroachment permits;

(c) Evidence that all aspects of the applicant's cable television system comply with applicable zoning laws of the County;

(d) A map or maps of a scale of not less than one (1") inch equals one hundred (100') feet or such other scale as is specified for good cause by the Director of Public Works showing the precise geographic area for which applicant seeks a license ("license area");

(e) Evidence that applicant has applied (including the payment of all applicable fees) to the Community Development Agency for building and electrical code review and approval of the plans and construction of the entire cable television system within the license area;

(f) Evidence of financial responsibility in the form of a performance bond conforming to Section 11-2.701 of this chapter;

(g) A nonrefundable application fee equal to one-quarter of one percent (.0025) of the principal penal amount of the initial performance bond established pursuant to Section 11-2.701 of this chapter, or such other sum as may be established by the Board of Supervisors, to cover the costs of review, issuance and enforcement of licenses issued pursuant to this chapter.

(h) A schedule of construction, as established by the applicant and reflected upon the map(s) provided pursuant to subsection (d) of this section, showing by a logical geographic progression which streets within the license area shall be constructed by the applicant within each calendar quarter during the period of construction;

(i) Detailed plans and specifications for the cable television system which is proposed by the applicant showing the location of line extenders, amplifiers, pedestal boxes and all repositories of active or passive equipment of any kind whatsoever;

(j) The process and schedule for notifying residents of the area affected of installation schedule, manner of installation, and manner of resolving disputes;

(k) A promise by the applicant at its sole expense, fully to indemnify, defend and hold harmless the County, and in their capacity as such, the officers, agents and employees thereof, from and against any and all claims, suits, actions, liability, and judgments for damages or otherwise, in connection with the application or performance authorized by any license issued hereunder in any way arising out of or through or alleged to arise out of or through the acts or omissions of the applicant or its officers, agents, employees, or contractors or to which the applicant or its officers', agents', employees' or contractors' acts or omissions in any way contribute;

(1) For actual or alleged injury to persons or property, including loss or use of property due to

an occurrence, whether or not such property is physically damaged or destroyed;

(2) Arising out of or alleged to arise out of any claim for damages for invasion of the right of privacy, defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation;

(3) Arising out of or alleged to arise out of applicant's failure to comply with the provisions of any statute, regulation or ordinance of the United States, State of California, or any local agency applicable to the licensee in its business; or

(4) Arising out of or alleged to arise out of:

(i) Any act or omission whereby applicant's cable communications system is utilized to provide any service in such a manner as to unlawfully damage any business competitor or other third party or violate any statutes or regulations of the United States or State of California; or

(ii) Any anti-competitive practice in violation of any statutes or regulations of the United States or State of California. The provisions of this section shall be enforceable in courts of competent jurisdiction against an applicant by any party who alleges injury as a result of an alleged violation thereof.

Nothing herein shall be deemed to prevent the parties indemnified and held harmless from participating in the defense of any litigation by their own counsel at the applicant's sole expense. Such participation shall not under any circumstances relieve the applicant from its duty of defense against liability or of paying any judgment entered against such party. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.203. Issuance of licenses.

The Board of Supervisors shall issue all licenses for which applications are received unless (1) the application shall fail to comply with the provisions of Section 11-2.202 or (2) any license theretofore issued to any affiliate, subsidiary or parent of the licensee or any other person or entity in which the licensee has a financial interest or which has a financial interest in the licensee shall be thereupon in default as to any provision of this chapter or as to any provision of any license issued hereunder. Notwithstanding the provisions of Section 11-2.202, the Board of Supervisors may, in its discretion, issue licenses subject to the subsequent performance of conditions specified herein, provided that in any event all such requirements shall be fulfilled prior to the commencement of any construction within the license area. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.204. Term of license.

The term of all licenses issued pursuant to the provisions of this chapter shall be five (5) years. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.205. Universal service.

Any cable television system licensed pursuant to the provisions of this chapter shall provide equal and uniform cable television service, subject only to a reasonable construction schedule established by the applicant pursuant to Section 11-2.202(h), to all dwelling units within the license area defined by the applicant; provided, however, that no licensee shall be required to extend cable service to any dwelling unit that does not meet the requirements of Sections 11-2.402 and 11-2.413 of this chapter. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.206. The license area.

The applicant shall define a license area whose contour, so far as is possible, shall follow streets. Within the perimeter of the contour, no dwelling units shall be excluded from service provided to the license area defined by the applicant, except pursuant to Section 11-2.402 of this chapter. (§ 1, Ord. 1095, eff. July 27, 1989)

Article 3. System Capability and Standards

Sec. 11-2.301. General capability.

Each cable television system shall, at minimum:

(a) Relay to subscriber terminals those broadcast signals required by the FCC;

(b) Distribute in color all television signals which it receives in color;

(c) Make available upon request by any subscribers receiving channels showing premium services and pay-per-view events, a lockout device which prevents the unauthorized viewing of such channels;

(d) Make available to subscribers, upon request, an RF switch (an A-B switch) permitting conversion from cable to antenna reception; and

(e) Have a present, activated capacity of 450 megahertz with all amplifier cascades designed and spaced to accommodate conversion to 550 megahertz capacity. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.302. Standby power.

Each cable television system shall include equipment capable of providing standby powering for headend, transportation and trunk amplifiers for a minimum of two (2) hours. The equipment shall be so constructed as to automatically notify the cable office when it is in operation and to automatically revert to the standby mode when the AC power returns. The system shall incorporate safeguards necessary to prevent injury to lineman resulting from a standby

generator powering a "dead" utility line. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.303. Override capability.

Each cable television system shall include an "Emergency Alert Capability" which will permit the County, in times of emergency, to override by remote control alternatively the audio and video of all channels simultaneously. Each cable television system shall include the capability to broadcast from the County's headquarters for emergency services. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.304. Interconnection.

The cable television system shall have the technical capability to be interconnected with other cable systems within the County and the greater Sacramento area, so as to technically enable each system to carry the public, educational, and governmental access programming of the other systems. Actual interconnection will be dependent upon the execution of mutually acceptable interconnection agreements between cable television systems relating to all interconnection issues, including issues of cooperation, technical assistance, economic feasibility, maintenance and service, requirements, and so forth. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.305. Plans and specifications.

Each application for a license shall include detailed plans and specifications for the cable television system which is proposed by the applicant. The system shall be constructed and installed by a licensee in compliance with the plans and specifications contained in the application. Upon completion, the applicant shall file "as built" plans with the County showing the detailed location of all underground cable plant and active electronics. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.306. Technical standards.

Each licensee shall construct, install and maintain its cable television system in a manner consistent and in compliance with all applicable laws, ordinances, construction standards, governmental requirements, and technical standards equivalent to those established by the FCC. Each licensee shall provide to the Director of Public Works upon request, written reports of the licensee's annual proof of performance tests conducted pursuant to FCC standards and requirements.

(a) Each licensee shall at all times comply with the National Electrical Safety Code (National Bureau of Standards); National Electrical Code (National Bureau of Fire Underwriters); California Public Utilities Commission General Orders 95, 112-d and 128; applicable FCC and other

Federal, State and local regulations; and Codes and other ordinances of the County.

(b) In any event, the cable television system shall not endanger or interfere with the safety of persons or property within the County or other areas where the licensee may have equipment located.

(c) All working facilities, conditions, and procedures used or occurring during construction of the cable television system shall comply with the standards of the Occupational Safety and Health Administration.

(d) Construction, installation and maintenance of the cable television system shall be performed in an orderly and workmanlike manner, and in close coordination with public and private utilities serving the County following accepted construction procedures and practices and working through existing committees and organizations.

(e) All cable and wires shall be installed, where possible, parallel with electric and telephone lines, and multiple cable configurations shall be arranged in parallel and bundled with the respect for engineering consideration.

(f) Any antenna structure used in the cable television system shall comply with construction, marking and lighting of antennae structures, required by the United States Department of Transportation.

(g) RF leakage shall be monitored in accordance with FCC Rules and Regulations. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.307. Public, educational and governmental access.

Every cable television system licensed pursuant to the provisions of this chapter shall provide not less than the following for public, educational and governmental access pursuant to the provisions of CCPA Section 611 (47 USC 531):

(a) One downstream video channel for public and community access;

(b) One downstream video channel for educational access; and

(c) One downstream video channel for governmental access. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.308. Support for use of access.

Nothing contained in this chapter shall be construed to limit the authority of the licensee to make payments in support of the use of public, educational and/or government. However, such payments are expressly not a requirement of any license granted hereunder and shall in no event be considered in the calculation of license fees pursuant to Article 5 of this chapter. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.309. Availability of access facilities.

Use of facilities for public, educational and government access upon the cable television system pursuant to Section 11-2.307 shall be made available, without rental, deposits, or any other charge whatsoever, for use twenty-four (24) hours per day, seven (7) days a week, in connection with the production of public, educational and/or governmental access programming cablecast upon the cable television system. A licensee shall (1) allow all persons and entities desiring to cablecast public, educational and/or governmental access programming to produce programming upon and electronically interface directly with cable television system of licensee so as to effectively cablecast the public, educational, and/or governmental access programming or, in the alternative, (2) establish such reasonable rules and procedures designed to promote the utilization of such public, educational and/or governmental access programming and subject to the approval of the Board of Supervisors, which approval shall not be unreasonably withheld, whereby the licensee shall accept and cablecast such public, educational and/or governmental access programming upon the cable television system as shall be provided to the licensee by such persons and entities. A licensee shall make all reasonable efforts to coordinate the cablecasting of public, educational and/or governmental access programming upon the cable television system at the same time and upon the same channel designations as such programming is cablecasting upon other cable television systems within the County. (§ 1, Ord. 1095, eff. July 27, 1989)

Article 4. Construction Requirements

Sec. 11-2.401. Dwelling units.

As used in this chapter, the term "dwelling units" means residential living facilities as distinguished from temporary lodging facilities such as hotel and motel rooms and dormitories, and includes single family residential units and individual apartments, condominium units, mobile homes with mobile home parks, and other multiple family residential units. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.402. Isolated dwelling exception.

Notwithstanding any other provision of this chapter, a licensee shall be excused from making cable television services available to a particular dwelling unit within a licensee area if that dwelling unit is situated at least 500 feet from another dwelling unit and making service available to the dwelling unit would require an aerial or underground extension of cable in excess of 500 feet from an otherwise existing

aerial or underground trunk cable. The sole purpose of this exception is to relieve a licensee from providing service to an isolated dwelling unit within a license area under circumstances wherein extension of the system would constitute an excessive burden, and occupants of only one dwelling unit within the area would be deprived of services as a result of the relief. A licensee shall not be entitled to relief under this section unless it shows that it would not have been reasonable to have located cable in such a manner as to be within the distance limitation prescribed by this section. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.403. Duty to report.

Commencing at the end of the first full calendar quarter following the issuance of a license pursuant to the provisions of this chapter, and continuing every calendar quarter thereafter until the date cable television services are made available to 100 percent of the dwelling units within each license area, the chief executive officer of the licensee shall file with the Director of Public Works a written declaration identifying the number and percentage of dwelling units in each license area to which such services have been made available as of the last day of the quarter for which the declaration is made. Upon request, the licensee shall make available to the County such maps, documents and other data as were used by the licensee to compile the aforesaid declaration. Said quarterly declarations shall be filed not later than forty (40) days after the end of the quarter for which the report is filed. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec.11-2.404. Completion.

(a) A final order of completion shall be issued by the Board of Supervisors when: (1) construction of the cable television system has been completed within the entirety of each license area in compliance with construction standards and the design and other requirements of this chapter; (2) cable television services have been made available to 100 percent of the dwelling units within each license area; (3) any and all studio facilities, equipment, channels and other services, resources or benefits required for public, educational, and governmental access purposes pursuant to the provisions of this chapter have been completed and made available; (4) complete and accurate "as built" plans pursuant to Section 11-2.305 have been filed by the licensee with the County; and (5) a notice of completion has been filed by the licensee as hereinafter provided.

(b) For purposes of this chapter, cable television service shall be deemed to be made available when cable television services are offered on a nondiscriminatory basis for immediate provision to the owner or legal representative of the owner empowered to

consent to use of the property of such individual dwelling units.

(c) For the purpose of determining compliance with the provisions of this chapter and of determining completion under this section, the total number of dwelling units within each license area shall be deemed to be the actual number of units available for occupancy as of the date forty-five (45) calendar days in advance of the filing of notice, the total number of dwelling units to which cable television service have been made available within each license area as of the date of filing, and shall otherwise certify completion as defined by subsection (a) of this section. Neither the notice of completion nor the statements, assertions or certifications contained therein shall be deemed to be binding upon the County.

(d) A licensee who asserts completion shall file a written notice of completion with the Clerk of the Board of Supervisors. The notice of completion shall state the total number of dwelling units available for occupancy within each license area forty-five (45) calendar days in advance of the filing of the notice, the total number of dwelling units to which cable television service have been made available within each license area as of the date of filing, and shall otherwise certify completion as defined by subsection (a) of this section. Neither the notice of completion nor the statements, assertions or certifications contained therein shall be deemed to be binding upon the County.

(e) During the period of construction of the cable television system or during the sixty (60) day period following filing of the notice of completion, all elements and components thereof, and all equipment and studio facilities required by the license document shall be subject to inspection by County employees or authorized agents or representatives thereof, for the purpose of determining whether the system and related facilities comply with the license and the provisions of this chapter. The licensee shall authorize such inspection and provide such information and cooperation as is required in order to permit an adequate investigation to determine the existence or nonexistence of such compliance. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.405. Excuses for violations.

(a) Except as hereinafter provided, violation by a licensee of any of the provisions of this chapter caused by circumstances beyond the control of the licensee shall constitute good and sufficient excuse and justification for such violations precluding the licensee from being in breach of said provisions. The following are examples of acts or omissions by a licensee or circumstances which shall be deemed not to be beyond the control of the licensee and which

shall not constitute excuses or justifications for violations:

(1) The failure at any time by a licensee or its officers, agents or employees to exercise diligence in planning, organizing, arranging for or prosecuting the work of construction and installation, or in taking any other action necessary to permit or facilitate the work or construction and installation;

(2) Unanticipated cost increases or insufficiency of capital with which to take actions necessary to comply or facilitate compliance with any of the provisions of this chapter;

(3) Considerations relating to economy or cost efficiency, as respects acts or omissions by a licensee;

(4) Delays occasioned by the failure of a licensee to diligently apply for and prosecute any request for a required certificate, approval or consent from the FCC;

(5) Delays occasioned by seasonal changes in weather or climatic conditions, such as rain (exclusive of catastrophic conditions in the nature of "Acts of God"). (Rain delay shall not constitute an excuse or justification for violation except with respect to measurable precipitation occurring on more than fifty-nine (59) days during any period commencing July 1st, and ending the next following June 30th; and only if such is the proximate cause of the violation);

(6) Delays occasioned by the customary and usual time required to obtain approval to attach lines to poles owned by private or public utilities or in the attaching of cable to the poles; provided that if a licensee submits all plans and documentation required by private or public utility in connection with the approval to attach lines or poles, any time consumed by such approval process which is longer than 150 calendar days following the submission of all necessary plans and documentation shall be deemed to excuse the licensee from any violations which are proximately caused by such delay in excess of 150 calendar days;

(7) Delays occasioned by the customary and usual time required to process and secure approvals under zoning ordinances of the County for the location of components of the cable television system and other installations associated therewith, given the nature of the approval required and magnitude of the project.

(b) Notwithstanding the provisions of subsection (a) of this section a licensee shall not be excused from any violation of the provisions of this chapter except for causes which are beyond the control of the licensee and except with respect to violations which have not been contributed to or aggravated by acts or omissions by the licensee.

(c) Except as otherwise provided above, violations caused exclusively by acts or omissions by the County or its officers, agents, or

employees shall constitute and excuse and justification for failure of the licensee to comply with the provisions of this chapter precluding a determination that the licensee is in breach. However, violations as a result of such exclusive causes shall not be deemed to excuse the licensee from other violations, shield the licensee from a determination that it is in breach for violations, or bar any relief for damages or otherwise as a result of such breach. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.406. Examples of excuses for violations.

Examples of circumstances beyond the control of licensee which excuse a licensee from violation and being in breach of the provisions of this chapter, when such violations are caused thereby, including but not limited to the following: strikes, acts of public enemies; orders by military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; floods; civil disturbances; explosions; and partial or entire failure of utilities. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.407. Use of streets: Interference.

Each cable television system, including wires and appurtenances, shall be located and installed and maintained so that none of the facilities endanger or interfere with the lives or safety of persons, or interfere with any improvements the County or the State of California may deem proper to make or unnecessarily hinder or obstruct the free use of the streets or other public property. All transmission and distribution structures, lines and equipment erected or installed by a licensee within the County shall be so located as to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the streets or other public property. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.408. Permits and approvals.

During the term of each license, in advance of occupying, working upon or otherwise utilizing any street, the licensee shall apply for and obtain any encroachment permit, license, authorization or other approval required by ordinances in force within the County, pay any fees and post any security required by such ordinance, and in the course of construction, installing, replacing, maintaining and repairing the cable television system shall comply with all applicable requirements of such ordinances and any terms or conditions of encroachment permits, licenses, authorizations or approvals issued thereunder.

The County shall be authorized to establish special fees payable by a licensee to defray the costs incurred by the Department of Public Works of the County in supervising and regulating the

installation of a cable television system within the streets of the County. The Director of Public Works of the County shall be authorized to formulate the purpose of promoting safety, reducing inconvenience to the public, and insuring adequate restoration and repair of the streets, and a licensee and its officers, agents, contractors and subcontractors shall comply with any and all such schedules. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.409. Restoration of streets and private property.

All disturbance by a licensee of pavement, sidewalk, driveways, landscaping or other surfacing of streets shall be restored, repaired or replaced by sidewalk, driveways, landscaping or other surfacing of streets shall be restored, repaired or replaced by the licensee at its sole cost in a manner approved by the Director of Public Works and in compliance with generally applicable ordinances of the agency vested with jurisdiction thereover, and in as good condition as before the disturbance occurred.

To the extent practicable and reasonable, each licensee shall accommodate the desires of any property owner respecting location within easements or rights-of-way traversing private land of the property owner of above ground boxes or appurtenances constituting a part of the cable television system. Any disturbance of landscaping, fencing or other improvements upon private property, including private property traversed by easements or rights-of-way utilized by a licensee, shall, at the sole expense of the licensee, be promptly repaired or restored (including replacement of such valuables as shrubbery and fencing) to the reasonable satisfaction of the property owner as soon as possible. Each licensee shall, through authorized representatives, make a reasonable attempt to personally contact the occupants of all private property in advance of private property in advance of entering such property for the purpose of commencing any installation of elements of the system within easements or rights-of-way traversing such property. As used in this paragraph, the terms "easements" and "rights-of-way" do not include easements or rights-of-way for roadway purposes. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.410. Street work.

(a) Upon any failure of the licensee to commence, pursue or complete any work required by it by law or by the provisions of a franchise to be done in any street, the Board at its option and according to law, may cause such work to be done and the licensee shall pay to the County the cost thereof in the itemized amounts reported by the Board to the licensee, within thirty (30) days after receipt of such itemized report.

(b) In the event that:

(1) Any part of such system has been installed in any street or other area without complying with the requirements hereof and/or the franchise ordinance; or

(2) The use of any part of the system of licensee is discontinued for any reason for a continuous period of thirty (30) days, without prior written notice to and approval by the County; then:

The licensee shall, at the option of the County, and at the expense of licensee and at no expense to the County, and upon demand of the County, promptly remove from any streets or other area all property of licensee, and licensee shall promptly restore the street or other area from which such property has been removed to such condition as the County Director of Public Works shall approve. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.411. Erection of poles.

No license shall be deemed to expressly or impliedly authorize the licensee to construct or install poles or wire-holding structures within the streets for the purpose of placing cables, wires, lines or otherwise, without the written consent of the Board of Supervisors. Such consent shall be given upon such reasonable terms and conditions as the Board of Supervisors in its sole discretion may prescribe which shall include a requirement that the licensee perform, at its sole expense, all tree trimming required to maintain the poles clear of obstructions.

With respect to any poles or wire-holding structures which a licensee is authorized to construct and install within streets, a public utility or public utility district serving the County may, if denied the privilege of utilizing such poles or wire-holding structures by the licensee, apply for such permission to the Board of Supervisors. If the Board of Supervisors finds that such use would enhance the public convenience and would not unduly interfere with the licensee's operations, the Board of Supervisors may authorize such use subject to the terms and conditions as it deems appropriate. Such authorization shall include the condition that the public utility or public utility district pay to the licensee any and all actual and necessary costs incurred by the licensee in permitting such use. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.412. Underground facilities.

(a) Unless otherwise authorized by the Board in those areas and portions of the County where transmission and/or distribution facilities of the public utility providing telephone service, and those of the utility providing electric service, are underground or hereafter may be placed underground, or are to be placed underground by a builder, developer or subdivider as part of a

development or subdivision, then the licensee shall likewise construct, operate and maintain all of its transmission and distribution facilities underground to the maximum extent that existing technology reasonably permits the licensee to do so.

(b) In new developments or subdivisions the builder, developer, or subdivider shall be responsible for the performance of all necessary trenching and backfilling of main line and service trenches, including furnishing of any imported backfill material required. The licensee will be responsible for the conduct of the engineering and labor to put the cable conduit in the trench. Pre-wiring of new dwellings to franchise specifications while under construction shall be mandatory. The licensee will be responsible for pulling in the cable, and providing the plant electronics and drops to individual homes, after occupancy.

(c) In those areas and portions of the County where utility service facilities are currently located underground, the licensee shall be responsible for the undergrounding of cable facilities, including the performance of all necessary trenching, and the furnishing of any imported backfill material required.

(d) Previously installed aerial cable shall be undergrounded in concert, and on a cost-sharing basis, with other utilities pursuant to the general ordinances of the County or applicable State law, or in the event such action shall be taken by all other utilities on a voluntary basis.

(e) Subject to approval by the Board, incidental appurtenances such as amplifier boxes and pedestal mounted terminal boxes may be placed above ground, but shall be of such size and design and shall be so located as not to be unsightly or hazardous to the public. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.413. System extension.

The licensee shall be required to extend the cable television system to any new developments or general areas within the license area as authorized to do so within the remainder of the license area pursuant to the following requirements:

(a) The licensee shall be required to extend the subscriber network to any new developments or general areas within the service area and is authorized to do so within the remainder of the franchise area pursuant to the following requirements:

(1) Licensee must extend and make cable communications service available to every dwelling unit within the area reaching the minimum density of at least forty (40) dwelling units per street mile, or five (5) dwelling units within 660 feet, as measured from existing feeder cable.

(2) Licensee must extend and make cable communications service available to every dwelling unit in all unserved, developing areas having at least forty (40) dwelling units planned per street mile, as measured from the existing system, and shall extend its system simultaneously with the installation of utility lines.

(3) Licensee must extend and make cable communications service available to any isolated resident requesting connection at the standard connection charge, if the connection to the isolated resident would require no more than a standard 150 foot aerial drop line or underground connection.

(4) With respect to requests for connection requiring an aerial drop line in excess of 150 feet, the licensee must extend and make available cable television service to such residents at a connection charge not to exceed the actual installation costs incurred by the licensee for the distance exceeding 150 feet.

(5) Whenever the licensee shall have received written requests for services from at least fifteen (15) assured subscribers within 1,300 cable feet of its aerial trunk cable, it shall extend its system to such subscribers solely for the usual connection and service fees for all subscribers, provided that such extension is technically and economically feasible. The 1,300 cable feet shall be measured in extension length of grantee's cable required for service located within public way or easement and shall not include the length of necessary drop to the subscribers house or premises.

(b) Special agreement. Nothing herein shall be construed to prevent licensee from serving areas not covered under this section upon agreement with developers, property owners, or residents.

(c) Any violation of this section shall be considered a breach of the terms of this chapter. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.414. Relocation.

If during the term of a license the County, a county service area, a community services district, a utility district, a public water district, a public sanitation district, a public drainage district or any other similar special public district elects to alter, repair, realign, abandon, improve, vacate, reroute or change the grade of any street or to replace, repair, install, maintain, or otherwise alter any above ground or underground cable, wire conduit, pipe, line, pole, wire-holding structure, structure, or other facility utilized for the provision of utility or other services or transportation of drainage, sewage or other liquids, the licensee shall, except as otherwise hereinafter provided, at its sole expense, remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and any other facilities which it has installed. If such removal or

relocation is required within the subdivision in which all utility lines, including those for the cable television system were installed at the same time, the entities may decide among themselves who is to bear the cost of relocation; provided that the County shall not be liable to a licensee for such costs. Regardless of who bears the costs, a licensee shall take action to remove or relocate at such time or times as are directed by the agency or company undertaking the work. Reasonable advance written notice shall be mailed to the licensee advising the license of the date or dates removal or relocation is to be undertaken. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.415. Tree trimming.

The licensee shall not, and shall prohibit any officer, agent, employee, contractor or subcontractor which it retains from removing or trimming any tree or portions thereof (either above, at or below ground level), which is located within a street without the prior written approval of the Director of Public Works of the County. Such consent may be given or withheld upon such terms and conditions as the Director of Public Works deems appropriate. Each licensee shall be responsible for, shall indemnify, defend and hold harmless the City and its officers, agents and employees from and against any and all damages arising out of or resulting from the removal, trimming, mutilation of or any injury to any tree or trees proximately caused by the licensee or its officers, agents, employees, contractors or subcontractors. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.416. Movement of buildings.

Each licensee shall, upon request by any person holding a building moving permit, license or other approval issued by the County or State of California, temporarily remove, raise or lower its wires to permit the movement of buildings. The expense of such removal, raising or lowering shall be paid by the person requesting same, and a licensee shall be authorized to require such payment in advance. A licensee shall be given not less than one week oral and written notice to arrange for such temporary wire changes. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.417. Removal.

Upon expiration or termination of a license, if the license is not renewed and if neither the County nor an assignee purchase the cable television system, the licensee may remove any underground cable from the streets which has been installed in such a manner that it can be removed without trenching or other opening of the streets along the extension of cable to be removed. The licensee shall not remove any underground cable or conduit which requires trenching or other opening of the streets along

the extension of cable to be removed, except as hereinafter provided. The licensee shall remove, at its sole cost and expense, any underground cable or conduit by trenching or opening of the streets along the extension thereof or otherwise which is ordered to be removed by the Board of Supervisors based upon a determination, in the sole discretion of the Board, that the removal is required in order to eliminate or prevent a hazardous condition or promote future utilization of the streets for public purposes. Any order by the Board of Supervisors to remove cable or conduit shall be mailed to the licensee not later than ninety (90) calendar days following the date of expiration of the license. A licensee shall file written notice with the Clerk of the Board of Supervisors not later than sixty (60) calendar days following the date of expiration or termination of the license of its intention to remove cable intended to be removed and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the Director of Public Works of the County. Removal shall be completed not later than twelve (12) months following the date of expiration or expiration of the license. Underground cable and conduit in the streets which is not removed shall be deemed abandoned and title thereto shall be vested in the County.

Upon expiration or termination of a license, if the license is not renewed and if neither the County nor an assignee purchase the system, the licensee, at its sole expense shall, unless relieved of the obligation by the County remove from the streets all above ground elements of the cable television system, including but not limited to amplifier boxes, pedestal mounted terminal boxes, and cable attached to or suspended from poles, which are not purchased by the County or its assignee.

The licensee shall apply for and obtain such encroachment permits, licenses, authorizations or other approvals and pay such fees and deposit such security as required by applicable ordinances of the County, shall conduct and complete the work of removal in compliance with all such applicable ordinances, and shall restore the streets to the same condition they were in before the work of removal commenced. The work of removal shall be completed not later than one year following the date of expiration of the license. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.418. Abandonment of licensed property.

(a) In the event the use of any license property is permanently discontinued, or no license has been obtained therefor, upon expiration of or within twelve (12) months after any termination of a license, the licensee shall promptly remove from the streets all property

involved, other than any the Board may, at its sole option, permit to be abandoned in place.

(b) A permit to abandon in place must first be obtained from the County Director of Public Works. Nothing hereunder shall be deemed a taking of the property of licensee, and licensee shall be entitled to no surcharge by reason of anything hereunder.

(c) License property to be abandoned in place shall be abandoned in such manner as the Board shall prescribe. Upon abandonment of any license property in place, the licensee shall submit to the Board an instrument, satisfactory to the County Counsel, transferring to the County the ownership of such property. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.419. Enforcement.

Any Director of Public Works for the County who determines that a licensee has committed an act or omission in violation of any of the provisions of Sections 11-2.407 through 11-2.417 shall be authorized to mail written notice of the violation to the licensee.

Not later than seven (7) calendar days following the mailing of such notice, the licensee shall be authorized to file an appeal with the Clerk of the Board of Supervisors. The licensee shall also file a copy of the notice in the office of the Director of Public Works. The Board of Supervisors shall hear the appeal, and shall be authorized to do so at its earliest convenience. The licensee shall be authorized to present oral and documentary evidence and cross-examine witnesses. Formal rules of evidence shall not be applicable.

If no appeal is filed and within ten (10) calendar days following mailing of the notice the licensee has failed to correct the violation, or if an appeal is filed and within five (5) calendar days following mailing to the licensee of an order by the Board of Supervisors, the licensee has failed to correct the violation through assignment of such task to his subordinate personnel or delegation of authority to take such corrective action to a public utility, public district, contractor or other third party. In such event, the licensee shall be liable for the full amount of any charges made for such corrective action, and salary and benefit costs of any public employees assigned to take such corrective action, and the costs of material, supplies and goods utilized in taking such corrective action.

The provisions of this section shall not be construed to fix the date of a breach by a licensee of any of the provisions of this chapter at the prescribed period following mailing of the notice of violation, or to prevent a determination that a licensee has breached any of said sections in advance either of the ten (10) days following the mailed notice or in advance of mailing of the notice or any communication pursuant to this

section to the licensee. Nor shall the provisions of this section be so construed as to relieve the licensee from liability for the damages which may arise out of and be proximately caused by breach by a licensee of any of the provisions of said provisions. (§ 1, Ord. 1095, eff. July 27, 1989)

Article 5. Services

Sec. 11-2.501. System ownership.

Legal and equitable title to the cable television system, including any and all studio facilities and production equipment provided for public, educational, and governmental access, and all channels for whatever kind or nature, shall be vested in the licensee. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.502. Services.

Within a license area, services provided by a licensee through its cable television system shall be offered uniformly upon nondiscriminatory terms to subscribers and users, and shall not differ based upon geographical location, income levels, racial and ethnic composition; provided, however, that licensee shall be entitled to offer bulk rate discounts to multiple dwelling unit developments, hotels, mobile home parks, and other similar developments or subdivisions. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.503. Subscriber antennae.

No licensee shall remove or offer to remove any potential or existing subscriber antenna, or provide any inducement for removal as a condition respecting the provision of service.

It is not necessarily the County's intention to prohibit the erection or controlled use of individual television antennae, and no one is or will be required to receive cable communications service or connect with a cable communications system.

Nothing in this chapter shall be construed to prohibit any person from constructing or operating any private noncommercial satellite receiving station to the extent permitted by County, State and Federal law. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.504. Anti-competitive practices.

(a) No license issued pursuant to the provisions of this chapter shall be deemed to expressly or impliedly authorize the licensee to utilize its cable communications system to provide any service in such a manner as to unlawfully damage any business competitor or other third party or violate any statutes or regulations of the United States or State of California. Nor shall any licensee, by act or omission, engage in any anti-competitive practice in violation of any statutes or regulations of the United States or State of California. The

provisions of this section shall be enforceable in courts of competent jurisdiction against a licensee by any party who alleges injury as a result of an alleged violation thereof.

(b) Each licensee shall hold harmless, indemnify and defend the County, and its officers, agents and employees from and against any and all suits, claims and liability for damages, penalties, fines, or other relief arising out of, resulting from or in any manner relating to any act or omission by the licensee, the allegation of which could constitute a violation of the provisions of this section. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.505. Maintenance and repair.

During the term of each license, the licensee shall maintain its cable television system in good condition and repair, render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.506. Discrimination in service prohibited.

No licensee shall deny service, deny access or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, religion, national origin or sex. (§ 1, Ord. 1095, eff. July 27, 1989, as amended by § 1, Ord. 1129, eff. November 21, 1991)

Sec. 11-2.507. Privacy.

Each licensee, and its officers, agents, employees, contractors and subcontractors, shall respect, refrain from invading, and take affirmative action to prevent violation of the privacy of subscribers served by the cable television system and others.

(a) Neither the licensee nor any other person, agency, or entity shall tap, or arrange for the tapping or monitoring of any cable, line, signal input device, or subscriber outlet or receiver for any purpose whatsoever, except that the licensee may conduct tests of the functioning of the system where necessary in order to ensure proper maintenance of the system and to collect performance data for agencies regulating the quality of signals, and the licensee may conduct system-wide or individually addressed "sweeps" for the sole purpose of verifying system integrity (including individual security system integrity), controlling return path transmissions, billing for pay services, or collecting aggregate data on viewing patterns by channel. "Tapping" shall mean observing a communications signal exchange where the observer is neither of the communicating parties, whether the exchange is observed by visual, aural or electronic means, for any purpose whatsoever. The provision of interactive services shall not be construed to be "tapping" or "monitoring" under this section.

(b) The licensee shall not place in any private residence or in any institution any equipment capable of two-way communications without the written consent of the subscriber, and shall not utilize the two-way communications capability of the system for subscriber surveillance of any kind without the written consent of the subscriber specifying how the data collected will be used and by whom. Tenants who occupy premises connected by the system shall be deemed to be subscribers within the meaning of this subsection regardless of who actually pays for the service. The written consents shall be, and shall show on their face that they are, revocable by the subscriber at any time by written communication mailed by the subscriber to the licensee. No penalty shall be invoked for a subscriber's failure to provide a written consent for his or her revocation thereof, and all written consents shall so state on their face. The licensee shall not make such written consent a condition precedent to receipt by a subscriber of noninteractive service. The provisions of this subsection shall not be deemed to require consent as a condition precedent to system-wide or individually addressed "sweeps" for the sole purpose of verifying system integrity, controlling return-path transmissions, billing for pay services, or collecting aggregate data on viewing patterns by channel.

(c) No cable, line, wire, amplifier, converter, or other piece of equipment associated with cable television system services shall be attached to any residence or other property of a citizen (except within streets) without first securing the written permission of the owner or tenant of the property. If such permission is later revoked, whether by the original or subsequent owner or tenant, the licensee shall remove forthwith all of the equipment and promptly restore the property to its original condition. The licensee shall perform all installations in a workmanlike manner and shall be responsible for any damage to residences or other property caused by the installation.

(d) No licensee or officer, agent or employee thereof shall sell, or otherwise make available, lists of the names and addresses of its subscribers, or any list which identifies, by name or otherwise individual subscriber viewing habits, to any person, agency, or entity for any purpose whatsoever; except that the licensee shall, upon request provide lists of names and addresses of its subscribers to authorized representatives of the Board of Supervisors when the Board of Supervisors deems such information necessary for performance of the regulatory functions of the County. Names and addresses of subscribers within the possession of the County shall not be subject to public inspection or review.

(e) A licensee may release the number of subscribers but only as a total number and as a

percentage of the potential subscribers within the license area. When indicating the number of subscribers viewing a particular channel, a licensee shall indicate only the total number of subscribers viewing them during the relevant time and, the percentage of all subscribers which they represent, but not the identity of any subscriber.

(f) No polls or other two-way responses of subscribers shall be conducted whether for commercial purposes, in connection with community use, or otherwise unless the program of which the poll is a part contains an explicit disclosure of the nature, purpose, and prospective use of the results of the poll. The licensee shall supervise and monitor all polls in which responses are received through the cable television system, and shall adopt and enforce through measures which ensure that personally identifiable information concerning a subscriber, including his or her viewing habits and responses or responses to the inquiry or inquiries, is not received by any third party, including the party sponsoring the poll.

(g) A licensee shall not tabulate any test results, nor permit the use of the system of such tabulation, which would reveal the commercial product preferences or opinions of individual subscribers, members of their families or their invitees, licensees or employees, without advance written authorization by the subscriber. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.508. Standards for system quality.

After public hearings, notice of which is properly given, the Board of Supervisors shall, from time to time, be authorized to enact technical standards applicable to the operation, maintenance, repair, replacement or functioning of a cable television system for the purpose of improving or maintaining quality of video or audio signals, freedom from interference, reliability of service delivery, or other similar types of functional characteristics of the system. Each licensee shall take such actions as are necessary to comply with such standards, and the failure to do so shall constitute a material violation and breach of the license. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.509. Affirmative action.

No licensee shall discriminate in employment or selection of contractors or subcontractors on the basis of race, color, religion, national origin or sex (including marital status). Each licensee shall strictly comply with the Equal Employment Opportunity Regulations promulgated by the FCC, and all applicable Federal and State statutes and regulations and ordinances of the County. Each licensee shall establish as objectives the employment of a work force based upon merit and achievement of a racial balance

within its work force consistent with that which pertains within the residential population of the County. (§ 1, Ord. 1095, eff. July 27, 1989)

Article 6. License Fees

Sec. 11-2.601. License fees.

For the use of the streets and for the purposes of providing revenue with which to defray the cost of regulation arising out of the issuance of licenses under this chapter and promoting, assisting and financing public, educational, and governmental access programming, each licensee shall pay license fees in the amount prescribed by Section 11-2.602, below. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.602. Amount and payment of license fees.

During the term of each license, each licensee shall pay to the Board of Supervisors an amount equal to five (5%) percent per year of the licensee's annual gross revenue.

Said fees shall be paid quarterly not later than August 1, November 1, February 1, and May 1 for the preceding three month period ending, respective, June 30, September 30, December 31, and March 31. Not later than the date of each payment, each licensee shall file with the Clerk of the Board of Supervisors a written statement signed under penalty of perjury by an officer of the licensee which identifies in detail the sources and amounts of gross revenues received by a licensee during the quarter for which payment is made.

No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the County may have for further or additional sums payable under the provisions of this section. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.603. Interest on delinquent license fees.

Any license fees which remain unpaid after the dates specified in Section 11-2.602 above shall be delinquent and shall thereafter accrue interest at the maximum legal rate until paid. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.604. Accounting standards.

Not less than annually, the licensee shall provide the Board of Supervisors with an unqualified certification of an independent certified public accountant certifying the accuracy of the quarterly license fee payments paid within the preceding twelve (12) months pursuant to Section 11-2.602 above. Said certification shall be prepared in accordance with generally accepted accounting standards as established by

the Financial Accounting Standards Board (FASB). (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.605. Gross accounting calculations.

(a) For purposes of the gross revenue calculations required by Section 11-2.602, the phrase "financial interest" as used in Section 11-2.103 shall include but not be limited to:

(1) Any contract in which the licensee or any named owner thereof is to receive a percentage of the gross revenues and/or a percentage of the net income of the other party to the transaction by reason of the activities encompassed by said contract;

(2) Any debt relationship in which the licensee or any named owner thereof as debtor borrows funds at a rate more advantageous than that generally available to similarly situated entities of similar credit worthiness;

(3) Any debt relationship in which the licensee or any named owner thereof as debtor borrows funds at a rate more advantageous than that generally available to similarly situated entities of similar credit worthiness;

(4) Any option or warrant to purchase the stock or other equity interest in an entity or entity related to an entity which generates revenues arising from or attributable to the operation of the system;

(5) Any debt relationship which has conversion privileges to a form of equity of the nature described in the preceding subdivision.

(b) For purposes of the gross revenue calculation required by Section 11-2.602, the phrase "arising from or attributable to operation of the cable television system" as used in Section 11-2.103 shall include but not be limited to:

(1) Any activity, product or service which generates revenue of any type whatsoever and which is offered to the subscribers of the system by means of the system or any related service;

(2) Any activity, product or service which is revenue producing and is offered to the subscribers of the system by any medium other than the system including but not limited to direct mail and home delivery if the system's subscriber list or any portion thereof is utilized for purposes of solicitation;

(3) Any activity, product or service in the production or provision of which any of the assets of the system including but not limited to cable, production facilities, and administrative facilities, are included, unless reasonable consideration is paid to the system for such utilization;

(4) Any television programming or other services offered to the citizens of Yolo County within the term of the license by any means of delivery whatsoever where such programming or services are or could be offered by means of the system. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.606. Auditing and financial records.

The Auditor of the County may, from time to time during the term of a license prescribe standards governing the nature, extent and type of accounting system and accounting procedures utilized by a licensee and require changes in accounting standards or procedures utilized by a licensee, for the purpose of promoting the efficient administration of the license fee requirements of this chapter. Any such standards shall be in writing, shall be filed with the Clerk of the Board of Supervisors, and shall be mailed to the licensee to whom directed. A licensee shall promptly comply with all such standards.

During the term of each license, the County may, not more frequently than once each year, conduct an audit of the books, records and accounts of the licensee fee for the purpose of determining whether the licensee has paid license fees in the amounts prescribed by Section 11-2.602. The audit may be conducted by the Auditor of the County or by an independent certified public accounting firm retained by the County, and shall be conducted at the sole expense of the County. The party conducting the audit shall prepare a written report containing its findings, and the report shall be filed with the Clerk of the Board of Supervisors, and mailed to the County and licensee.

Each licensee shall make available for inspection by authorized representatives of the County, its books, accounts, and all other financial records at reasonable times and upon reasonable advance notice for the purpose of permitting exercise of the authorities conferred by this section. (§ 1, Ord. 1095, eff. July 27, 1989, as amended by § 2, Ord. 1129, eff. November 21, 1991)

Article 7. Bonds and Insurance

Sec.11-2.701. Performance bond.

Each licensee shall file with it application for a license, and at all times thereafter until the filing of a final notice of completion pursuant to Section 11-2.404(a) of this chapter, maintain in full force and effect an acceptable corporate surety bond issued by a surety licensed therefor by the State of California in an amount equal to the greater of (a) the licensee's estimate of the total cost of the sum of (i) the product of the number of miles of aerial plant (to the nearest one-tenth (1/10) of a mile) in the license area and Eighteen Thousand and no/100ths (\$18,000.00) Dollars and (ii) the product of the number of miles of underground plant (to the nearest one-tenth (1/10) of a mile) in the license area and Thirty-Two Thousand and no/100ths (\$32,000.00) Dollars effective for the entire term of the license, and conditioned that in the event the licensee shall fail to comply with any one or more of the provisions of the license

documents, whether or not the license is terminated, then there shall be recoverable jointly and severally from the principal and surety of such bond, any damages suffered by the County as a result thereof, including but not limited to, the full amount of any liquidated damages, delinquent license fees, compensation and costs of repairing or completing the cable television system, and compensation, and cost of removal or abandonment of property and repair of streets and other public or private impoundments, up to the full amount of the bond; said condition to be a continuing obligation for the duration of the license and thereafter until the licensee has satisfied all of its obligations which may have arisen from the acceptance of the license or from its exercise of any privilege thereunder.

Upon the issuance of a final order of completion pursuant to Section 11-2.404(a) of this chapter, the amount of the aforesaid corporate surety bond shall be reduced to an amount equal to Fifty and no/100ths (\$50.00) Dollars for each dwelling unit located within the license area upon the date of the notice of final completion and maintained at such an amount at all times thereafter during the operation of the cable television system.

Neither the provisions of this section, any bond accepted pursuant thereto, nor any damages recovered thereunder shall be construed to excuse faithful performance by the licensee or to limit the liability of the licensee under the license or for damages, either to the full amount of the bond or otherwise. The bond shall contain a provision which prohibits cancellation by the surety during the term of the license, whether for failure to pay a premium or otherwise, without thirty (30) calendar days advance written notice mailed by the surety to the Clerk of the Board of Supervisors. The form of the bond and surety shall be subject to the approval of the Board of Supervisors. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.702. Indemnification by licensee.

(a) Each licensee shall, at its sole expense, fully indemnify, defend and hold harmless the County, and in their capacity as such, the officers, agents and employees thereof, from and against any and all claims, suits, actions, liability and judgments for damages or otherwise:

(1) For actual or alleged injury to persons or property, including loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed, in any way arising out of or through or alleged to arise out of or through the acts or omissions of the licensee or its officers, agents, employees or contractors or to which the licensee's or its officers, agents, employees or contractors acts or omissions in any way contribute;

(2) Arising out of or alleged to arise out of any claim for damages for invasion of the right of privacy, defamation of any person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark or patent, or of any other right of any person, firm or corporation; and

(3) Arising out of or alleged to arise out of licensee's failure to comply with the provisions of any statute, regulation or ordinance of the United States, State of California or any local agency applicable to the Licensee in its business.

(b) The indemnification and hold harmless provisions of this Section shall include those activities proscribed by Section 11-2.406.

(c) Nothing herein shall be deemed to prevent the parties indemnified and held harmless herein from participating in the defense of any litigation by their own counsel at the licensee's sole expense. Such participation shall not under any circumstances relieve the licensee from its duty of defense against liability or of paying any judgment entered against such party. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.703. Licensee insurance.

As a part of the indemnification provided by Section 11-2.702, but without limiting the foregoing, each licensee shall file with the application, and at all times thereafter maintained in full force and effect at its sole expense, an acceptable policy or policies of liability insurance, including comprehensive general liability insurance, products/completed operations liability, personal injury liability, owners and contractors protective liability, broad form property damage, and contractual liability, automobile liability (owned; nonowned and hired automobiles), workers compensation and employer liability. The policy or policies shall name as primary insured the County and their capacity as such, their officers, agents and employees. The licensee and said County and officers, agents, and employees shall be named as co-insured and the policy or policies shall contain cross-liability endorsements. The policy or policies of insurance shall be in the minimum single limit amount of Five Million and no/100ths (\$5,000,000.00) Dollars per occurrence. The insurance policy or policies shall contain contractual liability insurance naming the licensee, and shall insure against the types of liabilities covered by the indemnification and hold harmless provisions of Section 11-2.702.

The insurer or insurers shall be authorized to write the required insurance, approved by the Insurance Commissioners of the State of California, and subject to the reasonable approval of the Board of Supervisors. The form and substance of the policy or policies of insurance shall also be subject to approval by the Board of Supervisors.

The policy or policies of insurance shall be maintained by the licensee in full force and effect during the entire term of the license. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of the licensee or for other reasons, except after thirty (30) calendar days advance written notice mailed by the insurer to the Clerk of the Board of Supervisors and that such notice shall be transmitted, postage prepaid, with return receipt requested, and addressed to the Clerk at 625 Court Street, Woodland, California. 95695. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.704. Waiver of subrogation.

Each licensee shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against the County and in their capacities as such the officers, agents, and employees thereof in connection with any damage covered by any policy, whether for nonpayment of premium, or otherwise, and whether at the request of the licensee or for other reasons, except after thirty (30) calendar days advance written notice mailed by the insurer to the Clerk of the Board of Supervisors and that such notice shall be transmitted postage prepaid, with return receipt requested, and addressed to the Clerk of the Board of Supervisors at 625 Court Street, Woodland, California, 95695. (§ 1, Ord. 1095, eff. July 27, 1989)

Article 8. Transfer and Termination

Sec. 11-2.801. Transfers.

No part or element of a cable television system or any other real or personal property which is a part of said cable television system shall be sold, transferred, assigned, mortgaged, pledged, leased, sublet or otherwise encumbered for any purpose whatsoever, nor shall title thereto, either legal or equitable, or any right or interest therein pass to or vest in any party without the prior written consent of the County.

A license issued pursuant to the provisions of this chapter shall not, either in whole or in part, be sold, transferred, assigned, mortgaged, pledged, leased, sublet or otherwise encumbered for any purpose whatsoever; nor shall title thereto, either legal or equitable, or any right or interest therein, pass to or vest in any party without the prior written consent of the County.

Any such sale, transfer, assignment, mortgage, pledge, lease, sublease or other encumbrance of whatever kind or nature made in violation of the provisions of this section shall be void. (§ 1, Ord. 1095, eff. July 27, 1989, as amended by § 1, Ord. 1162, eff. July 1, 1993)

Sec. 11-2.802. Crimes.

Violation of the provisions of Section 11-2.407 shall constitute a misdemeanor. With the foregoing exception, violation of the provisions of this chapter shall not constitute a misdemeanor, infraction or other crime. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.803. Termination of license.

The following material breaches of the obligations of a licensee under the license shall constitute grounds for termination of license by the County:

(a) Cumulative unexcused delay in excess of thirty (30) calendar days in completion of the cable television system in accordance with the construction schedule submitted pursuant to Section 11-2.202;

(b) Any violation of Section 11-2.701;

(c) The failure to make any disclosure of fact within the application for the license which is required by this chapter, or the misrepresentation of such a fact in the application;

(d) The willful failure to make any payments required by Section 11-2.602; or

(e) Any other act or omission by the licensee which materially violates the terms, conditions or requirements of this chapter or any order, directive, rule or regulation issued thereunder and which is not corrected or remedied within thirty (30) calendar days following mailing to the licensee of written notice of the violation. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.804. Commencement of termination proceedings.

The Board of Supervisors of the County shall not determine that the license shall be terminated upon grounds identified by Section 11-2.803, above, until a hearing has been conducted upon the matter. Written notice of the time, date and place of the hearing shall be mailed to the licensee, and the licensee's surety on the performance bond filed pursuant to Section 11-2.601, not later than thirty (30) calendar days in advance of the date of commencement of the hearing. The notice shall state the reasons for the hearing, describe the basis for termination, and identify the terms, conditions or requirements with respect to which the breach has occurred.

The hearing may be conducted either by the Board of Supervisors or, at the sole discretion of the Board, by a hearing officer appointed by the Board to conduct the hearing. Any such hearing officer shall be an attorney licensed to practice under the laws of the State of California.

The cost of providing quarters for the hearing, the compensation for the hearing officer, if any, and the per diem cost of any reporter retained to record the proceedings shall be borne by the County. The costs incurred by the parties for attorneys fees, expert witness fees and other

expenses shall be borne solely by the party incurring the costs. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.805. Conduct of hearing.

(a) All witnesses testifying at the hearing concerning termination shall be sworn. Witnesses shall be subject to direct and cross-examination. However, formal rules of evidence applicable to the trial of civil or criminal proceedings in the trial courts of this State shall not be applicable to the hearing. The provisions of the Administrative Procedure Act, commencing at Section 11500 of the Government Code or any successor legislative enactment, shall not be applicable to any such hearing. The hearing may be continued from time to time.

(b) If the hearing is conducted by a hearing officer, the officer shall, upon conclusion of the hearing, prepare a recommended decision which includes findings of fact and conclusions. The recommended decision shall be filed with the Clerk of the Board of Supervisors and mailed to the parties not later than thirty (30) calendar days after conclusion of the hearing. Upon receipt of such a recommended decision, the Board of Supervisors may, without a hearing except as otherwise required below, either:

(1) Adopt the recommended decision, including findings of fact and conclusions submitted by the hearing officer;

(2) Adopt the findings of fact and conclusions contained in the recommended decision, modify the decision, and adopt the recommended decision as so revised;

(3) Based upon the record of the hearing, modify the findings of fact, conclusions or decisions, and adopt the recommended decision as so revised; or

(4) Reject the recommended decision and conduct a new hearing.

(c) If the hearing is conducted by the Board of Supervisors, upon conclusion of the hearing, the Board of Supervisors shall adopt a decision which includes findings of fact and conclusions.

(d) If the decision by the Board of Supervisors is that there are grounds for termination of the license and that the license shall be terminated, the Board shall adopt a resolution which terminates the license and includes its decision. The effective date of termination shall be such date as is prescribed by the Board of Supervisors, within its sole discretion, in the resolution. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.806. Alternative remedies.

No provision of this chapter shall be deemed to bar the right of the County to seek or obtain judicial relief from a violation of any provision of the license documents or any rule, regulation, requirement or directive promulgated thereunder.

Neither the existence of other remedies identified in said chapter nor the exercise thereof shall be deemed to bar or otherwise limit the right of the County to recover monetary damages (except where liquidated damages are otherwise prescribed) for such violations by the licensee, or judicial enforcement of the licensee's obligations by means of specific performance, injunctive relief or mandate, or any other judicial remedy at law or in equity. (§ 1, Ord. 1095, eff. July 27, 1989)

Sec. 11-2.807. Nonenforcement.

A licensee shall not be relieved of any obligation to comply with any of the provisions of the license documents or any rules, regulation, requirement or directive promulgated thereunder by reason of any failure of the County or its officers, agents, or employees to enforce prompt compliance. (§ 1, Ord. 1095, eff. July 27, 1989)