

SPECIAL MEETING

CITY COUNCIL

SACRAMENTO

Monday
November 9, 1981
7:00 p.m.

and

Wednesday
November 11, 1981
7:00 p.m.

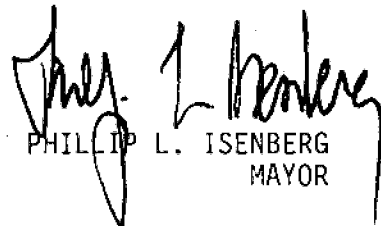
I HEREBY CALL Special Meetings of the Sacramento City Council for the purpose of a Joint Meeting of the SACRAMENTO CITY COUNCIL and the SACRAMENTO COUNTY BOARD OF SUPERVISORS to be held on Monday, November 9, 1981 and Wednesday, November 11, 1981, at the hour of 7:00 p.m. in the Sacramento County Board of Supervisors Chamber, 700 "H" Street, Sacramento, California, for the purpose of considering and acting upon the following:

DRAFT ORDINANCE REGARDING CABLE T.V.

and

DRAFT REQUEST FOR PROPOSAL REGARDING CABLE T.V. FRANCHISE

ISSUED: This Fifth Day of November, 1981


PHILLIP L. ISENBERG
MAYOR

ATTEST:


LORRAINE MAGANA
CITY CLERK



CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK

915 I STREET

CITY HALL ROOM 203

SACRAMENTO, CALIFORNIA 95814

TELEPHONE (916) 449-5426

LORRAINE MAGANA
CITY CLERK

MEMORANDUM

THE BACK-UP MATERIAL FOR THE SPECIAL MEETING OF THE SACRAMENTO CITY COUNCIL HELD ON NOVEMBER 9, 1981, IS CONTAINED IN THE FOLDER FOR THE SPECIAL MEETING OF NOVEMBER 11, 1981.

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

BOARD OF SUPERVISORS MINUTES November 9, 1981

The Board of Supervisors met in Joint Session with the City Council to conduct public hearings to consider the Cable Television Ordinance this ninth day of November, 1981, at 7:00 p.m.

Present: Supervisors Illa Collin, Chairman; C. Tobias Johnson; Joseph E. Sheedy

Absent: Supervisors Bill Bryan; Sandra R. Smoley

Supervisor Collin called the meeting to order.

William Freeman, Assistant County Executive, presented a background report detailing the progression of the Cable Television Ordinance over the past two years.

Lee Elam, County Counsel, outlined the ordinance, pointing out the specific issues yet to be resolved.

Councilman Hoeber addressed the issue of community use programming and a Community Use Authority.

Lee Elam spoke on the legal difficulties in designing a regulatory structure.

Councilman Hoeber discussed the provisions for the Community Use Authority which had been first drafted into the ordinance.

Councilwoman Anne Rudin stated she would like to see the Request for Proposals outline to the bidders what areas of community programming are of interest to the City and County.

Discussion ensued regarding the legal aspects of a public body administering the regulatory authority.

Lee Elam pointed out the difference between the regulatory authority powers and the regulatory policy powers outlined in the ordinance.

Councilman Pope moved consideration of the Cable Television Ordinance, seconded by Councilwoman Rudin.

Supervisor Johnson moved consideration of the Cable Television Ordinance, seconded by Supervisor Collin.

Acting Chairman Isenberg called for discussion.

Bill Cunningham, County Superintendent of Schools, addressed the Joint Body regarding the Educational Consortium.

Chairman Isenberg called for discussion of the voting procedure for tentative selection.

Councilman Connelly questioned the nine month deadline for tentative selection following submission of applications.

Lee Elam responded with the staff's reasons for nine months, and not a shorter time period.

Supervisor Collin requested clarification of the second paragraph of the Tentative and Final Selection Procedures.

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Chairman Isenberg called for discussion on community use programming.

Lois Woodruff, League of Women Voters, addressed the Joint Body regarding provisions in the ordinance and Request for Proposals for specific uses for community use channels. In reply to questions by Councilman Hoeber, Ms. Woodruff stated if uses could not be mandated, such uses should not be allocated to KVIE and the Educational Consortium.

Carol Bass, Public Access Sacramento, recommended no specific public channel allocations, a percentage of the franchise fee designated for community access programming, the formation of a non-profit organization to administer community programming and provisions for non-used channels to be returned to such non-profit organization. In response to questions by Councilman Hoeber, Ms. Bass stated she did not feel the franchisee would provide community access channels voluntarily, and pointed out the problems of lack of financial support for community access programming.

Discussion followed regarding the distribution of the franchise fee, the purchase of services by community organizations and the funds for administering a use authority.

Lee Elam responded regarding restrictions on the franchise fee, and pointed out the provisions in Section 5.50.550 in relation to community use.

Mr. Fong, Sacramento Council of the Parent-Teachers Association, addressed the Joint Body supporting the allocation of public access channels to the Educational Consortium.

Henrene Hines, National Association for the Advancement of Colored People, addressed the Joint Body in support of community access programming channels and requesting that the City and County make the decision as to the community groups' allocations of channels.

James Cleveland addressed the Joint Body regarding Cable Television being made a public utility.

Bill Slayton, KVIE, addressed the Joint Body supporting public access channels and the specific allocation of those channels.

Pam Stor, representing the Child Abuse Services Council and as Chairperson of the Program and Priorities Committee of the Community Services Planning Council, addressed the Joint Body supporting Public Access Sacramento's position.

Bill Moskin, Sacramento Metropolitan Arts Commission, addressed the Joint Body requesting a provision for resource commitments for the arts in the Request for Proposals.

Dr. David A. Rupert, Pastor for the Sacramento Free Methodist Church and representing the Coalition for a Better Television Ordinance, addressed the Joint Body urging restrictions in the ordinance to prevent the showing of X-rated material on Cable Television. Dr. Rupert submitted a model ordinance covering general obscenity passed by Colorado and Texas State Legislatures.

Discussion ensued as to how to restrict objectionable material without violating protections under the First Amendment of the Constitution.

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Lee Elam pointed out the police powers in the ordinance under Section 5.50.512; and suggested that to protect children, a statement could be added to the Request for Proposals expressing the governing bodies' specific concern for the youth of this County and encouraging operators to provide this type of protection in their bid proposals.

Dr. Richard Escala, 6242 Kenneth Avenue, Fair Oaks, representing the Sacramento Health Consortium, addressed the Joint Body requesting a public access channel for health organizations.

Dana Dyers, a resident of Rancho Cordova, addressed the Joint Body regarding public access programming.

Robert Jacobson addressed the Joint Body relating problems encountered in public access programming under the Los Angeles Cable Television Ordinance.

Ron Cooper, Media Services, 355 Commerce Circle, referred to the position paper filed by Media Services supporting public access channels for community groups, supporting the Educational Consortium's channel allocations and in opposition to the channel allocations to KVIE.

Councilman Connelly directed staff develop and provide to the Council and Board by Wednesday morning, language in the ordinance or the RFP with respect to protecting children from access to X-rated materials programmed in the system -- what could franchisees bid to eliminate such access by children; and accepted the amendment by Supervisor Sheedy to include direction to staff to draft a broader ordinance along the lines of that contained in the Colorado and Texas model statutes; seconded by Councilman Hoeber and carried by the consensus of the Council members present.

Supervisor Sheedy moved the above direction to staff, seconded by Supervisor Johnson and carried by the consensus of the Board members present.

Councilman Connelly directed staff to prepare draft language, to be submitted to the Council and Board members Wednesday morning, which would mandate a minimum allocation of three channels to the Community Use Authority with one channel to be for public access purposes, and to prepare whatever modifications are necessary to effect that mandate; seconded by Councilman Hoeber and carried by the consensus of those Council members present.

Councilman Connelly directed staff to submit by Wednesday morning, draft language which deletes the channel allocations to KVIE and the Educational Consortium, and to include those organizations in the Request for Proposals with a statement of preference; seconded by Councilman Hoeber and carried by the consensus of the Council members present.

Councilman Hoeber directed staff to bring back the provisions which were first written into the ordinance regarding the Community Use Authority.

Chairman Isenberg called for discussion on Enforcement of Benefits for private parties.

There were no comments on the issue.

Chairman Isenberg called for discussion on Minority Concerns.

Jim Jackson, City Attorney, recommended the deletion of the last sentence under Section 5.50.548.

Lee Elam concurred with the recommendation.

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Chairman Isenberg ruled that the sentence be deleted as recommended to make the section consistent with other actions taken by the sub-committee.

Councilman Hoeber, Councilman Thompson and Councilwoman Rudin wished votes recorded in opposition to the Chairman's ruling.

Chairman Isenberg called for discussion of Anti-Competitive Regulations.

Councilman Hoeber questioned the provision relating to communication devises.

The Joint Body adjourned to Wednesday, November 10, 1981, at 7:00 p.m.

A T T E S T

Assistant Clerk of the Board

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PROPOSED AGENDA FOR PUBLIC HEARINGS ON CABLE TELEVISION
BOARD OF SUPERVISORS AND SACRAMENTO CITY COUNCIL
November 9 and 11, 1981

The following agenda has been prepared to suggest a structure for these final hearings. The listing of issues is based on prior hearings and is not meant to be exclusive. The agenda anticipates two meetings for completion, but that only represents staff's estimate of the time required.

MONDAY, NOVEMBER 9, 1981

I. STAFF PRESENTATION

- A. Background - Bill Freeman
- B. Ordinance Overview - Lee Elam
- C. R.F.P. Overview - Jim Jackson

II. PUBLIC/OPERATOR TESTIMONY

- A. General Comments
- B. Specific Issues
 - 1. Voting Procedure for Tentative Selection
 - 2. Community Use Programming
 - 3. Enforcement of Benefits for Private Parties
 - 4. Minority Concerns
 - 5. Anti-Competitive Regulations

WEDNESDAY, NOVEMBER 11, 1981

II. TESTIMONY CONTINUED

- 6. Regulation of Services
- 7. Channel Allocations to KVIE, Educational Consortium, and Others
- 8. Valuation on Buy-Out
- 9. Rate Regulation
- 10. "Banking" of Channels

CONNELLY -- RFP TREATMENT OF
CHANNELS FOR KVIE & CONSORTIUM

Resource Commitments to Local Entities

The governing bodies encourage the applicants to propose commitment of resources to local entities. These resources include channels (or time thereon), studios, equipment, staff assistance and financial support.

It is the view of the Governing Bodies that the allocation of channels to local entities, in and of itself, will not enable local entities to make effective use of the cable system. ~~While the franchisee will be required to allocate certain channels to KVIE and the Educational Consortium;~~ It is expected that any voluntary proposals relating to resource commitments will include adequate staff assistance and/or financial support, where needed, to assure that any studio or equipment resources (and allocated channels or time thereon) can be effectively used.

Recognizing that local entities might be able to use more resources than it is economically feasible for the applicant to offer, the Governing Bodies have adopted guidelines so that applicants can incorporate the priorities of the Governing Bodies into their resource commitment proposal.

The order of priorities for resource commitments to local entities is:

1. Educational Consortium; KVIE; and Community Use Programming, including, but not limited to, Access Use, and programming which includes medical, cultural,

artistic, scientific, moral and spiritual, local athletic, and social service, public service and governmental interests, whether audio and video, or audio only;

2. County and Cities
3. Other local governmental entities
4. Other governmental entities

Each of these categories should be included in a resource commitment proposal, if any proposal is made. Resource commitments should be tailored to actual needs in relation to demonstrated expectancies pertaining to utilization. Applications shall contain restrictions required by Sections 5.50.342 and 5.50.344 of the ordinance, and may otherwise contain such terms and conditions consistent with the other Franchise Documents as an applicant may prescribe. Channels or time thereon committed to particular recipients may be conditioned upon full-time utilization standards contained in the application. Resource commitments (including channels or time thereon) shall revert, in the event of non-use or violation of any term or condition, to use, without charge, for Community Use Programming purposes under the jurisdiction and regulatory control of any independent body proposed by the Franchisee under Subparagraph "b" of Section 5.50.344, or the Board of Directors of the Cable Television Commission or any independent body which it may form if the Franchisee has not made a Community Use Programming proposal.

Priority No. 1, above, should focus resource commitments to the Educational Consortium in order to enhance home instructional services, to KVIE in order to facilitate and expand KVIE's cultural, scientific and educational programming for the viewing public, and to Community Use Programming in order to establish extended programming services of special interest to the viewing public. Such services to the public should be viewed and planned as an integrated whole, and resource commitments should be allocated, conditioned and apportioned accordingly, with emphasis upon maximization and interchangeability of use, and economy of scale.

Commitment of channels (or time thereon), access, or resources to local entities which is designed to obtain support for the applicant's application rather than to best implement the priority guidelines set by the Governing Bodies will not be favored in the review process.

It is moved that Article 4-e be amended
 Add A PROVISION Authorizing the Commission,
 in its discretion to confer a contractual
 Right to perform a particular inter-active
 (Non-entertainment) service following:

A- A detailed Application by the Franchisee
 which specifically defines the Nature, extent
 + Scope of the Service, the identity of any
 and all third parties who will be
 associated with delivery of the Service, +
 Such other information as required; and

B. A public hearing. ~~notice of which is~~
~~given to existing providers~~

The Application may be approved and the
 contractual Right conferred upon such
 conditions as the Commission requires -

COUNTY OF SACRAMENTO

Inter-Department Correspondence

Date November 6, 1981

To : Mayor, Chairperson and Members
City Council of Sacramento
Board of Supervisors of Sacramento County

From : L. B. Elam
County Counsel

Subject: Hearing Draft No. 4 - Cable Television Ordinance

Enclosed herewith is Hearing Draft No. 4 of the Cable Television Ordinance, dated November 4, 1981. This Draft has been approved by the Joint Sub-Committees of the City Council and Board of Supervisors at the conclusion of their public hearings on October 29, 1981. It is presented for consideration by the full governing bodies, during their joint public hearings on November 9 and 11, 1981. The underlined provisions within the enclosed Hearing Draft No. 4 represent technical and substantive changes made in Hearing Draft No. 3, dated October 15, 1981, which was the Draft upon which the public hearings by the Joint Sub-Committees were conducted.

Also enclosed are the following explanatory documents:

- a. A memorandum by the undersigned to the Joint Sub-Committees, dated October 2, 1981, explaining the substantive provisions of Sub-Chapter 1 through Article 4-b of Sub-Chapter 4 of the Ordinance;
- b. A memorandum by the undersigned to the Joint Sub-Committees, dated October 14, 1981, explaining the substantive provisions of Article 4-c of Sub-Chapter 4 through Article 5-b of Sub-Chapter 5 of the Ordinance;
- c. A memorandum by the undersigned to the Joint Sub-Committees, dated October 23, 1981, discussing various aspects of the Ordinance, including Franchise Fees, procedures for the selection of the Franchisee, etc.;
- d. A memorandum by the undersigned to the Joint Sub-Committees, dated October 28, 1981, discussing Rate Regulation and the "Banking" of Channels.

The agenda for the public hearings on November 9 and 11, 1981, identifies ten major issues upon which public testimony will be solicited, and which will be singled out for special consideration by the joint governing bodies. This memorandum will briefly summarize the background of each of the ten issues.

1. Voting Procedure for Tentative Selection. The first and any subsequent franchise would be issued in the name of the Cable Television Commission, by its Board of Directors. (Sec. 5.50.218). However, a tentative selection would be made by the City Council of Sacramento and Board of Supervisors prior to issuance of the franchise. (Secs. 5.50.210, 5.50.214). Within thirty days following the tentative selection, the Municipalities of Folsom, Galt, and Isleton would be entitled to veto selection. Should one of them do so, the franchise would not be effective within that Municipality. (Sec. 5.50.212). For the initial franchise, the City Council of Sacramento and Board of Supervisors would be required to approve the resolution issuing the franchise, and the Board of Directors of the Commission would be bound by those determinations. (Sec. 5.50.214). Tentative selection could be rescinded by either the City Council of Sacramento or Board of Supervisors prior to formal award of the franchise. However, such a rescission would result in rejection of all applications, and no franchise could be issued pursuant to the request for proposals. (Sec. 5.50.214).

Staff suggested, and the Joint Sub-Committees, by a three to two vote, adopted a special voting procedure for tentative selection of the initial franchisee. Under that procedure, the City Council and Board of Supervisors would vote as combined bodies, by secret ballot. The results of the ballots would be immediately and publicly disclosed by the clerks. The first applicant to receive, at the same time, three votes by Supervisors and five votes by members of the City Council, would be deemed to have been tentatively selected. Balloting would be conducted repetitively until selection occurs. After the first two ballots, applicants with the lowest number of votes would be eliminated from competition. Abstaining votes would be permitted. The Joint Sub-Committees desired that tentative selection occur during a single meeting. Therefore, a vote of adjournment by either body prior to tentative selection, would result in a rejection of all applications, and no franchise could be issued pursuant to the request for proposals. The procedure is outlined in Section 5.50.210 of enclosed Hearing Draft No. 4.

If the above voting procedure is considered to be undesirable, it is the staff recommendation that Section 5.50.210 be revised to simply provide that voting may be conducted in any manner which the governing bodies determine, and that the successful applicant will be

the one who, at the same time, is the beneficiary of votes by five members of the City Council and three Supervisors.

2. Community Use Program. Under Section 5.50.332, applicants are not required to either provide community use programming or facilities therefor. However, they may include within their applications proposals to do so.

If an applicant elects to make such a proposal, it must establish an independent authority whose responsibility it would be to regulate such Programming, and must also provide at least one channel and studio facilities for access use by members of the public on a first-come-first serve basis. (Secs. 5.50.334-b, 5.50.336). In addition, an applicant may also propose various volumes of Community Use Programming within Tiers of Service, and studio facilities and other resources which would be made available for use by community groups to produce such Programming. (Sec. 5.50.338). If the franchise is awarded to an applicant who has made such proposals, the proposals would be legally binding, and failure of compliance would constitute a material breach of the franchise. (Sec. 5.50.340).

The foregoing provisions have been fashioned primarily as a result of staff recommendations, with agreement by interested operators. The provisions are motivated by the fact that mandatory allocation or requirements that a Franchisee provide Community Use Programming, and public regulation of the various content and other aspects thereof, could violate protections afforded by the First Amendment of the U. S. Constitution. Establishment of a voluntary bidding process for creation of such resources and benefits, together with an independent regulatory authority which is not controlled by a public agency, are methods designed to avoid assertion of violations of protected First Amendment rights.

3. Enforcement of Benefits for Private Parties. It is known, or at least reliably assumed, that interested operators will include within their proposals the allocation of various benefits to private parties. These benefits could range from studio facilities for K.V. I.E. to the right to use particular channels granted to named community organizations, to the pledge of revenues to cultural or philanthropic endeavors. The question arises whether such promises should be enforceable terms of the franchise, such that failure of the Franchisee to make the promises good results in a breach of the franchise triggering such remedies as refusal to release channels from the "Bank" to termination.

On the one hand, the governing bodies may rely upon such promises in selecting the successful applicant. On the other hand, the promises are made primarily to and for the benefit of named private parties. If the promises are too vague, they may not be enforceable. If disputes arise between the Franchisee and the private parties regarding the extent to which the promises are kept, the Board of Directors of

the Cable Television Commission could be placed in the awkward position of mediating disagreements in which it has no direct interest.

The Joint Sub-Committees directed that a mechanism be created to allow for enforcement through the franchise of certain types of such promises, that there be a restriction upon the use of such benefits for commercial purposes, and directed staff to develop a process for achievement of these ends.

Section 5.50.344 of the enclosed Hearing Draft No. 4, represents the staff solution. Applicants would be required to include legal instruments with their applications by which all benefits to be conferred upon private parties would be made. The instruments are required to include a prohibition against use of the benefits for commercial purposes. The private party recipients would be authorized to sign the legal instruments after tentative selection of the Franchisee, and in advance of award of the franchise. Within thirty days following tentative selection, the City Council and Board of Supervisors would be required to conduct a hearing for the purpose of receiving criticism by private party recipients of the adequacy of the language used to convey the benefits, and to determine which types of obligations would be made enforceable provisions of the Franchise Documents. With respect to situations where a private party recipient asserts lack of specificity, the governing bodies would be empowered to direct the Franchisee and recipients to meet and satisfactorily resolve the disputes in advance of award of the franchise.

4. Minority Concerns. Section 5.50.546 of enclosed Hearing Draft No. 4 prohibits discrimination on the basis of race, religion and sex (including marital status), requires strict compliance with Equal Employment Opportunity Regulations, and requires a Franchisee to attempt to achieve a racial balance consistent with that of the residential population.

The Request for Proposals, page 27, Item No. 10; Form "M", authorizes applicants to propose procedures by which affirmative action in employment might be achieved, and identifies such proposals as a factor to be considered in selection. The voluntary approach to the establishment of affirmative action plans is mandated by constitutional restrictions upon governmental requirements respecting employment on the basis of race.

At the direction of the governing bodies, staff also presented to the Joint Sub-Committees language by which a mandatory set-aside for minority business enterprises would be required in relation to the issuance by the Franchisee of contracts for the construction of the Cable Television System. The Joint Sub-Committees declined to include such provisions within the Franchise Documents. As presented, neither the Ordinance nor Request for Proposals contain such provisions.

5. Anti-Competitive Regulations. Pursuant to directions by the City Council and Board of Supervisors when public hearings by the two full bodies were last conducted, provisions were prepared which prohibited the sale and repair of communication receivers, and regulating leased access for the purpose of promoting use by others of the Cable Television System.

Pursuant to recommendations by staff, the Joint Sub-Committees authorized removal of these provisions. Section 5.50.516 is the only provision within the enclosed Hearing Draft No. 4 which deals with that topic. Section 5.50.516 broadly prohibits a Franchisee from discriminating in competition in a manner which violates Anti-Trust Laws.

The staff recommendation is based upon the following factors. Public agencies, including the City and County may now be liable for unlawfully restricting the competitive opportunity of a cable television operator. Overly broad restrictions upon the operator's right to compete could result in such liability. The extent to which local public agencies are preempted from anti-trust regulation is also legally unclear. Staff suggests that regulation of anti-competitive practices be reserved for a time when precise ills are known, and specific regulations may be enacted in order to deal with them.

Accordingly, enclosed Hearing Draft No. 4, reserves broad authority in the Cities, County and Cable Television Commission to enact future regulations or ordinance amendments to deal with any specifically identified transgressions by a Franchisee in the anti-trust field. (Secs. 5.50.036, 5.50.038, 5.50.500, 5.50.552). In addition, a Franchisee would not acquire a contractual right to provide any non-entertainment service, regardless of whether it is proposed in the application. (Sec. 5.50.506). The absence of a contractual right to engage in such activities as provision of burglar alarm services, establishes a sound legal platform for future regulation should such become necessary.

6. Regulation of Services. Applicants for a franchise are required to identify within their applications, in detail, the nature and extent of educational and home entertainment services which they propose. (Sec. 5.50.504). Changes in those services are regulated in such a manner that actual programming may not vary in nature, extent, volume or quality from that offered. (Sec. 5.50.508). Arbitration is established as the remedy. (Sec. 5.50.510). A rule-making authority is reserved to the Board of Directors of the Cable Television Commission respecting such services. (Sec. 5.50.512).

As discussed above, non-entertainment services are authorized to be provided, but are not endowed with a contractual entitlement. Full regulatory authority thereover is reserved. (Sec. 5.50.506).

7. Channel Allocations to K.V.I.E., Educational Consortium and Others. The City Council and Board of Supervisors, during prior public hearings of the full bodies, directed inclusion within the Ordinance of provisions which allocate channels to K.V.I.E. and the Educational Consortium.

By a three to two vote, the Joint Sub-Committees have directed that four channels be allocated to each of these entities. Sections 5.50.328 and 5.50.330 of enclosed Hearing Draft No. 4 contain the following restrictions respecting the use of these channels:

- a. Two of the channels must be made available to K.V.I.E. and three of the channels must be made available to the Educational Consortium by the date the Franchisee first provides service on the Subscriber Network.
- b. The remainder of the channels must be made available when K.V.I.E. and the Educational Consortium are able to prove to the Board of Directors of the Cable Television Commission that they will be utilized on a full-time basis.
- c. Channels initially allocated must be used on a full-time basis within sixty months following award of the franchise.
- d. If full-time use of the channels ceases, they are lost.
- e. K.V.I.E. and the Educational Consortium must indemnify and insure the Cities, County and Franchisee against any liability arising out of their use of the channels.
- f. The channels may not be assigned to others by K.V.I.E. or the Educational Consortium for the provision of programming for the viewing public without advance consent by the Franchisee.
- g. Use of the channels for commercial purposes or for purposes other than the provision of instruction or programming for the viewing public is prohibited, absent approval by the Board of Directors of the Cable Television Commission.

The enclosed Hearing Draft No. 4 contains an oversight respecting this topic. During their public hearings, the Joint Sub-Committees directed that any channels lost through failure of utilization would revert to Community Use, rather than to the Franchisee. Staff has inadvertently failed to include such a provision within Section 5.50.330. It may be added in advance of enactment of the Ordinance.

8. Valuation on Buy-Out. Sections 5.50.240 and 5.50.244 of enclosed Hearing Draft No. 4 authorize either the Cable Television Commission or its assignee to purchase the Cable Television System and associated property either: (i) In the event the franchise is terminated for breach; (ii) In the event the franchise terminates at the conclusion of its term without renewal to the first Franchisee; or (iii) In the event the Franchisee desires to assign the System or franchise to a third party prior to the expiration of the franchise, the Commission disapproves, and the disapproval by the Commission is reversed by a court. "Book Value", with a 15 year depreciation schedule, is the standard for acquisition of the property in the event of termination pursuant to breach. "Replacement Cost" is the valuation standard in the event of purchase as a result of change in law, or termination of the franchise at the conclusion of its term without renewal to the Franchisee. "Market Value", limited to the term of the initial franchise, is the valuation standard in the event of purchase pursuant to disapproval of an assignment. (Secs. 5.50.246, 5.50.248).

Interested operators desire that "Market Value" be the standard in the event of purchase as a result of change in law or termination of the franchise without renewal to the Franchisee. The operators also desire to receive compensation for use of subscriber lists.

These issues have been considered at length by the Joint Sub-Committees. Extensive written summaries of arguments by staff and interested operators have been received and considered. Substantial debate of the issue took place during the public hearings. The above described provisions have been approved by the Joint Sub-Committees. During the public hearings, one Sub-Committee member suggested staff reconsideration of its position and suggestion of compromise.

Staff has reconsidered its position, and its recommendation remains constant -- that is, adoption of the provisions within the enclosed Hearing Draft No. 4, described above. No attempt will be made to summarize the various arguments. However, Attachment A to this memorandum identifies the evolution of the current staff position, in relation to provisions in other ordinances and the recommended C. T. I.C. language.

If the staff recommendation is rejected, it is suggested that the approach to valuation utilized by Dallas and Austin, as shown in Attachment A, be adopted. Staff does not recommend this approach, because it does not understand what the language means. However, it is possible that the language will have been interpreted by the time it would become pertinent here, and that the magnitude of financial exposure which purchase would entail will be foreseeable. Adoption

of an exotic valuation standard which has not been utilized elsewhere risks inability to predict the magnitude of cost before the substantial financial resources required in order to litigate the valuation question in adversary hearings have been committed.

9. Rate Regulation. Sections 5.50.616 through 5.50.624 of enclosed Hearing Draft No. 4 authorize applicants to propose rate regulation of Basic Service (the lowest Tiers of entertainment programming). If the Franchisee has proposed such regulation, rates for Basic Service stated in the application may not be increased until completion of the Cable Television System, and thereafter only on an annual basis at an escalator which does not exceed 50% of the increase in the CPI. The Ordinance contains no prohibition against the proposal by an applicant of rate regulation of higher Tiers of Service than Basic Service. There was some indication during the public hearings by the Joint Sub-Committees that one or more applicants may choose to make such expanded proposals.

Rate regulation is a legally "soft" restriction upon a Franchisee's operations. Section 53066.1 of the Government Code purports to allow Franchisees to exempt themselves from such regulation. The Legislative Counsel has opined that even self-imposed regulation violates Section 53066.1. Although staff does not agree with this conclusion, it must be conceded that the answer will remain somewhat in doubt until the issue is litigated. In addition, various proposals in the California Legislature and Congress would outlaw rate regulation.

The staff recommendation supporting the above limited form of regulation was motivated by the legal uncertainties inherent in the current environment. Regulation of the rates for Basic Service is a highly modest restriction, and virtually innocuous in light of the vast array of services which predictably will be offered.

10. "Banking" of Channels. Sections 5.50.814 and 5.50.816 reserve 20% of the video channels on the Subscriber Network which are or become practically capable of utilization as a measure of enforcing compliance with the Franchise Documents.

Under Section 5.50.816, 50% of the reserved channels must be released to the Franchisee if the Franchisee actually completes the System and complies with other requirements within 51 months following award of the franchise. Fifty-one months is the completion date established by Section 5.50.410-d. What "completion" actually entails, is defined by the first paragraph in Section 5.50.416.

On the other hand, if the actual date of completion is later than 51 months following award of the franchise, only 25% of the reserved channels are released. (Sec. 5.50.816).

November 6, 1981

Twelve months following issuance of the Final Order of Completion, all remaining channels may be released, at the discretion of the Board of Directors of the Cable Television Commission. That determination is required to be based upon an appraisal of adequacy of the Franchisee's performance, and suitability of other enforcement mechanisms should future breaches occur.

The Board of Directors is required to release one of the reserved channels every twelve months following issuance of the Final Order of Completion, unless the Board finds that the Franchisee is in violation of the Franchise Documents. At the end of the sixth year following issuance of the Final Order of Completion, all remaining reserved channels must be released.

Attachment C of the enclosed memorandum by the undersigned to the Joint Sub-Committees, dated October 28, 1981, illustrates how the release mechanism would function given a particular set of hypothetical situations.

The foregoing completes the summary of detailed information concerning the ten central issues. The above discussion has not, and could not possibly, detail the many other changes which have been either ordered or approved by the Joint Sub-Committees during their deliberations. An overview of the enclosed Hearing Draft No. 4 will be presented orally at the commencement of the public hearings by the full bodies on November 9, 1981.


L. B. ELAM

LBE:sd

cc: William Freeman, Asst. County Exec.
Mac Mailes, Asst. City Manager
James Jackson, City Attorney
Interested Operators
Clerk, Board of Supervisors

ATTACHMENT A

Chronology of Positions
Valuation Standard for Non-Renewal
With
Illustration of Other Approaches

1. Initial County Staff Position - March 1, 1981 Draft Ordinance - Book Value.
2. City of Portland Ordinance - Market Value -- but excluding any consideration of investment or expected profits, going concern value, compensation for records, and value for unexpired term.
3. City of Milwaukee Ordinance and C. T. I. C. Recommendation - not less than net book value, and not greater than current replacement cost -- specifically excluding good will factors from consideration.
4. County Staff Recommendation - October 15, 1981 Hearing Draft No. 3 - the lessor of replacement cost or market value.
5. County Staff Recommendation - November 4, 1981 Hearing Draft No. 4 - replacement cost.
6. City of Dallas and Austin Ordinances - replacement value plus going concern value. "Going concern value" means benefits resulting from location within Dallas, the Franchisee's reputation among subscribers and others, other circumstances resulting in retention of subscribers; but excluding value for the "franchise itself" and increases in value relating to revenue expectations beyond the term of the franchise.

COUNTY OF SACRAMENTO

Inter-Department Correspondence

Date October 2, 1981

To : Joint Sub-Committees
Cable Television Ordinance Review
City and County of Sacramento

From : L. B. Elam
County Counsel

Subject: Cable Television Ordinance - Sub-Chapter 1
through Sub-Chapter 4, Article 4-b
Meeting of October 7, 1981

The enclosed Sub-Chapter 1 through Sub-Chapter 4, Article 4-b represents approximately 60% of the draft of the Cable Television Ordinance which is being prepared for hearings by the Joint Sub-Committees. The remaining 40% will be presented for the Sub-Committees' meeting on October 14, 1981.

This memorandum will focus upon the principal changes from the March 1, 1981 Ordinance Draft which have been incorporated into the enclosed one.

Sub-Chapter 1 General Provisions

1. Basic Service. The definition of Basic Service has been altered to require only carriage of the 6 local stations, plus one of the K.V.I.E. channels required to be donated by the Franchisee, plus one of the Educational Consortium channels required to be donated by the Franchisee, plus one Access Channel, if an Access Channel is proposed by the Franchisee in its application. (Sec. 5.50.012-a). Any channels included within Basic Service in addition to the 9 required, would be carried at the discretion of the Franchisee.

2. Contractual Relationship. The "vested rights" language contained in the March 1, 1981 Draft Ordinance has been omitted in its entirety at the request of the interested operators.

In lieu thereof, a provision has been inserted which makes it clear that the relationship between the parties is contractual in nature. (Sec. 5.50.018). Section 5.50.018 not only defines the contractual relationship, but also contains rules of interpretation, and a recital which explains the manner in which the ordinance has been negotiated with interested operators by staff and the

process by which operators have been entitled to input directly to the governing bodies, for the purpose of negating any inference that the franchise constitutes a contract of adhesion.

3. Amendments. No amendment of the ordinance could become effective unless it is enacted by both the City Council of Sacramento and Board of Supervisors. No amendment adopted by those bodies would be effective within the Municipalities of Folsom, Galt or Isleton unless the governing bodies of those jurisdictions similarly enact the amendment. (Sec. 5.50.036).

Section 5.50.038 defines the circumstances under which a Franchisee is protected against amendment of the Ordinance once a franchise has been issued. In general, the power to amend would be comprehensive, with exceptions prescribed by subparagraphs "a" through "h" of Section 5.50.038. Within that portion of the Draft Ordinance enclosed herewith, among the significant provisions which would not be subject to amendment so as to affect the rights of a Franchisee, in the absence of an emergency or the consent of the Franchisee, are the following:

- a. The standards for valuing the property which the Cable Television Commission or its assignee is entitled to purchase in the event of breach, at the conclusion of the term of the franchise, or in the event of a requested assignment;
- b. The provisions defining minimum standards for the Cable Television System, such as channel capacity, number of channels, etc.;
- c. The provisions establishing prevailing rates;
- d. The provisions requiring donation of channels to K.V.I.E. and the Educational Consortium; and
- e. The provisions establishing requirements for construction of the Cable Television System, terms and conditions for extension, and procedural remedies in the event of failure of compliance.

4. Limitations of Actions. Interested operators have requested that there be included within the Ordinance a provision establishing a 30 day limit for the commencement of actions which challenge the validity of the provisions of the Ordinance and any administrative determination made under the Ordinance. The

provision is set forth in Section 5.50.048. The limitation applies to suits brought by third parties, not to actions which might be commenced by the Cable Television Commission, County or Cities.

5. Illegal Tapping. One of the operators has requested inclusion within the Ordinance of a provision which makes it illegal to tap a Cable Television System without paying the prescribed fee for the right to receive service. Other operators have not objected to the provision. The provision has been included in the form of Section 5.50.052.

Sub-Chapter 2 Cable Television Commission

The enclosed Draft contains few changes from the March 1, 1981 Ordinance Draft pertaining to the Cable Television Commission.

The Board of Directors would continue to consist of 9 members, 5 Supervisors, 3 Sacramento City Councilmen, and 1 representative of Folsom, Galt, and/or Isleton. The Commission would become operable and empowered to act 31 days following the date of selection of the Franchisee for the Initial CATV Franchise. (Sec. 5.50.106). The reason for the 31 day period, is that Folsom, Isleton and Galt would each be entitled within 30 days following selection of the Franchisee to veto the selection by withdrawing from the Commission and the franchising program.

Provisions have been added to Sub-Chapter 2, empowering elected officials on the Board of Directors to individually appoint representatives to serve on the Board in their place (Sec. 5.50.104), and empowering the Board to provide reasonable compensation for services rendered by its members (para 3-f).

Sub-Chapter 3 Issuance and Renewal of Franchises

1. Selection of Initial Franchisee. The process for such selection approved by the Joint Sub-Committees on September 30, 1981, requires the selection to be made during a single meeting of the City Council of Sacramento and Board of Supervisors sitting jointly. Voting would be through secret balloting, with immediate announcement of the results. Applicants receiving few votes would be eliminated during the course of balloting. However, if no selection is thereafter made, the applicants would be reinstated to the competition. The right to abstain from voting is conferred in order to insure that three Supervisors whose choice has been eliminated from competition temporarily could defeat selection. In order to be selected, the successful applicant would need to receive 5 Councilmen votes and 3 Supervisors votes during the same balloting.

Section 5.50.210 embodies the above process. The Section also provides that recesses not longer than 15 minutes would be permitted during the meeting at which selection is made, and that a decision by either the City Council or Board of Supervisors to adjourn the meeting at which selection is to be made in advance of selecting the Franchisee, would constitute an automatic rejection of all applications and deny the governing bodies the power to issue a franchise pursuant to the request for proposals.

Section 5.50.212 would give the Municipalities of Folsom, Galt and Isleton the opportunity to veto selection by withdrawing from the franchising program and from the Commission, if action disapproving the selection is taken within 30 days after the date of selection.

2. Renewal. The initial franchise of 15 years would be subject to renewal pursuant to an application filed by the Franchisee not later than 48 months prior to the expiration of the franchise. (Sec. 5.50.228). A year would be allowed to determine whether the renewal application should be granted. If no action is taken, the application would be deemed to have been denied. (Sec. 5.50.232). The Board of Directors of the Commission would be empowered to approve renewal. (Sec. 5.50.234). However, the City of Sacramento or County of Sacramento would be empowered to overrule the determination by the Board of Directors within 30 days following filing of the certificate of acceptance for renewal. (Sec. 5.50.238).

The Commission's existence terminates December 31, 2002, and no franchise could extend beyond that date. (para. 9 p. 22; sec. 5.50.224). Therefore, a renewal could not be for a term longer than five years, absent amendment of the Joint Powers Agreement extending the life of the Commission or a reorganization of the franchising process. The reason for endowing the Commission with a life five years longer than the term of the initial franchise, is to make it viable for the Commission to issue additional competing franchises should such be determined to be advisable.

3. Acquisition of Cable Television System. The terms and conditions under which acquisition of the Cable Television System is permitted by the Commission are controversial. These issues are the subject of a separate memorandum by this Office presented for consideration during the meeting on October 7. The purpose of the following discussion is to simply outline the contents of the enclosed Ordinance Draft.

Whereas the March 1, 1981 Draft Ordinance permitted acquisition of the System by the Commission only at the end of the term of a

franchise (should it not be renewed) or upon early termination of the franchise as a result of breach, the enclosed Draft Ordinance also permits acquisition in the event the Franchisee seeks approval of an assignment. (Sec. 5.50.240-c). This additional right has been recommended by C.T.I.C. (the consultant) as an alternative means of reacting to a determination by a Franchisee to sell the business to a third party.

Whereas the March 1, 1981 Draft Ordinance permitted the Commission to acquire all property of the Franchisee or any portion of the property at the discretion of the Commission the enclosed Draft Ordinance makes it clear that all property of the Franchisee must be acquired with very limited exceptions. (Sec. 5.50.242). This modification has been made at the request of interested operators. If the Commission elects to purchase, the purchase must include the Cable Television System, land, buildings and improvements utilized to provide services, cameras, equipment, vehicles, and books, accounts and records, including subscriber lists. At the request of interested operators, space utilized solely for business office purposes is excluded from the right of purchase. In addition, the Commission may elect to exclude from purchase land and improvements upon which no component of the System is situated and which is not essential to the System or the provision of services thereunder.

"Book Value" remains the standard applicable to an acquisition pursuant to early termination of a franchise as a result of breach. (Sec. 5.50.248-a). However, at the request of interested applicants, the definition of "Book Value" has been modified to require a 15 year straight-line depreciation schedule, instead of actual depreciation taken for purposes of taxation. (Sec. 5.50.246-a). The purpose of this revision is to insure that the purchase price will at least equal outstanding debt on the System resulting from construction loans, and thereby avoid lender resistance to the terms of the franchise.

"Market Value" or "Replacement Cost", whichever is lower is the standard for acquisition of the property at the conclusion of the term of the franchise, should the franchise not be renewed. (Sec. 5.50.248-c). "Replacement Cost" is defined as the direct cost of rebuilding the System at current prices, assuming equivalent utility and technological capacity, but utilizing modern materials and construction standards -- less depreciation and obsolescence from physical, functional and economic causes. (Sec. 5.50.246).

"Market Value" is the standard of valuation applicable in the event of acquisition of the property pursuant to a request by the

Franchisee for approval of an assignment. (Sec. 5.50.248). However, the appraiser must assume that the property to be purchased is not subject to utilization for the provision of cable television services within the Sacramento Community subsequent to expiration of the stated term of the franchise.

Real property which is leased by the Franchisee, would be subject to assignment to the Commission without special consideration, unless the Franchisee holds a leasehold interest with option to purchase. At the request of interested operators, residual value would be payable with respect to leases with options to purchase. (Sec. 5.50.248). No value or benefits would be attributed to the books and accounts of the business, including subscriber lists, which would be included in the purchase. (Sec. 5.50.248).

The procedure for acquisition would involve appointment by the Commission and by the Franchisee of one appraiser each. Those two appraisers would make independent appraisals, and attempt to agree upon the value of the property to be acquired. Any agreement would be binding upon the parties with respect to the values included. (Sec. 5.50.258). With respect to any valuation issues upon which the appraisers could not agree, a single arbitrator (who must be an appraiser) would be appointed. In addition, an advisor (who must be a lawyer) would be appointed. The arbitrator would decide the outstanding valuation issues, subject to legal advice by the advisor concerning the requirements of the Ordinance, whose advice would be binding. An adversary hearing could be held by the arbitrator, but is not required. (Sec. 5.50.260). The valuation process would consume 9 to 12 months under the procedure outlined.

Sub-Chapter 4
Article 4-a

System Capability and Standards
Prevailing Rates
Community Use

1. System Design. Pursuant to determinations during the public hearings of the City Council and Board, the Cable Television System is required to have at least two Subscriber Cables, one of which may be inoperable, and one institutional cable. Each cable must have a capacity of at least 35 channels. (Sec. 5.50.304).

However, pursuant to the determination made by the Joint Sub-Committees on September 30, 1981, the above requirements would be applicable only within the "Imposed Service Area". System

design standards within the single Proposed Service Area (Galt) would be left to the bidding process. (Sec. 5.50.300). The design of Systems extended from Service Areas pursuant to line extension requirements, would be the same as the design for the Service Area from which extension is made. (Sec. 5.50.424). The Ordinance would contain no minimum design standard with respect to Systems installed outside of Service Areas which are not required by the line extension provisions of Sections 5.50.424 or 5.50.426.

2. Prevailing Rates. On September 30, 1981, the Joint Sub-Committees approved the provisions relating to Prevailing Rates. Generally, these provisions require payment of the rates paid by other cable operators within the 10 metropolitan counties with respect to all work of construction, maintenance and extension of Cable Television Systems, whether the work is performed by the Franchisee or a party under contract with the Franchisee. The Board of Directors of the Commission would annually appoint an expert to make the prevailing rate determinations, and the determinations of the expert would be final and binding. Enforcement of the provisions would be through private suits by employees or unions seeking compliance and relief from underpayment (Secs. 5.50.316-5.50.326).

During the meeting on September 30, 1981, this Office was directed to contract the BIA and add language which would immunize subdividers from the prevailing rate requirements. Such language has been included in Section 5.50.318. In essence, prevailing rate requirements would not be applicable when a subdivider or contractor thereof installs cable in a new subdivision at the same time as public improvements and other utilities are being installed. The effect of this provision will be to allow the Franchisee to have cable in new subdivisions installed by the developer or its contractors, and thereby avoid applicability of the prevailing rate requirement to such installations.

As has been previously noted, the approach of the prevailing rate provisions is responsive to requests by interested operators that the survey area be the metropolitan counties, but that comparisons be made only to other cable operators.

3. Channels for K.V.I.E. and Educational Consortium. Sections 5.50.328 and 5.50.330 are the ones which commit 7 channels to K.V.I.E. and the Educational Consortium. These provisions have been previously considered by the Joint Sub-Committees, the enclosed Draft Ordinance contains no modifications, and further discussion is not required.

4. Community Use. A detailed concept of the Community Use provisions has previously been approved by the Joint Sub-Committees. In general, applicants are vested with the choice of either proposing or not proposing Community Use. However, if proposals are made, they must be in the form of either Access facilities and channel(s) or Access facilities and channel(s) and quantification of community use programming hours offered by the applicant respecting both applicant program production and program production by community groups. (Secs. 5.50.332-5.50.340). Further explanatory discussion is unnecessary in view of the prior determinations by the Joint Sub-Committees, and the absence of changes in the enclosed Ordinance Draft.

A request by K.V.I.E. in relation to Community Use, is the subject of a separate memorandum.

5. Resource Commitments. Section 5.50.342 makes it clear that an applicant is entitled to propose a variety of services or resources to the County, Cities or Educational Consortium. Such resources, if proposed, would be made an express part of the franchise obligations. To the extent the contents of applications respecting such proposals are vague or indefinite, between the date of selection of the Franchisee and issuance of the franchise staff will be able to discuss the proposals with the selectee and formulate sufficiently specific terms for insertion in the resolution offering the franchise to create viable contractual obligations.

However, Section 5.50.342 envisions a different approach with respect to services or resources offered by applicants to specifically identifiable, non-governmental, third parties. With respect to such contributions, Section 5.50.342 would provide that all such contributions must be disclosed in the application, but would not become franchise obligations; such contributions to be the subject of independent legally binding contractual commitments between applicants and the parties to whom the commitments are to be made. There are several reasons for this suggested approach, as follows:

- a. There are a variety of local organizations who could become the recipients of benefits offered by applicants, ranging from K.V.I.E., to health interests, to organizations representing minority or underprivileged interests. The nature and extent of contributions offered could range from on-going financial support, to the donation of channels, to the

allocation of channel time, to the construction of studio facilities, to the provision of sophisticated program production equipment.

- b. Unrestricted proposal applications, absent precise plans and specifications (of which there are necessarily none), constitutes a poor foundation for the creation of unambiguous, legally enforceable, contractual commitments.
- c. County and City staff should not be dealing with the subject matter of substantive proposals by applicants during the bid preparation process. There would be inadequate time for County and City staff to deal with such issues subsequently. Further, County and City staff are ill-suited to act as representatives of private parties in negotiating and drafting contractual commitments respecting benefits to be made available to those parties.
- d. All contracts with private parties through which the commitments by applicants would be made, would be required to be included with the applications, so that the awarding authorities would be assured at the time of deliberation of proposals that legally enforceable contingent obligations have been created, satisfactory to the parties upon whom the benefits would be conferred.
- e. It is common knowledge that in other jurisdictions there have been instances where commitments (for instance, of channels) have been made, the recipient has lost interest, and the channels have been utilized for purposes not expressed in the application. Disputes over those issues could be resolved between the Franchisee and the private parties, without involvement of the Commission therein.
- f. There would be an advantage in shielding the sensitive enforcement mechanisms of the Ordinance, particularly the bank, from the need of the Board of Directors to make decisions concerning who is right and wrong in potentially purely private misunderstandings between the Franchisee and private parties to whom benefits have been promised.

Article 4-b

Construction and Extension of System
Use of Streets

1. Service Areas. Pursuant to the determination by the Joint Sub-Committees on September 30, 1981, the enclosed Draft Ordinance has been revised to allow bidding of only a single Proposed Service Area, within Galt. (Sec. 5.50.404). Findings have been included for the purpose of rationalizing the decision to prohibit applicants from proposing service in other areas.

As in the March 1, 1981 Ordinance Draft, the enclosed one requires service to be provided throughout each Service Area. However, the interested operators have requested, and staff has included one exception. A Franchisee would be excused from serving a particular Dwelling Unit within a Service Area, if it is situated at least 500 feet from another Dwelling and would require an aerial or underground extension of cable in excess of 500 feet. (Sec. 5.50.412).

Although, with the above exception, service must be provided to 100% of the Dwelling Units within each Service Area, a Dwelling Unit is defined so as to exclude temporary lodging facilities, such as hotel and motel rooms. (Sec. 5.50.400).

2. Construction Schedule and Completion. As per determinations made during the public hearings by the City Council and Board, the schedule for completion of the System has been extended from 36 months to 51 months.

The enclosed Ordinance Draft contains a substantially more specific and comprehensive process for determining final completion of the System, than was contained in the March 1, 1981 Draft Ordinance. Under the enclosed Ordinance Draft, a Franchisee files a notice of completion when it decides that completion has been attained. (Sec. 5.50.416). A public hearing is then conducted by the Board of Directors of the Commission for the purpose of receiving comment, and the Commission is empowered to issue a list of deficiencies or other requirements for correction. If the Board of Directors makes a final order of completion, that order is conclusive as to everyone, and cannot be reexamined. (Sec. 5.50.418). A Franchisee is entitled to seek arbitration, if he contends that the Board of Directors is unreasonably refusing to make a final order of completion. The arbitrator's decision is final. (Sec. 5.50.420).

3. Service Outside Service Areas. During the Joint Sub-Committees meeting on September 30, 1981, erroneous information was provided respecting the circumstances under which a Franchisee may expand its system outside of Service Areas. It was noted that such expansion could not occur until completion of the System within Service Areas (i.e. approximately 51 months after issuance of the franchise).

The enclosed Ordinance Draft contains two approaches to extension of a System outside of Service Areas.

The first is line extension requirements. Line extension of the System is required when densities adjacent to the boundaries of a Service Area exceed certain limits. Expansion of the System under line extension requirements is, indeed, prohibited until after the System within Service Areas has been completed. (Sec. 5.50.424).

The second method of expansion is pursuant to an administrative procedure outlined by Section 5.50.446. Under that provision, the System may, at any time be expanded, pursuant to an administrative approval by the Board of Directors of the Commission. The design of the System, services provided and rates (if rates are regulated) would be subject to administrative approval and conditions imposed by the Board. Approval could be denied should the Board find that proposed delivery would be inadequate, or involve unreasonable cross-subsidization.

The provisions of Section 5.50.466 permitting expansion should be read in connection with the provisions of Section 5.50.042 in enclosed Sub-Chapter 1. As contained in the March 1, 1981 Draft Ordinance, the provisions of Section 5.50.042 simply reserved the right of the County and Cities to issue individual franchises within areas not served by the Franchisee under the Joint Powers Agreement Program. One of the interested operators requested 90 days notice to the Franchisee in advance of exercise of the reserved franchising authority, in order to entitle the Franchisee to expand into the new area and thereby override the franchising authority reserved to the County and Cities. The request was made during public hearings of the City Council and Board, and was approved at that time. The provisions of Section 5.50.446 establish an administrative procedure by which service can be guaranteed when a Franchisee thwarts the reserved franchising authority by expressing interest in serving territory outside a Service Area, as well as a mechanism to encourage such service.

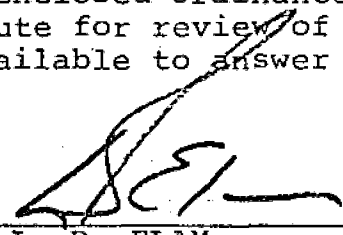
4. Undergrounding. At the request of interested operators, the provisions relating to undergrounding have been revised to require undergrounding only when there are no other utilities above ground. For example, if one utility line is above ground and others are below ground, the Franchisee would be authorized

to attach its cable to poles. Similarly, undergrounding of existing above-ground cable would be required only if all other utility lines are undergrounded -- such that if an overhead utility line were placed underground, but other utility lines remained overhead, overhead cable would not be required to be undergrounded until the other lines are also undergrounded. (Sec. 5.50.456).

5. Removal. The interested operators desire that the Ordinance vest in them discretion to remove or not remove underground cable at the conclusion of the franchise term, if the franchise is not renewed and the Commission does not purchase the System.

Staff recommends and Section 5.50.464 of the enclosed Ordinance Draft provides, that the Franchisee has a right to remove underground cable only if removal can be accomplished without trenching, and that the Franchisee may be required by the Commission to remove underground cable at its sole expense if removal is required in order to prevent hazard or promote future utilization of the streets for public purposes. At best, disruption of streets to remove underground cable at the conclusion of a franchise term by an operator who will no longer be in town, is burdensome. It is the view of staff that the provisions of Section 5.50.464 strike an equitable balance between the interests of an operator and those of the public agencies.

The foregoing discussion has been lengthy -- but so is the ordinance. Time has permitted only discussion of the most significant changes incorporated in the enclosed Ordinance Draft. The foregoing is not an adequate substitute for review of the text of the enclosure. Staff will be available to answer questions.



L. B. ELAM
County Counsel

LBE:sp

cc: William Freeman, Assistant County Executive
Mac Mails, Assistant City Manager
James Jackson, City Attorney
Interested Operators

COUNTY OF SACRAMENTO
CALIFORNIA

October 14, 1981

To: Joint Sub-Committee
Cable Television Ordinance Review
City and County of Sacramento

From: L. B. Elam
County Counsel

Subject: Re: Cable Television Ordinance - Article 4-c,
Sub-Chapter 4 through End
Meeting of October 14, 1981

By memorandum dated October 2, 1981, this Office transmitted a hearing draft of Sub-Chapter 1 through Sub-Chapter 4, Article 4-b of the Cable Television Ordinance. The memorandum detailed relevant provisions of the draft, particularly in relation to changes in that Draft from the March 1, 1981 Draft Ordinance, and to preceding policy determinations by the Governing Bodies and Joint Sub-Committee.

Enclosed herewith is an entire hearing draft dated October 15, 1981, of the Cable Television Ordinance Sub-Chapter 1 through Sub-Chapter 4, Article 4-b of this enclosure was presented and considered during the Joint Sub-Committee's meeting on October 7, 1981. Consideration of Sub-Chapter 4, Article 4-c through the end of the Ordinance is scheduled for the meeting on October 14, 1981.

This memorandum will focus upon Sub-Chapter 4, Article 4-c through the end of the Ordinance. This memorandum, and the one dated October 2, 1981, a copy of which is beneath this one, constitute a staff discussion of the complete Ordinance.

Sub-Chapter 4
Article 4-c

Services

1. Over-All Regulatory Approach. The over-all approach to the regulation of services provided by a Franchisee has been developed within the following context. Interested operators strongly object to the reservation of regulatory control. To the extent the control is to be reserved, the operators prefer that precise restrictive provisions be included within the ordinance to be adopted, so that all will know at the time applications are filed what restrictions apply, and so that all will be assured of complete freedom from restriction during the term of the franchise except as otherwise initially prescribed by the franchise ordinance. Protections afforded by the First Amendment of the United States Constitution limit to a not yet precisely defined extent, the scope of regulatory control which may be applied to broadcast programming. With respect to non-entertainment business oriented services which might be provided through a cable system, it is generally acknowledged that there are potentials for anti-trust violations both by a Franchisee provider of the services and a public agency

attempting to regulate them. The nature, magnitude and extent of services which may be provided by a Franchisee are not now known and probably will not be clearly defined by the application for the franchise. During this era of rapidly advancing technology, it is highly unlikely that an applicant would desire to be limited in the provision of services to those which it precisely describes in its application.

Within this context, the staff recommended regulatory approach is predicated upon the following principles:

- a. A specific regulatory framework should be developed only with respect to services which are known all applicants will offer to provide, primarily broadcast programming. Certainly, a relevant factor in selection of the Franchisee will be the type of home entertainment programming offered, how that programming is arranged ranged in Tiers of Service, and where premium services are placed within the Tiers. Since applicants tend to make and glamourize such proposals, the ordinance should provide some mechanism to insure that the promises are kept.
- b. There should be a reserved authority in the Board of Directors of the Cable Television Commission to regulate the provisions of broadcast programming to the extent permitted by constitutional limitations. Constitutional limitations will permit only precise, narrowly defined regulations which are carefully tailored to meet problems which have actually occurred.
- c. With respect to non-entertainment business services, there should be reserved an authority to restrict, or even prohibit such services, should a regulatory need to do so arise. For example, the staff recommendation that the broadly phrased prohibition against sale of television sets be eliminated from the ordinance was adopted. However, it is conceivable that an operator could choose to sell television sets or, perhaps, provide burglar alarm services, or, perhaps, provide a variety of other business associated services, which might ultimately be determined to require restriction, or even prohibition, as a result of actual damage caused to competitors or other harms. Since an authority should be reserved to regulate such non-entertainment business services, the ordinance should not establish either a right or duty on the part of a Franchisee to provide them, even if they have been identified in the application for the franchise.
- d. The scope of reserved regulatory authority should be co-extensive with that which may be legally exercised under the Police Power respecting any business within the community, and the franchise should not require a surrender of otherwise available defenses to regulatory control. Such a surrender would be of uncertain legal validity. With respect to anti-trust issues, the required surrender, itself, could conceivably violate anti-trust restrictions.

2. Entertainment Programming. Section 5.50.504 requires applicants who desire to propose entertainment programming to specifically identify the types of programs which will be broadcast, Tiers of Service, the number of channels within each Tier, minimum broadcasting time on each channel, etc.

Section 5.50.508 identifies such programming proposals as a material factor in selection, but also recognizes that changing circumstances will require changes in program offerings, Tier arrangements, etc. Such changes may result from marketing strategy, program availability and other factors. Finally, Section 5.50.508 provides that no such changes may materially reduce or eliminate programming of the nature, extent, volume or quality identified in the application, or the hierarchy relationship of such programming. Section 5.50.510 establishes arbitration as the remedy should the Board of Directors of the Cable Television Commission assert that a Franchisee has violated Section 5.50.508.

A Franchisee acquires the contractual right to provide only that entertainment programming which is specifically identified in the resolution offering the franchise, not all programming identified in its application. (Sec. 5.50.506).

Section 5.50.512 reserves to the Board of Directors of the Cable Television Commission authority to regulate entertainment programming which is detrimental to the peace, health, safety or welfare. However, any such regulation must be implemented by specific rules directed to particular evils. The rules would be enforced by suit brought against the Franchisee by the Commission.

3. Business Services. The enclosed Draft Ordinance contains no provision which would specifically mandate that a particular non-entertainment business service, such as burglar alarm services, home shopping services, and a myriad of other similar or dissimilar types of potential services, is mandated. This is true, whether the service is proposed within the application filed by the Franchisee or not.

Correspondingly, Section 5.50.506 makes it clear that a Franchisee does not by receiving the franchise, obtain a contractual entitlement to provide any such services. An authority is retained to regulate such services which is co-extensive with the Police Power defined by Article XI, Section 7 of the California Constitution.

The enclosed Draft Ordinance does not contain any specific restrictions upon business services. Any such restrictions would need to be added by amendments enacted by both the Board of Supervisors and City Council of Sacramento. (Sec. 5.50.036). Such amendments would not be effective within Galt, Folsom, or Isleton unless enacted by those municipalities. (Sec. 5.50.036). The right to make such amendments is reserved by Sections 5.50.038 and 5.50.500.

The enclosed Draft Ordinance does, however, authorize such restrictions to be imposed by administrative regulations enacted by the Board of Directors of the Cable Television Commission. The rule making authority could be evoked only after public hearings. (Sec. 5.50.550).

At the request of interested operators, a provision has been added which states that in relation to these issues, by accepting a franchise a Franchisee does not waive any otherwise applicable constitutional right. This provision is not as broad in scope as the applicants have requested. However, it does balance the provisions which recite that the government is not, by issuing a franchise, contracting away its regulatory authority.

4. Service Areas. Section 5.50.504 provides that services provided by Franchisees within Proposed Service Areas may differ from those provided within the Imposed Service Area, and that services may differ from one Proposed Service Area to another.

5. Other Provisions. The remainder of the provisions in Article 4-c deal with such matters as picture quality, continuity of service, adequacy of repair services, privacy and reporting. With the following exceptions, no significant changes have been made in these provisions since the joint public hearings by Board of Supervisors and City Council.

Provisions prohibiting sale of communication receivers and providing for specific regulation of anti-competitive practices, have been omitted pursuant to prior determinations by the Joint Sub-Committee. At the request of interested operators, a provision has been added to the Privacy Section authorizing Franchisees to "sweep" for the purpose of collecting aggregate data on viewing patterns by channel. (Sec. 5.50.538-a-b). A provision has been added to the Section on Affirmative Action, which includes a prohibition against discrimination in relation to marital status. (Sec. 5.50.546).

Article 4-d

Franchise Fees - Rates

Pre-written provisions of Article 4-d have been previously reviewed by the Joint Sub-Committee, and will not be further discussed in detail.

1. Franchise Fees. Pursuant to the policy decision by the Joint Sub-Committee, a uniform Franchise Fee in the amount of 5% per year is required whether or not a Franchisee has proposed Community Use Programming. (Sec. 5.50.602). A specific authority has been conferred upon the Cable Television Commission to contract for Community Use Programming, whether or not the Franchisee has proposed such Programming. (Sec. 5.50.548).

The minimum payment which a Franchisee is required to make annually is \$325,000. This sum has been reached on the basis of a variety of factors, including actual expected operating costs during the first year, a 10% contingency for attorneys fees, a 10% contingency for general purposes, and an allowance for inflation. The actual amount required to be paid by a Franchisee is limited to 120% of the annual operating budget. The maximum limitation of \$325,000 represents the figure above which the Franchisee is excused unless the 5% gross revenue fee yields more than that amount. Commencing with the second year of the franchise, the maximum amount of \$325,000 is inflated by a factor equivalent to the CPI. (Sec. 5.50.604).

2. Rates. The only change which has made in the previously reviewed rate provisions pertains to Service Areas Sections 5.50.618 and 5.50.624 have been revised to provide that rates and charges associated with Basic Service may vary from one Service Area to another, and that such charges are subject to approval by the Board of Directors in areas outside of Service Areas. The applicability of these provisions, like others relating to Basic Service Rates, would depend upon an election by the Franchisee to affirmatively propose them.

Article 4-e

Security - Indemnification - Insurance

1. Performance Bond. During the joint hearings of the Board of Supervisors and City Council, it was directed that the Performance Bond requirement be modified to permit the \$2.5 million bond to be reduced to \$1 million following completion of the Cable Television System. That change has been made. (Sec. 5.50.700).

2. Security Deposit. The March 1, 1981 Draft Ordinance provided for a cash security deposit in the amount of \$100,000. During the joint hearings of the Board of Supervisors and City Council staff orally recommended that the cash security deposit be increased to \$250,000. That recommendation was rejected.

The provisions of Section 5.50.702 require an initial cash deposit in the amount of \$250,000 which is subject to mandatory reduction to \$100,000 after the Cable Television System is complete. These provisions represent a renewed staff recommendation.

The purpose of the security deposit is to provide a readily available sum of cash from which the Cable Television Commission can draw in the event of breaches of the Franchise documents by the Franchisee. There is no other readily available source of such funds. A bonding company might or might not voluntarily pay damages. Involuntary collection of damages from the Franchisee would require levy of a writ of execution upon whatever assets the Franchisee may possess.

The cash deposit also provides a funding source in the event the Franchisee either fails to pay Franchise Fees or the budget requirements of the Cable Television Commission during the period when Franchise Fees are inadequate to cover such cost. Should the Franchisee fail to make such payments, the only instantly available source of operating capital for the Commission would be the County and Cities.

Given the fact that the initial operating budget of the Commission will be over \$200,000, an initial cash deposit requirement in the amount of \$250,000 is, in the opinion of staff, the absolute minimum which should be required. Even this amount could require the Commission to look to the County and Cities for operating revenues, in the event the Franchisee fails to make required payments.

Sub-Chapter 5
Article 5-a

Assignments

The provisions relating to assignments and transfers have been revised to include an authority of the Board of Directors of the Cable Television Commission, to attach conditions to any approvals which it gives. (Sec. 5.50.758). Provisions have also been added authorizing purchase of the Cable Television System and other property of the Franchisee, in the event the Board of Directors refuses to grant such approval. (Secs. 5.50.758, 5.50.760).

Article 5-b

Remedies

1. Liquidated Damages. The March 1, 1981 Draft Ordinance contained liquidated amounts of \$500 per day for breaches relating to failure to complete or extend the Cable Television System, and \$100 per day for failure to file timely reports. During the joint hearings by the Board of Supervisors and City Council staff orally recommended that the damage amount for failure to complete be increased to \$1,000 per day. That recommendation was rejected. Staff renews its recommendation.

Section 5.50.804 prescribes liquidated amounts of \$1,000 per day for failures to complete or extend the System or make repairs ordered by the Board of Directors, and \$500 per day for each day in excess of five the Franchisee is late in filing a required report.

The 51 month schedule for completion of the System has been tailored to the needs of the operators, at their request. The completion schedule in the March 1, 1981 Draft Ordinance was only 36 months. A substantial damage amount should be associated with unexcused failures of a Franchisee to comply with the schedule. Similarly, citizens on the periphery of Service Areas denied benefit of the System, when line extensions are otherwise required, suffer a loss of services which a liquidated damage amount of \$1,000 per day should not be deemed to over-compensate.

It should be noted in this connection, that at the request of interested operators, Section 5.50.248 has been revised to preclude a Franchisee from being exposed to undue liability for violating line extension provisions. The revision prevents the Franchisee from being in breach unless it is notified of a duty to extend, and the Franchisee thereafter fails to make the extension. In this manner, the burden is shifted from the Franchisee to the Commission or the public to identify locations where line extension is required. The Franchisee is immunized from liability unless it fails to take action after notice is given.

The damage amount of \$500 per day is applicable to the failure of a Franchisee to file required reports identifying progress in completing the System, and annual reports of operations. Since this damage amount would become applicable only after a five day delay, it should be viewed as a prudent mechanism to encourage compliance with these provisions.

2. The Bank. The Joint Sub-Committee has approved a bank consisting of 20% of the channels on the Subscriber Network and directed that a substantial number of channels be released upon completion of the System. The Sub-Committee has not dealt with the question of whether the channels to be banked should consist of only video channels or also data channels. Staff has discussed this issue with interested operators and it recommends that the "bank" be limited to video channels.

The provisions for release of channels are set forth in Section 5.50.816. A prior draft of this section contained references to "video and data" channels. The haste in issuing the ordinance has resulted in the failure to correct that language. The language in that Section should be read as referring only to video channels, and where the language talks about a release of one video and one data channel, the language should be deemed to mean only one video channel. The language will be corrected after the meeting on October 14.

Section 5.50.816 contemplates the release of 50% of the "banked" channels if the Commission issues a Final Order of Completion by the end of the 51st month following the award of the franchise. Should the Final Order of Completion be issued by that date, completion would actually have occurred in advance of 51 month completion schedule prescribed by the Ordinance. The reason is that the Franchisee must first complete, then file a notice with the Commission asserting completion, and the Commission must then conduct hearings to determine whether completion has in fact been achieved. All this must occur before the Final Order of Completion is issued.


If the Final Order of Completion is issued subsequent to the beginning of the 52nd month following award of the Franchise, only 25% of the "banked" channels would be subject to release. Thus, the release mechanism would be designed to encourage completion slightly in advance of the required date. On the other hand, no matter how late the Franchisee completes, even if it is the tenth year of the Franchise, it would be entitled to 25% of the channels from the "bank" upon issuance of the Final Order of Completion.

Section 5.50.816 further provides that one year following the date of issuance of the Final Order of Completion, the Board of Directors of the Commission would be empowered to release all remaining channels from the "bank." This determination would be discretionary, based upon an appraisal of how performance has progressed to date. By one year following completion, there should be a reasonably good understanding of whether System quality is adequate, repair services are adequate, and Community Use Programming meets objectives established by the Franchise Documents. The discretionary release provision has been included at the request of interested operators.

The Board of Directors of the Commission would be required to release at least one channel each year for the first five years following issuance of the Final Order of Completion unless it finds that the Franchisee is in violation of particular provisions of the Franchise Documents or orders or directives of the Commission issued thereunder. At the conclusion of the sixth year following the issuance of the Final Order of Completion, all remaining "banked" channels would be required to be released absent findings of violations.

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The foregoing concludes the discussion of Article 4-c through the end of the enclosed Draft Ordinance. Questions will be answered during the meeting on October 14, 1981.


L. B. ELAM Beto
County Counsel

LBE:emw

cc: William Freeman, Assistant County Executive
Mac Mailes, Assistant City Manager
James Jackson, City Attorney
Interested Operators

COUNTY OF SACRAMENTO

Inter-Department Correspondence

Date October 23, 1981

To : Joint Sub-Committees
Cable Television Commission
City and County of Sacramento

From : L. B. ELAM
County Counsel

Subject : CABLE TELEVISION ORDINANCE - MISCELLANEOUS TOPICS
Public Hearings October 26, 28, 29, 1981

This memorandum discusses a variety of topics associated with the Cable Television Ordinance Draft dated October 15, 1981, arising out of the last meeting of the Sub-Committees on October 14, 1981, and otherwise. It is suggested that the various topics covered by this memorandum be individually discussed at the time they arise on the Agenda for the Public Hearings on October 26, 28, and 29, 1981.

1. Franchise Fees. The October 15, 1981 Draft Ordinance requires each Franchisee to pay to the Cable Television Commission 5% of its Gross Revenues per annum. (Sec. 5.50.602). The Commission is authorized to expend the fees to defray costs of regulation under the franchise, and to assist, finance and promote Community Use Programming and other cable services of a public character. (Sec. 5.50.600). However, the Commission must distribute at least 20% of the revenue which it receives from franchise fees back to the County and Cities, apportioned upon a population basis. (Para. 6, pg. 20). The Commission is empowered to enter into contracts with Franchisees and others providing for the expenditure of such fees, whether or not a Franchisee has proposed a Community Use Programming component within its service package. (Sec. 5.50.548).

During its last meeting on October 14, 1981, the Sub-Committees, noting that the 5% fee is payable whether or not a Franchisee has included such a Community Use Programming element in its service package, asked for a discussion of alternative Franchise Fee arrangements. The discussion was requested to focus upon regulatory restrictions upon such fees imposed by the FCC.

The controlling FCC Regulation is quoted as follows:

"Franchise fees shall be no more than 3 percent of the franchisee's gross revenues per year from all cable services in the community (including all forms of consideration, such as initial lump sum payments). If the franchise fee is in the range of 3 to 5 percent of such revenues, the fee shall be approved by the Commission if reasonable upon showings: (a) By the franchisee, that it will not interfere with the effectuation of federal regulatory goals in the field of cable television, and (b) by the franchising authority, that it is appropriate in light of the planned local regulatory program." (47 CFR 76.31).

The "no more than" language at the commencement of Section 76.31 supersedes previous language establishing an overall requirement of "reasonableness" of fee levels. An April 15, 1974, FCC Rule Clarification states that "... We are seeking to strike a balance that permits the achievement of federal goals and at the same time allows adequate revenues to defray the costs of local regulation". The Clarification goes on to state that "... The use of the franchise fee mechanism as a revenue raising device frustrates our efforts at developing a nationwide broadband communications grid." (Pg. 31). Later in the same document, it is announced that the FCC generally is opposed to the utilization of franchise fees to finance community use, but will approve such proposals on an experimental basis. (Pg. 37). As worded, however, Section 76.31 provides for specific FCC review only of fees which range from 3% to 5%.

The rationale for the 5% flat fee is predicated upon the following factors:

- a. It is impossible to predict the magnitude of regulatory costs which the Cable Television Commission will actually incur. The \$325,000 minimum annual payment prescribed by Section 5.50.604 is a highly misleading indicator of future costs. That figure is predicated upon an assumed full-time staffing of two persons to perform all clerical and managerial functions. Under ideal circumstances, a full-time staff of two might not even be required. On the other hand, should a Franchisee default prior to completion of the System, a battery of attorneys could be required to litigate such questions as whether the franchise should be terminated for breach, and if so, when. Such costs could consume millions of

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dollars. Subsequent to completion, should System quality be inadequate or repair services deficient, the Commission would be empowered to adopt precise regulations imposing specific duties upon the Franchisee. A monitoring system requiring additional staff supervision could be required. It is not uncommon for there to be a direct relationship between the volume of citizen complaints concerning a particular service, and the number of public employees who are hired for the purpose of responding to them. During the term of the franchise, litigation ranging from the validity of the "banking requirements" to the validity of future regulations restricting anti-competitive practices could also generate high regulatory costs.

Furthermore, there has been no estimate of the costs which will be incurred by member jurisdictions relating to supervision of installation of the Cable Television System within the Streets. Such costs could be sufficiently high to require reimbursement over a period of several years.

- b. Formulation with interested operators of regulations for proposals of Community Use Programming packages, has yielded provisions which focus upon the allocation of finite resources. Applicants may propose studio facilities, equipment and personnel resources to be made available without cost. (Secs. 5.50.336-c, 5.50.338-c). The volume of broadcast time will also be prescribed in finite terms. (Secs. 5.50.336a, d, 5.50.338-a).

It is unknown whether the finite resources and broadcast time offered will satisfy demands. It is unknown whether there will be demand to utilize the resources offered, without specific encouragement and promotional expenditure. Section 5.50.338-d requires an applicant to identify strategies designed to promote Community Use Programming interest. It is not expected that such articulated strategies will be among the most objective provisions of the application.

- c. Regulation of Community Use Programming will be under the exclusive regulatory jurisdiction of either the Franchisee or an independent authority proposed by

the Franchisee. (Sec. 5.50.334-b). Absent an ability to make expenditures to promote and assist Community Use Programming, there will likely be little authority on the part of the Commission to deal with any inadequacies which may arise.

- d. Franchise Fees may be expended not just for Community Use Programming, but also for other cable services of a public character. (Sec. 5.50.600). Exactly what these might be is unclear at this time. Conceivably, they could consist of program production of educational and service programming by public agencies themselves (i.e., fire safety, information services relating to health and other social service programs, library services, police protection messages, etc.).
- e. In summary, an unrestricted 5% fee would provide funds which the Commission could spend for a variety of purposes, including the correction of deficiencies in administering Community Use Programming, the remedying of inadequate resources or broadcast time to satisfy actual demands for Community Use Programming, and the provision of governmental services through cable.

There is a risk that the FCC would disapprove a fee in this instance which exceeds 3%. Such a disapproval, coming after award of the franchise, would potentially save the Franchisee \$2 million per year. The greatest handicap relating to the 5% fee is the absence of specific plans for expenditure. As has been previously noted, such plans would be premature, risk creating inflexibility respecting future expenditures, and beyond the current capacity of staff to propose. One possible solution to this problem might be inclusion within the RFP of a separate section requiring applicants to propose potential plans for expenditures of the fees which would not be binding upon the Commission.

Alternative approaches to the existing Franchise Fee requirements will, to some extent, turn upon the degree of flexibility which is desired to be reserved to the Commission in dealing with currently unforeseen potentials of cable television services, as well as unforeseen problems therewith. Some of the alternatives are as follows:

- a. Establish a maximum fee in the amount of 5%, identify with specificity the purposes for which the Fees may be expended, and provide for a refund to the Franchisee of the difference between actual expenditures and the maximum amount. Such an approach would inevitably limit discretion, and create a risk of litigation with the Franchisee over the propriety of proposed expenditures.

- b. Establish a 3% Fee rather than a 5% Fee. Absent a desire to simply limit demands imposed upon a Franchisee, there would be no advantage in such a provision. Should the FCC disapprove a 5% Fee, it should become 3%, since the FCC apparently does not require substantiation of a 3% Fee.
- c. Establishment of a 3% Fee coupled with a requirement that if a Community Use Programming package is proposed, the package include an on-going commitment of financial resources by the Franchisee, in addition to provision of the finite ones, which is measured by a percentage of Gross Revenue. A maximum of 2% of Gross Revenues could be established, on the competitive process could be permitted to establish the lid. Although never discussed, it is anticipated that interested applicants would oppose and assert the illegality of unrestricted competition based upon Gross Revenue commitments to Community Use Programming. The expenditure of revenues in excess of 3% would be vested in the Franchisee or an independent authority established by the Franchisee, and not the Commission. Such an approach could have the effect of relieving applicants of the perceived need to bid finite resources for Community Use Programming in quantities as high as might otherwise be perceived to be required with the existence of a flat 5% Fee payable to the Commission.
- d. A variation of sub-paragraph "c", above, might be prescription of a 3% or 4% Fee payable to the Commission, and a 1% or 2% Fee payable to the independent authority created by the Franchisee to oversee Community Use Programming. Such an approach would have a similar effect to that described in sub-paragraph "c", above.

The Staff recommendation is that the Franchise Fee provisions of the October 15, 1981 Hearing Draft remain as written. However, it would be advisable to broaden the Commission's contracting authority as established by Paragraph 3-b (Page 19) and Section 5.50.548 to include contracts with public agencies and others for the expenditure of Franchise Fees.

The foregoing discussion has focused upon potential expenditures of Franchise Fees which are related to Cable Television Services, rather than the use of such fees for support of general

governmental operations. Although the FCC apparently reviews Fees only when they are in excess of 3%, the above discussion demonstrates that the basic FCC position is that Franchise Fees should be levied solely for the purpose of financing regulatory activities associated with Cable Television Services. A discussion of the special tax prohibitions of Article XIII A of the California Constitution is beyond the scope of this memorandum.

2. Selection and Award Process. During the Sub-Committees' meeting on October 14, 1981, there was a direction for further review of selection and award procedures for the Initial CATV franchise. The discussion by Sub-Committee members inter-related such topics as the EIR Process, the voting procedure for selection, and the period of delay between selection and award. Although there may be a practical relationship between these issues, they are not related from a technical perspective. The following discussion treats them separately.

Selection Voting. The voting procedure for selection in Section 5.50.210 establishes a somewhat complicated system of combined voting by secret ballot. The Sub-Committee decision to require selection at one meeting, precipitated the provision that an adjournment of the meeting, without selection, constitutes a rejection of all proposals.

The Section 5.50.210 procedure has been suggested as a method of combining the City Council and Board of Supervisors into a joint voting process. Establishment of the rules by Ordinance obviates the necessity of the two governing bodies formulating the selection process in what will likely be a volatile and tense atmosphere.

If the Section 5.50.210 procedure is unacceptable as drafted, it is suggested that the procedure be changed to simply require that the successful applicant be chosen by five votes of members of the City Council and three votes by members of the Board of Supervisors. A flexibility would thereby be established to utilize whatever specific voting procedure the two bodies might elect at the time of selection.

Environmental Analysis. Staff recommends that a two staged Environmental Analysis Process be utilized.

Stage 1 would consist of a gross analysis performed between the date of receipt of applications and the date of tentative selection. That analysis could produce a Negative Declaration, or a full report. The report could include a variety of recommended conditions and requirements designed to mitigate any

impacts which the applications, considered collectively rather than individually, might cause.

The specific locations of headends, towers, and earth stations will not be identified in the applications. Those locations will not become fixed until several months following selection. Local approval by member jurisdictions of such locations will likely be required under individual zoning ordinances. Depending upon the sites selected and specific nature and extent of installations, environmental impacts could be present. Because of the time required to ascertain the specific sites, it would be neither practical nor advisable to delay award of the franchise pending such ascertainment.

Therefore, staff recommends that the Request for Proposals provide for subsequent environmental analyses upon identification by the Franchisee of the sites for and installations respecting headends, etc., at such time as they are provided by the Franchisee. The Franchisee would not be authorized to proceed with installation of a particular headend or cable associated therewith pending completion of the environmental analysis and issuance by the Board of Directors of the Cable Television Commission of a notice to proceed. However, time limits for completion of the System would not be extended by virtue of the "Notice to Proceed" process.

Timing of Award. The October 15, 1981 Hearing Draft prevents award of the franchise for at least 31 days following tentative selection in order to give Folsom and Galt an opportunity to veto selection. (Sec. 5.50.106, 5.50.212, 5.50.214). Otherwise there is no time limit following tentative selection by which formal award of the franchise must be made. Notwithstanding concerns relating to lobbying, it is the staff recommendation that no such limits be prescribed.

How soon the franchise may be formally awarded following tentative selection is a matter which will turn upon the practicalities of the situation. A resolution offering the franchise is intended to be prepared, which will potentially, in many particulars, clarify ambiguous provisions in the application of the successful applicant. Although that process may be expedited, it is impossible to establish a reasonable time before knowledge of the contents of the application is obtained.

Formation of Commission. The October 15, 1981 Hearing Draft provides that the tentative selection is to be made jointly by the City Council and Board of Supervisors. (Sec. 5.50.210). During the thirty days following tentative selection, Folsom,

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Galt and Isleton may veto selection as applied to their jurisdictions. (Sec. 5.50.212). The Commission is formed on the 31st day following tentative selection, and awards the franchise. (Secs. 5.50.106, 5.50.214).

Certain members of the Sub-Committees have suggested that the City Council and Board of Supervisors should actually approve the award by reviewing and authorizing the resolution offering the franchise. The Ordinance does not currently contain such provisions. If the Sub-Committees desire such an arrangement, it should be ordered. There is no staff position upon this issue.

3. Rates. Quite some time ago the Sub-Committees elected to provide for rate regulation only with respect to Basic Service. The October 15, 1981 Hearing Draft implements that policy decision. (Secs. 5.50.616 - 5.50.624).

In view of the likelihood that all applicants will include within their applications a description of Tiers of Service to be offered, together with rates and charges associated with each Tier, and the fact that the Tier and rate relationships will be considered in making the selection, staff feels compared to illustrate how the rate regulation provisions of the October 15, 1981 Hearing Draft would actually operate.

Suppose the applicant who is selected for award has made the following bid:

- a. Tier No. 1 (Basic Service) -- 30 channels -- \$3.00 per month;
- b. Tier No. 2 -- 15 channels -- \$6.00 per month -- plus a premium service of first-run movies at an additional charge of \$10.00 per month;
- c. Tier No. 3 -- consisting of 5 channels with special satellite programming -- \$10.00 per month; and
- d. Tier No. 4 -- consisting of 3 of the most interesting channels -- \$15.00 per month.

As presently worded, the October 15, 1981 Hearing Draft would not prohibit the Franchisee from changing the rates for Tier Nos. 2 through 4 the day following award of the franchise, and before service is delivered. The \$3.00 rate for Tier No. 1 could not be increased until the date of issuance of the Final Order of Completion, and could not be increased in amounts

greater than 50% of the CPI every 12 months thereafter. (Sec. 5.50.622). The premium movie service in Tier No. 2 could, for example, be shifted to Tier Nos. 3 or 4 immediately following award of the franchise, if the Franchisee has stated in its application that it reserves that right. (Sec. 5.50.508).

There is an alternative method of dealing with these issues which would be consistent with the policy decision not to conduct ongoing regulation of Tiers above Basic Service and the rate regulation exempting provisions of Section 53066.1 of the Government Code.

Section 53066.1 authorizes a Franchisee, subject to certain conditions which could be met here, to exempt itself from rate regulation, except for the first year following the date of delivery of service pursuant to the initial grant of a franchise. The date of delivery of service as used in the underlined provision is not easily ascertained. For example, under Section 5.50.410 service would be required to be provided to 20% of the dwelling units within 23 months following award, 50% of the dwelling units within 37 months following award, and 100% of the dwelling units within 51 months following award. Since the Franchisee would be authorized to exempt itself from regulation following the first year of delivery of service, it would be possible to require in the ordinance that rates proposed in the application be maintained until expiration of that year. Thus, although the measuring date established by Section 53066.1 in relation to Section 5.50.410 is ambiguous, a provision could be added to the October 15, 1981 Hearing Draft which prohibits rate increases until issuance of the Final Order of completion.

The primary purpose of the discussion in this section of the memorandum is to insure that there is a full understanding of the operative effect of the October 15, 1981 Hearing Draft, and of alternatives.

4. Banking of Unused Channels. During the Sub-Committee's meeting on October 14, 1981, staff was requested to report back upon Mayor Isenberg's proposal that any channel identified within a Tier of Service in an application, be placed in the "bank" if it should not be used during the term of the franchise. The apparent purpose of such a provision would be to penalize the Franchisee for promising a certain number of channels within a Tier, and omitting the service.

The October 15, 1981 Hearing Draft attempts to attack such a problem, together with the more important problem relating to substitutions of new programming, in a somewhat different manner. Section 5.50.504 requires applicants proposing Tiers of Service, to identify them precisely. Section 5.50.508 recites reliance by the agencies upon the contents of the application, but recognizes the need of the Franchisee to modify the Tiers from time-to-time during the term of the franchise. Section 5.50.508 goes on to prohibit changes which "materially reduce or eliminate programming of the nature, extent, volume or quality identified in the application or provided at the time of initial service, and changes which materially alter the hierarchy of program relationships." Section 5.50.510 vests an arbitrator with jurisdiction to resolve disputes, and to fashion remedies for ascertained violations.

Although the above described provisions may fall short of providing completely adequate protection, they do deal with the issue of Tier revisions in a more comprehensive manner than simply "banking" darkened channels. It is the staff view that adding such a "banking" requirement would unduly complicate the "banking" system.

5. Funding of Culture. During the Sub-Committee's meeting on October 14, 1981, further language was requested respecting the concept of Franchisee funding of cultural activities.

This is a Sub-Committee generated issue, and staff has not been able to identify a Sub-Committee consensus regarding the matter. Therefore, the following language is offered as an approach to implementation of the concept as initially expressed:

Promotion of cultural activities, including the performing arts, the visual arts and natural and physical sciences, for the purpose of improving educational, artistic and cultural opportunities within the Sacramento Community and providing potential subject matter for Community Use Programming, is one of the positive assets which a Cable Television System could bring to the Sacramento Community. Therefore, applicants are encouraged to propose the contribution of financial support to an independent authority (other than one created pursuant to Section 5.50.334-b) whose responsibility it would be to fund such cultural activities within the Sacramento Community.

6. Miscellaneous Revisions. The following miscellaneous substantive revisions relating to the October 15, 1981 Hearing Draft have arisen out of a meeting between staff and interested operators on October 23, 1981.

Acquisition of Franchisee's Property. Section 5.50.240 provides for acquisition by the Commission or its assignee of the Franchisee's property either upon termination of the franchise for breach, expiration of the franchise, or pursuant to an application for assignment which is denied. Section 5.50.248 assigns various valuation standards, depending upon the circumstances of acquisition. The Section 5.50.050 type of termination resulting from changes in law impairing regulatory authority of the Commission, is not specifically covered by these Sections. Staff recommends that in the event of a Section 5.50.050 type termination, the valuation standard for acquisition of the Franchisee's property be either replacement cost or market value, whichever is lower. The standard would be the same as if acquisition should occur at the expiration of the term of the franchise by virtue of a refusal to renew.

In the event of a requested assignment, Section 5.50.758 gives the Commission authority to purchase the Franchisee's property either without acting upon the request for approval or subsequent to a judicial decision overruling a denial of approval. The interested operators have requested a revision of this provision which would: (i) require the Commission to act upon the request for assignment approval and allow withdrawal of the request in advance of election by the Commission to purchase; and (ii) allow purchase only if the Commission denies consent to assignment, and that denial is subsequently reversed by a judicial decision. Staff concurs in the revision, and recommends its approval.

Restrictions Upon Channels Allocated. As written, the October 15, 1981 Hearing Draft contains no restrictions whatsoever pertaining to use or disposition of the 4 channels to be allocated to K.V.I.E. and the Educational Consortium. For example, there is no express restriction upon the right of the recipient to assign one or more of the channels to a third party for use foreign to the purposes of the recipient. The Educational Consortium would not be expressly required to use the channels solely for education purposes. Neither the Ordinance nor the RFP would require that any of the channels donated to K.V.I.E. be utilized to provide programming for the benefit of viewers within the Sacramento Community, even though the "full-time utilization standard contains the implicit notion that

programming for the viewing public will be the sole use. Interested operators have expressed concern that one or more of the channels could be made available to a third party who would provide commercial programming in competition with the Franchisee. They have also raised the question of how any revenues derived by K.V.I.E. or the Consortium from advertising might be disposed of.

Staff recommends as follows:

- a. That the October 15, 1981 Hearing Draft be modified by adding a provision prohibiting the assignment or granting by either K.V.I.E. or the Educational Consortium of any right of use of channels donated by the Franchisee to a third party, without the consent of both the Franchisee and the Consortium;
- b. That K.V.I.E. and the Education Consortium be asked to identify all generic types of uses intended to be made of the channels to be donated, and with respect to uses which do not involve programming for the viewing public (such as tele-conferencing, etc.), the specification of relative volumes or time quantities such uses will occur; and
- c. Upon receipt and review of such submissions by the Governing Bodies, such use restraints be expressed within the October 15, 1981 Hearing Draft as are deemed appropriate.

In view of the ambiguity which the Full-Time utilization standard (Sec. 5.50.330) Creates respecting use, it is recommended that the October 15, 1981 Hearing Draft expressly state either that there is an unlimited right of assignment and use, or that there are restrictions, identifying the nature and extent thereof.

Uncommitted Channels. For the purpose of clarifying the definition of a "video channel", the C.T.I.C. consultant has recommended a reference to 6 MHz of bandwidth. Staff recommends that such a provision be added to Section 5.50.814.

Interested operators have requested that 50% of the "banked" channels be released if the effective date of completion of the system falls within the 51 month deadline established by Section 5.50.410. Under Section 5.50.816, 50% of the channels are

released only if the Final Order of Completion is issued by the beginning of the 52nd month following issuance of the franchise. By virtue of the administrative procedure to determine completion, there may be a several month difference between the effective date of completion, and the date of issuance of the Final Order of Completion.

As presently worded, the effect of the October 15, 1981 Hearing Draft is to allow release of 50% of the channels only if actual completion occurs in advance of the 51 month deadline, as a bonus. Staff does not object to a revision of Section 5.50.814 to eliminate the bonus effect, by matching the 50% release to the actual date of completion.

Notwithstanding the foregoing, Sections 5.50.418 and 5.50.420 should be revised for the purpose of making it clear that a Final Order of Completion specifies the effective date of completion, and that such date is relevant for the purpose of determining remedies applicable to breach of the Franchise Documents.

Services. Interested operators are concerned that the language contained in Section 5.50.506 negating establishment of a contractual right to provide a commercial service (nonentertainment) identified in the application, denies the Franchisee any right whatsoever to provide the service. Staff disagrees. However, staff recommends that the second paragraph of Section 5.50.506 be revised to make it clear that the Franchisee is permitted, subject to future restriction, to provide services identified in the application, but not vested with a contractual right to do so.

The interested operators have requested that the last sentence in Section 5.50.508 be removed. That Section is the one regulating revision of Tiers of Service contained in an application. The sentence sought to be removed reads "Any home education or entertainment program which is terminated shall be replaced with a comparable program."


The primary concern by interested operators apparently is that "comparability" is a vague standard, that the standard could require replacement of poor programming with poor programming, and that there may not be "comparable" programming available. In view of the standards otherwise set forth in Section

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5.50.508, staff does not object to removal of the above quoted sentence.



L. B. ELAM
County Counsel

LBE:sp

cc: William Freeman, Assistant County Executive
Mac Mailès, Assistant City Attorney
James Jackson, City Attorney
Interested Operators

Staff Recommended
Revisions of Sections 5.50.328 and 5.50.330
Allocation of Channels to K.V.I.E. and Consortium

1. The Ordinance should say that the purpose of the allocations is to enhance home instructional services and programming by K.V.I.E. for the viewing public and that such opportunities are material inducements to franchising of Cable T.V.

The October 15, 1981 Hearing Draft does not. The attached draft does.

2. Assignments or leases of the allocated channels for provision of home instructional services or programming for the viewing public should be permitted and regulated.

- a. The October 15, 1981 Hearing Draft does not do so.
- b. The attached draft requires the Franchisee's consent. Commission consent should not be required because of First Amendment issues.

3. Use of the allocated channels for purposes unrelated to home instructional services and programming for the viewing public should be permitted and regulated.

- a. The October 15, 1981 Hearing Draft does not.
- b. The attached draft requires Commission consent, prohibits the Commission from censoring program content in connection with issuance of such approvals, and otherwise permits such approvals to be granted upon conditions.

5.50.328 CHANNEL ALLOCATIONS TO K.V.I.E. AND CONSORTIUM. K.V.I.E., through Channel 6, has traditionally made a significant community contribution through broadcasts of programming of an educational, scientific and cultural nature. Two of the positive benefits to the Sacramento Community which the Initial CATV Franchise may present, and benefits which constitute material inducements to the County and Cities to issue a franchise, are the opportunities to extend instructional services by educational institutions to the home through cable service and expansion of the services provided by K.V.I.E. programming to the viewing public.

Subject to the terms and conditions prescribed by Section 5.50.330, below, the Franchisee under the Initial CATV Franchise shall allocate four (4) channels on the Subscriber Network (in addition to K.V.I.E.'s existing station channel) for the exclusive use of K.V.I.E., and four (4) channels on the Subscriber Network for the exclusive use of the Educational Consortium.

The Franchisee shall make two (2) of the four (4) channels available for cable cast use to K.V.I.E., and three (3) of the four (4) to the Educational Consortium for broadcast use, not later than the date on which the Franchisee first provides service on the Subscriber Network to Dwelling Units. The remaining channels shall be made available to K.V.I.E. and the Educational Consortium at such time as is ordered by the Board of Directors of the Cable Television Commission. Such an order shall be made upon application by K.V.I.E. or the Educational Consortium, and shall not be issued except upon a showing by the applicant and finding by the Board of Directors that the additional channels will immediately be committed to Full-Time Use by the applicant.

5.50.330 UTILIZATION STANDARDS. The channels allocated under Section 5.50.328, above, shall not be assigned, leased or otherwise made available by K.V.I.E. or the Educational Consortium for use by any third party for the provision of instructional services or programming for the viewing public, whether for consideration or otherwise, without the advance written consent by the Franchisee under the Initial CATV Franchise.

As used in this Section and Section 5.50.328, above, the terms "Full-Time Use" shall mean that a particular channel is in use at least ten (10) hours per day, one hundred-eighty (180) days during any thirty-two (32) consecutive week period within any twelve (12) month period. With respect to the channels allocated to K.V.I.E., broadcast time consumed by programs repeated more than four (4) times during any thirty (30) day period and eight (8) times during any twelve (12) month period on a particular channel shall not be considered in determining whether the Full-Time Use standard is utilized. The Education Consortium and K.V.I.E. shall be the sole judge of the nature, quality and content of instructional services and programming for the viewing public presented on channels allocated pursuant to the provisions

of Section 5.50.328, above, and the Board of Directors of Commission shall not in making any determination authorized by Section 5.50.328, above, or this Section, consider such matters or exercise any discretion or control thereover. Neither the Educational Consortium nor K.V.I.E. shall utilize any of the channels allocated pursuant to the provisions of Section 5.50.328, above, for any commercial or other use which does not consist of the provision of instructional services or programming to the viewing public, without advance approval by the Board of Directors of the Commission. Except as otherwise provided by this Section, such approval may be granted or withheld upon such conditions as the Board of Directors deems proper. The repeat programming standard applicable to K.V.I.E.'s use of channels shall not be applicable to uses approved by the Board of Directors which do not consist of instructional services or programming for the viewing public.

All channels allocated to K.V.I.E. and the Educational Consortium not later than the date on which the Franchisee first provides services on the Subscriber Network to Dwelling Units, which are not committed to Full-Time Use by sixty (60) months following the date on which the certificate of acceptance is filed for the Initial CATV Franchise, shall be released by the recipient entity back to the exclusive use and control of the Franchisee. Except as provided above, any channel committed to K.V.I.E. or the Educational Consortium pursuant to Section 5.50.328, above, which at any time during the term of the Initial CATV Franchise is not committed to Full-Time Use shall be released by the recipient entity back to the exclusive use and control of the Franchisee. The exclusive means of enforcing the requirements of this Section shall be by an action commenced in a court of competent jurisdiction by the Commission or Franchisee against K.V.I.E. or the Educational Consortium, and the Franchisee shall not be authorized to use self-help or any other measure to enforce the provisions of this Section.

COUNTY OF SACRAMENTO

Inter-Department Correspondence

Date October 28, 1981

To : Joint Sub-Committees
Cable Television Ordinance Review
City and County of Sacramento

From : L. B. Elam
County Counsel

Subject : CHANNEL ALLOCATIONS - RATE REGULATION - "BANKING OF CHANNELS"
PUBLIC HEARINGS - OCTOBER 26, 28, 29, 1981

The above three topics are discussed in this memorandum in the order in which they will be considered during the public hearings.

RATE REGULATION

During the public hearing on October 26, 1981, the Joint Sub-Committees directed discussion with interested operators and presentation of provisions to be added to the October 15, 1981 Hearing Draft which would provide for rate regulation of all Tiers of Service.

A meeting with interested operators was held this morning. The interested operators generally expressed the view that if rate regulation for all Tiers of Service is to now be added, the Joint Sub-Committees should re-examine the necessity and desirability of other enforcement measures within the October 15, 1981 Hearing Draft, such as the "bank", reduction of the term of the franchise for breach, etc. Staff disagrees. For reasons discussed below, the staff would not expect that comprehensive rate regulation will turn out to be an effective enforcement measure, as distinguished from a measure whose primary purpose is to defeat "price gouging".

In order for rate regulation to serve as a practical enforcement measure, it would be necessary for virtually all rate increases to be subject to discretionary approval by the Commission. The exemption provisions of Section 53066.1 of the Government Code, would protect operators from such a provision should it be unilaterally written into the October 15, 1981 Hearing Draft. Should operators be given the opportunity to voluntarily subject themselves to such pervasive regulation,

there is a fairly high degree of probability that one or more would decline to do so. A form of rate regulation which permits CPI related increases on all Tiers of Service, without regulating rates for premium services, would have little effect as an enforcement measure, even if discretionary increases above the CPI related ones are permitted at the discretion of the Commission. It is for these reasons that as between the "banking" concept and rate regulation of all Tiers of Service, staff originally recommended the "banking" concept as the superior measure, despite its alleged legal infirmities.

The two potential approaches to rate regulation are as follows. The first is "structured regulation", consisting of a form involving a set of uniformly applicable standards permitting CPI related increases, with discretionary adjustments, which all applicants may elect to bring themselves under by declaring intention to do so in their applications. The form of "structured regulation" which staff would recommend, if "structured regulation" is adopted, is shown on the enclosure with this memorandum as Attachment A. The second regulatory approach is "unstructured regulation". Under this form, applicants would be authorized to both propose rate regulation, and include the precise form of regulation in their applications -- such that the application, itself, would define the types of restraints applicable to rates.

Both interested operators and staff are divided upon the question of whether the "structured regulation" or "unstructured regulation" should be implemented. A majority of the interested operators appear to favor the "structured regulation", though they are not necessarily in agreement with the specifics identified in Attachment A.

The relative advantages of "structured regulation" are as follows:

a. The Governing Bodies may decide at the outset, and as a matter of policy, exactly what type of rate regulation is desired, and any applicant who agrees thereto will be bound by the policy determinations;

b. To the extent rate regulation is an important factor in the selection process, all applicants proposing such regulation will be uniformly bound by the same types of restrictions. Ease of comparison is facilitated by the grouping of applicants into those who will not be regulated, and those who will be. There will be no

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differences in types of regulations as to applicants who will be regulated. It is for this reason that CTIC recommends the "structured regulation" approach.

c. Because the form of regulations are set forth in the Ordinance, the danger of ambiguities respecting applicability of the regulations is reduced. Reliance need not be placed upon the drafting quality of the applicant.

The relative advantages of the "unstructured regulation" are as follows:

a. A "structured regulation" approach presupposes that services will be grouped by tier. Interested operators have indicated that the interactive capabilities may permit greater variety in the combination and pricing of services. A Tier of Service form of regulation could reduce flexibility in packaging service features.

b. It is possible, though not probable, that one or more applicants would propose a discretionary form of rate regulation which would be useful as an enforcement measure. A "structured regulation" approach would eliminate even the possibility of such a measure. Even if no one bids such an enforcement mechanism, comparisons could still be made on the basis of which restraints achieve the objective of defeating "price gouging."

c. In light of Government Code, Section 53066.1, a pure "unstructured regulation" approach would be more legally defensible than would a "structured regulation" approach. The more pervasive the rate regulation, the greater the likelihood that it would come under legal attack. Therefore, validity of the regulation becomes more critical when it applies to all Tiers of Service, than to only Basic Service.

d. Interested operators currently take the position that the October 15, 1981 Hearing Draft would not prohibit them from bidding more pervasive

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rate regulation than those which the Ordinance makes applicable to Basic Service. This being true, a true "structured regulation" approach would require the addition of language which prohibits the bidding of innovative regulatory approaches. It is the view of some of the staff that absolute exclusion of rate regulation from the competitive process would not serve the public interest.

CHANNEL COMMITMENTS

During the public hearing on October 26, 1981, the Joint Sub-Committees adopted the regulations relating to commitment of channels to K.V.I.E. and the Educational Consortium contained on pages 11 and 12 of the memorandum by the undersigned dated October 23, 1981. A three page document containing an outline and language text implementing those regulations was distributed during the meeting on October 26, 1981. The document was not considered, because members of the Joint Sub-Committees had had an inadequate opportunity for review.

Enclosed herewith as Attachment B is the three page document, approval of which would implement the recommendations.

CHANNEL BANKING

Supervisor Collin has requested preparation of a schedule which illustrates how channels would be released from the "bank".

Enclosed herewith as Attachment C is a schedule which illustrates how Sections 5.50.814 and 5.50.816 of the October 15, 1981 Hearing Draft would regulate releases of channels. Three separate schedules are shown. The first schedule illustrates releases in the event of completion of the System within 42 months, 9 months in advance of the date required by the Ordinance. The second schedule illustrates releases should the System be completed within 51 months, the date required by the Ordinance. The third schedule illustrates releases should the System be completed 60 months after issuance of the franchise, 9 months later than required by the Ordinance.

The schedules are based upon the following hypothetical. The Franchisee has proposed a 440 MHz System, with 116 video channel capacity. The operators have indicated that approximately 10 or 11 video channels would be unuseable because of

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Cable Television Ordinance Review
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FAA requirements and for technical reasons. Certain assumptions are made below respecting numbers of channels proposed by the applicant for community use. The following schedule illustrates the number of channels which would be available for use by the Franchisee, given the assumptions made concerning community use allocations, and Ordinance requirements relating to "banking" and commitments of channels to K.V.I.E. and the Educational Consortium:

A. Gross Channel Capacity	116
B. Less Channel Losses for Technical Reasons.	<u>11</u>
C. Net Channels Available for Use	105
D. Video Channels Withheld from the Franchisee	
(1) Channels for Bank	21
(2) Allocations to K.V.I.E. and Educational Consortium	8
(3) Assume one Access Channel	1
(4) Assume five Channels for Community Use	<u>5</u>
(5) Total Channels Withheld	<u>35</u>
E. Total Video Channels Available to Franchisee	70

As noted above, enclosed Attachment C shows how the 21 "banked" channels would be released during the term of the franchise given three hypothetical dates for completion of the Cable Television System.


L. B. ELAM

LBE:wp

cc: William Freeman, Asst. County Exec.
Mac Mailes, Asst. City Manager
James Jackson, City Attorney
Interested Operators
Clerk, Board of Supervisors

ATTACHMENT A

Recommended Form of "Structured Regulation" for Rates

1. After completion of the System, annual increases in bid rates would be permitted in amounts which do not exceed 5% or 60% of the CPI increase for the preceding 12 months, whichever is greater.

a. Such limitations would be applicable to all Tiers of Service which include home educational and entertainment services, except premium services and pay per view services, as such services would need to be defined.

b. Permissible increases within the above limits would be cumulative -- that is, if a permissible increase is not made on the date permitted, it would be authorized on a prospective and cumulative basis at a later date, not exceeding 30 months following the date when the increase could have been authorized. This provision will require extensive drafting, and will result in complex administrative review.

2. In addition to the increases specified above, the Board of Directors of the Commission, after public hearings, would be vested with discretion to approve increases based upon the following factors:

a. Rates for comparable services charged in jurisdictions with comparable Cable Television Systems;

b. Whether the Franchisee is in compliance with the Franchise Documents;

c. The extent to which the Franchisee has exercised automatic increase prerogatives in the past;

d. Amounts and percentages of cost increases incurred by the Franchisee in delivering the services regulated; and

e. Reasonable rate of return upon capital investment, in relation to all revenues derived by the Franchisee from exercise of the franchise.

ATTACHMENT B

Staff Recommended Revisions of Sections 5.50.328 and 5.50.330 Allocation of Channels to K.V.I.E. and Consortium

1. The Ordinance should say that the purpose of the allocations is to enhance home instructional services and programming by K.V.I.E. for the viewing public and that such opportunities are material inducements to franchising of Cable T.V.

The October 15, 1981 Hearing Draft does not. The attached draft does.

2. Assignments or leases of the allocated channels for provision of home instructional services or programming for the viewing public should be permitted and regulated.

- a. The October 15, 1981 Hearing Draft does not do so.
- b. The attached draft requires the Franchisee's consent. Commission consent should not be required because of First Amendment issues.

3. Use of the allocated channels for purposes unrelated to home instructional services and programming for the viewing public should be permitted and regulated.

- a. The October 15, 1981 Hearing Draft does not.
- b. The attached draft requires Commission consent, prohibits the Commission from censoring program content in connection with issuance of such approvals, and otherwise permits such approvals to be granted upon conditions.

5.50.328 CHANNEL ALLOCATIONS TO K.V.I.E. AND CONSORTIUM. K.V.I.E., through Channel 6, has traditionally made a significant community contribution through broadcasts of programming of an educational, scientific and cultural nature. Two of the positive benefits to the Sacramento Community which the Initial CATV Franchise may present, and benefits which constitute material inducements to the County and Cities to issue a franchise, are the opportunities to extend instructional services by educational institutions to the home through cable service and expansion of the services provided by K.V.I.E. programming to the viewing public.

Subject to the terms and conditions prescribed by Section 5.50.330, below, the Franchisee under the Initial CATV Franchise shall allocate four (4) channels on the Subscriber Network (in addition to K.V.I.E.'s existing station channel) for the exclusive use of K.V.I.E., and four (4) channels on the Subscriber Network for the exclusive use of the Educational Consortium.

The Franchisee shall make two (2) of the four (4) channels available for cable cast use to K.V.I.E., and three (3) of the four (4) to the Educational Consortium for broadcast use, not later than the date on which the Franchisee first provides service on the Subscriber Network to Dwelling Units. The remaining channels shall be made available to K.V.I.E. and the Educational Consortium at such time as is ordered by the Board of Directors of the Cable Television Commission. Such an order shall be made upon application by K.V.I.E. or the Educational Consortium, and shall not be issued except upon a showing by the applicant and finding by the Board of Directors that the additional channels will immediately be committed to Full-Time Use by the applicant.

5.50.330 UTILIZATION STANDARDS. The channels allocated under Section 5.50.328, above, shall not be assigned, leased or otherwise made available by K.V.I.E. or the Educational Consortium for use by any third party for the provision of instructional services or programming for the viewing public, whether for consideration or otherwise, without the advance written consent by the Franchisee under the Initial CATV Franchise.

As used in this Section and Section 5.50.328, above, the terms "Full-Time Use" shall mean that a particular channel is in use at least ten (10) hours per day, one hundred-eighty (180) days during any thirty-two (32) consecutive week period within any twelve (12) month period. With respect to the channels allocated to K.V.I.E., broadcast time consumed by programs repeated more than four (4) times during any thirty (30) day period and eight (8) times during any twelve (12) month period on a particular channel shall not be considered in determining whether the Full-Time Use standard is utilized. The Education Consortium and K.V.I.E. shall be the sole judge of the nature, quality and content of instructional services and programming for the viewing public presented on channels allocated pursuant to the provisions

of Section 5.50.328, above, and the Board of Directors of Commission shall not in making any determination authorized by Section 5.50.328, above, or this Section, consider such matters or exercise any discretion or control thereover. Neither the Educational Consortium nor K.V.I.E. shall utilize any of the channels allocated pursuant to the provisions of Section 5.50.328, above, for any commercial or other use which does not consist of the provision of instructional services or programming to the viewing public, without advance approval by the Board of Directors of the Commission. Except as otherwise provided by this Section, such approval may be granted or withheld upon such conditions as the Board of Directors deems proper. The repeat programming standard applicable to K.V.I.E.'s use of channels shall not be applicable to uses approved by the Board of Directors which do not consist of instructional services or programming for the viewing public.

All channels allocated to K.V.I.E. and the Educational Consortium not later than the date on which the Franchisee first provides services on the Subscriber Network to Dwelling Units, which are not committed to Full-Time Use by sixty (60) months following the date on which the certificate of acceptance is filed for the Initial CATV Franchise, shall be released by the recipient entity back to the exclusive use and control of the Franchisee. Except as provided above, any channel committed to K.V.I.E. or the Educational Consortium pursuant to Section 5.50.328, above, which at any time during the term of the Initial CATV Franchise is not committed to Full-Time Use shall be released by the recipient entity back to the exclusive use and control of the Franchisee. The exclusive means of enforcing the requirements of this Section shall be by an action commenced in a court of competent jurisdiction by the Commission or Franchisee against K.V.I.E. or the Educational Consortium, and the Franchisee shall not be authorized to use self-help or any other measure to enforce the provisions of this Section.

ATTACHMENT C

RELEASES FROM "BANK"
OF 21 CHANNELS*

ASSUME COMPLETION OF
SYSTEM 42 MONTHS
FOLLOWING AWARD OF
FRANCHISE

	<u>Channels Released</u>
3 yrs. 6 mos.	10
4 yrs. 6 mos. (may release all)	1
5 yrs. 6 mos.	1
6 yrs. 6 mos.	1
7 yrs. 6 mos.	1
8 yrs. 6 mos.	1
9 yrs. 6 mos.	<u>6</u>
	21

ASSUME COMPLETION OF
SYSTEM 51 MONTHS
FOLLOWING AWARD OF
FRANCHISE

	<u>Channels Released</u>
4 yrs. 3 mos.	10
5 yrs. 3 mos. (may release all)	1
6 yrs. 3 mos.	1
7 yrs. 3 mos.	1
8 yrs. 3 mos.	1
9 yrs. 3 mos.	1
10 yrs. 3 mos.	<u>6</u>
	21

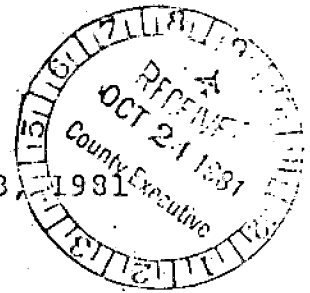
ASSUME COMPLETION OF
SYSTEM 60 MONTHS
FOLLOWING AWARD OF
FRANCHISE

	<u>Channels Released</u>
5 yrs.	5
6 yrs. (may release all)	1
7 yrs.	1
8 yrs.	1
9 yrs.	1
10 yrs.	1
11 yrs.	<u>11</u>
	21

*Assume no violations of Franchise Documents
at the time release would otherwise be permissible.

MEMORANDUM

DATED: October 23, 1981



TO: Members of Cable Television Subcommittee
Sacramento City Council
Sacramento County Board of Supervisors

FROM: HOWARD GAN, Cable Television Information Center

As the Cable Television Subcommittee nears final consideration of its cable television policies, specifically the cable television regulatory ordinance and the request for proposals, I would like to make some specific comments with regard to several provisions about which I remain concerned. I believe the Request for Proposals (RFP) is in good form at the present time; we will make specific recommendations for changes in the forms which are technical in nature.

The ordinance in my view is extraordinarily comprehensive and extremely well drafted by Lee Elam and Jim Jackson. However, I have consistently expressed my concern and in fact, my opposition to certain provisions contained in the ordinance, namely:

- the channel banking concept;
- the mandatory allocation of channels to station KVIE and the Educational Consortium; and,
- the definition of "basic service" which permits rate regulation only for basic service as defined in the ordinance.

The channel banking concept and the allocation of channels to KVIE and the Educational Consortium both involve the same fundamental issues. The basic problem is that the City and County are mandating in ordinance form what the cable operator must do with certain channels. Under the circumstances, I believe it is questionable whether such mandatory allocations can be justified on the basis of being closely connected with the public interest. With regard to KVIE and the Educational Consortium, I believe it is inappropriate to allocate four channels on a required basis. I believe it would be more enforceable and more appropriate to request in the RFP that applicants consider allocation of a reasonable amount of channel capacity to KVIE and the Educational Consortium for public purposes. I am also concerned that allocation of channels in the ordinance to KVIE and the Educational Consortium only may be discriminatory in that other potentially worthy recipients of channel allocations are not equally provided for under the ordinance.

Following the Supreme Court decision in the Midwest Video II case in 1979, we have been recommending to cities that they not mandate access channels in any case. Rather, due to the highly competitive nature of the cable franchising process at this time,

we have found that the community will receive in the form of voluntary provisions by the cable applicants a large number of access channels allocated for public purposes without having to mandate them in the form of an ordinance. Our concern with regard to the Midwest Video case is that there are still unresolved constitutional issues as to legitimacy of mandating that the cable operator provide channels for access or other purposes. We are concerned that in light of litigation that is now ongoing, it may be determined that cities cannot in fact constitutionally mandate the use of access channels, but rather can only request such channels be voluntarily provided by the cable companies. Therefore, our approach generally is to place as much as possible in the way of request for specific services in the RFP. The companies will undoubtedly offer the services requested on a voluntary basis and can be bound in a two party contract to provide the services they have voluntarily offered to the community. A contract cannot be overturned by subsequent state or federal legislation and is fully enforceable by the franchising authority.

With regard to the channel banking concept, you should be aware that I have been unequivocally opposed to this approach from the time it was first suggested. Let me reiterate that I understand the Subcommittee's concern about enforcing the rights of the community and insuring that the company provide all of the services and facilities it has promised, in light of efforts by the cable television industry to preempt or supersede local authority in Congress (e.g., Senate Bills 2828 of last year and 898 of this year). We too are concerned with the efforts to preempt local regulatory authority. However, I have two major concerns in regard to the channel banking concept. One relates to the substance of the channel banking provisions themselves. Although the revised channel banking provisions have been artfully drafted by Lee Elam, the technical aspect of defining available channels is complex. Furthermore, the entire concept of forcing the company to turn over, in effect, 20% of its channel capacity to the cable commission is extremely vulnerable to a legal challenge as an unconstitutional assertion of City/County authority over the franchisee or unconstitutional taking of property without compensation. This is truly a precedent-setting provision, never proposed elsewhere in the country. This is not a desirable precedent to be set by you. The requirement that the cable company turn over 20% of its capacity to the commission in my view is not a proper use of city regulatory authority and should not be used as a club to enforce performance by the operator.

Although no one can project what future litigation may result from this provision, I can almost guarantee that the cable industry will find this channel banking provision so distasteful and potentially dangerous that it will challenge the provisions, with a good chance to succeed. Simply stated, the cable operator's property is being taken from him. It may reasonably be argued to be a taking of property without due process of law or confiscation

of property in violation of the Fifth Amendment to the Constitution. Moreover, the cable operators have been asserting very strongly their First Amendment rights. Although I generally reject the First Amendment argument, in this case, because the channel banking concept does not require the allocation of channels for actual public uses such as government access or educational access, the First Amendment problem is more substantial.

Since I am dictating this memo it is difficult to go into a number of specific arguments which I would like to discuss with the Subcommittee and staff on Monday. However, overall, I suggest that the banking concept is unwise for many reasons which I hope we will discuss in depth. I believe that the potential cost in terms of likely future litigation and the possible adverse impact both on Sacramento's ability to enforce its franchise provisions, and on local regulatory authority nationally outweighs the benefits to be derived. Battles are being fought in the halls of Congress to show that cities and counties are acting reasonably and responsibly and not attempting to go beyond the pale in exercising regulatory jurisdiction over cable. I fear that the channel banking concept will be held up by the cable industry as an example of regulation gone too far and used to convince Congress that local regulatory authority should be cut back. The adverse impact may extend far beyond Sacramento; if this provision is viewed as arbitrary and unreasonable by Congress or the courts, it may lead to Congressional action or a court decision adversely affecting cities throughout the nation.

There are several other issues which I will not attempt to discuss in this memo. I will provide additional written material next week, and discuss other matters with you. These include adding language to insure that KVIE and the Educational Consortium cannot sublease their channels for profit-making purposes when other public interest groups cannot act in a similar manner; problems with what constitutes a "breach" to trigger the withholding of channels from the operator through the channel bank; and the possibility that other interest groups within the community, once they recognize that only KVIE and the Educational Consortium have been allocated specific channels for their own discretionary use, will vociferously complain and may, in fact, file suit on the grounds that they have been discriminated against by the City's and County's actions.

In sum, although the objectives of protecting the rights of the community in a deregulatory atmosphere both statewide and federally are laudible, I do not believe that the channel banking and mandatory channel allocation provisions should be maintained in their present form. I do have alternative provisions which I will suggest to the Subcommittee, including a modified form of rate regulation which would be imposed on the cable operator for all "basic" cable services to replace the channel banking concept.

I believe that this modified form of rate regulation, which would permit annual rate increases up to a certain percentage of the consumer price index, will be acceptable to the applicants and will permit greater future leverage and enforcement power on the part of the Cable Television Commission than the channel banking concept. I will look forward to meeting with the Subcommittee and discussing my concerns and those of the members of the Subcommittee in greater depth on Monday.

Howard GAN
HOWARD GAN

HG:kn

HEARING DRAFT
(Number 4)

CABLE TELEVISION ORDINANCE

FOR

THE COUNTY OF SACRAMENTO
AND CITIES OF SACRAMENTO,
FOLSOM, ISLETON AND GALT

November 4, 1981

OFFICE OF THE SACRAMENTO COUNTY COUNSEL

(Underlining Represents Substantive Changes
in Hearing Draft No. 3, dated October 15, 1981)

HEARING DRAFT
CABLE TELEVISION ORDINANCE
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LBE:ph
11-4-81

ORDINANCE NO. SCC _____

AN ORDINANCE ADDING CHAPTER 5.50 TO THE
SACRAMENTO COUNTY CODE RELATING TO CABLE
TELEVISION FRANCHISES

The Board of Supervisors of the County of Sacramento, State of California, do ordain as follows:

SECTION 1. Chapter 5.50, Sections 5.50.010 through 5.50.846 are hereby added to Title 5 of the Sacramento County Code to read as follows:

CHAPTER 5.50

CABLE TELEVISION ORDINANCE

SUB-CHAPTER 1

GENERAL PROVISIONS

5.50.010 PURPOSES. The purposes of this Chapter include, but are not limited to, the promotion of the general welfare of the citizens of the Sacramento Community by:

- a. Establishing a master-plan for the franchising of cable television services within the Sacramento 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 television will in fact inure to the benefit of the Sacramento Community and the citizens thereof;
- c. To provide for the unified administration of cable television franchises in order to reduce the danger that the nature and extent of services received and benefit derived therefrom will be dependent upon the jurisdiction in which a citizen of the Sacramento Community resides; and
- d. Regulate the operations of Franchisees 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 Franchisee which is not otherwise conferred by another express provision of this Chapter.

5.50.012 DEFINITIONS. As used in this Chapter, the following terms, phrases, and words shall be ascribed the following meanings, unless the context indicates 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.

a. "Basic Service" -- shall mean: (i) a single tier of television reception services on the Subscriber Network provided in connection with each residential hook-up for a uniform monthly charge, if any, which includes the following:

(1) Reception of all local television broadcasting stations as prescribed by applicable FCC Regulations (47 C.F.R. 76.51 through 76.67, inclusive) as said regulations exist on March 1, 1981;

(2) Any additional stations which may be required by FCC Regulations enacted subsequent to March 1, 1981;

(3) One (1) of the channels made available to K.V.I.E. pursuant to Section 5.50.328 in Article 4-a (in addition to the pre-existing channel operated by K.V.I.E. otherwise required to be carried);

(4) One (1) of the channels made available to the Educational Consortium pursuant to Section 5.50.328 in Article 4-a;

(5) One (1) Access Channel, if an Access Channel is made available by a Franchisee pursuant to the provisions of Section 5.50.336 in Article 4-a; and

(6) Any other or additional cable television services proposed by a Franchisee in its application to be included within Basic Service; and

(ii) if proposed in the application submitted by a Franchisee and prescribed by the Resolution Offering the Franchise, one (1) or more tiers of television reception services on the Subscriber

Network which consist of less television reception services than prescribed by "(i)", above, provided in connection with each residential hook-up for a uniform monthly charge, if any.

- b. "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 Sacramento Community, including both Subscriber Networks and Institutional Networks.

A "Cable Television System" shall not include any facility which serves or will serve exclusively only subscribers in one or more multiple-unit dwellings under common ownership, control or management, one or more condominiums, a mobilehome park, or a residential subdivision with private roads, which is not installed in and does not use Streets and other public and utility rights-of-way.

- c. "Cable Television Commission" or "Commission" -- shall mean the Sacramento Metropolitan Cable Television Commission created pursuant to the provisions of Sub-Chapter 2, or any successor in interest thereof established by the County and Cities.
- d. "Cities" -- shall mean the City of Sacramento, and each of the municipalities of Folsom, Isleton, and Galt which enacts the provisions of this Chapter in identical form and does not adopt a resolution disapproving selection of the Franchisee under the Initial CATV Franchise pursuant to Section 5.50.212, in Sub-Chapter 3.
- e. "Community Use", "Community Use Programming", and "Community Use Channels" -- shall mean use, programming or channels for purposes of non-commercial cablecasts presented by or in behalf of a Franchisee, the County or Cities, individuals and local community non-profit organizations, which consist of topics of special interest to the Sacramento 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. "Non-Commercial" means:

(i) the content of such programming shall not be for the purpose of either directly or indirectly selling any product or service for private gain; and
(ii) that the programming shall not be associated with or interrupted during presentation by commercial advertising or announcements presented for the purpose of selling products or services for private gain.

- f. "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 delivered at designated converter dial locations.
- g. "County" -- shall mean the County of Sacramento.
- h. "Educational Consortium" -- shall mean the Sacramento County Superintendent of Schools as trustee for the benefit of all public school districts within the County, the Los Rios Community College District, the Sacramento County Office of Education, the California State University at Sacramento, and such privately owned and operated schools as are designated by the Sacramento County Board of Education; or any legal entity hereafter formed for the purpose of administering the benefits conferred by this Chapter which includes as members the foregoing entities.
- i. "FCC" -- shall mean the Federal Communications Commission and any legally appointed, designated or elected agent or successor thereof.
- j. "Franchise Documents" -- shall, with respect to a franchise for a Cable Television System issued pursuant to the provisions of this Chapter, mean the provisions of this Chapter, the map defining any Imposed Service Area for the franchise as adopted by resolution, the provisions of any Request for Proposals issued pursuant to the provisions of this Chapter in connection with that franchise, the provisions of the application for the franchise submitted by the Franchisee, the provisions of the resolution offering the franchise, and the provisions of the certificate of acceptance by the Franchisee of the franchise.
- k. "Franchisee" -- shall mean the party to whom a franchise to operate a Cable Television System is issued pursuant to the provisions of this Chapter.
- l. "Governing Body" -- shall mean the Board of Supervisors with respect to the County, and each City

Council with respect to the Cities.

- m. "Gross Revenues" -- shall mean all cash, credits, property of any kind or nature or other consideration derived directly or indirectly by a Franchisee, its affiliates, subsidiaries, parent, and any other person or entity in which the Franchisee has a financial interest or which has a financial interest in the Franchisee, arising from or attributable to operation of the Cable Television System, including, but not limited to: (i) revenue from all services provided on the Subscriber Network and Institutional Network (including Leased Access fees); (ii) advertising revenues; (iii) revenue from the use of studio facilities, production equipment and personnel; (iv) revenue from installation, connection and reinstatement and the provision of subscriber and other services; and (v) the sale, exchange or 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 non-monetary form received by the Franchisee or others described above in consideration for performance by a Franchisee or others described above of any advertising or other service in connection with the Cable Television System.

"Gross Revenues" shall not include: (i) any taxes on services furnished by the Franchisee which are imposed directly upon any Subscriber or User by the United States, State of California or local agency and collected by the Franchisee on behalf of the government; (ii) revenue received directly from the Franchisee by an affiliate, subsidiary or parent of the Franchisee or any other person or entity in which the Franchisee has a financial interest or which has a financial interest in the Franchisee, when the revenue received has already been included in reported Gross Revenue as received by the Franchisee; and (iii) 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.

- n. "Initial CATV Franchise" -- shall mean the first franchise for a Cable Television System issued pursuant to the provisions of this Chapter.

- o. "Institutional Network" -- shall mean a cable communications network used exclusively for the provision of services to businesses, schools, public agencies or other non-profit agencies in connection with the on-going operations of such enterprises.
- p. "Inter-active Services" -- shall mean services provided to subscribers or users where the subscriber either: (i) both receives information consisting of either television or other signals and transmits signals generated by the subscriber or user or equipment under his control for the purpose of selecting what information shall be transmitted to the subscriber or user for any other purpose; or (ii) transmits signals to any other location for any purpose.
- q. "K.V.I.E. -- shall mean Central California Educational Television, a California non-profit corporation or any successor in interest which operates the channel now known as K.V.I.E. within the Sacramento Community.
- r. "Leased Access" -- shall mean use on a fee-for-service basis of the Subscriber Network or Institutional Network by business enterprises (whether profit, non-profit or governmental) to render services within the Sacramento Community.
- s. "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 that "Monitoring" shall not include systemwide, non-individually addressed sweeps of the Cable Television System for purposes of verifying System integrity, controlling return path transmissions, or billing for pay services.
- t. "Sacramento Community" -- shall mean the entire geographical territory within the unincorporated area of the County, the corporate limits of the City of Sacramento, and the corporate limits of each of the municipalities of Folsom, Isleton and Galt which enacts this Chapter and elects to issue the Initial CATV Franchise pursuant to the provisions of this Chapter.
- u. "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 other properties, and in which the County or Cities are expressly or impliedly authorized or empowered to permit use for installation and operation of a Cable Television System.

- v. "Subscriber" -- shall mean a lawful recipient of service from a Cable Television System.
- w. "Subscriber Network" -- shall mean a cable communications network which carries television entertainment channels and Community Use Channels (including Basic Service) and may carry channels providing commercial or other non-entertainment services and Leased Access channels.
- x. "Tier of Service" -- shall mean a grouping of program services on the Subscriber Network which is marketed by a Franchisee to Subscribers for a single monthly or other charge. "Basic Service" as defined by "(i)" under subparagraph "a" of this Section shall constitute a single Tier of Service. "Basic Service" as authorized under "(ii)" of subparagraph "a" of this Section shall constitute a separate and distinct tier of Service.
- w. "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.

5.50.014 FRANCHISE REQUIRED. Except as otherwise provided by this Chapter, Streets within the Sacramento Community shall not be occupied by or used for a Cable Television System except under a franchise issued pursuant to the provisions of this Chapter.

5.50.016 GENERAL CHARACTERISTICS OF FRANCHISE 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 Television System;
- b. Be non-exclusive, and neither expressly nor impliedly be deemed to preclude the issuance of subsequent franchises to operate Cable Television Systems within the Sacramento Community; and

- c. Be for a term prescribed by the issuing authority which shall not extend beyond December 31, 2002.

Such a franchise shall not be deemed to authorize or either expressly or impliedly permit the Franchisee, except with the consent of the owners, to provide Cable Television System service to, or install antennae, 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, mobilehome parks and residential subdivision developments with private roads. The purpose of this paragraph is to require owner consent for the provision of service. This paragraph shall not be construed to prohibit a Franchisee 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.

5.50.018 FRANCHISE AS CONTRACT. A franchise issued pursuant to the provisions of this Chapter shall be deemed to constitute a contract between the Franchisee and the Cable Television Commission. Each Franchisee 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 5.50.038, below, shall constitute a 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 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 resolution 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; and

- d. The express terms of the application for the franchise shall prevail over 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 numerous 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, and innumerable changes have been made in drafts of this Chapter at the request of operators. The Franchise Documents shall not be construed to constitute a contract of adhesion.

5.50.020 FRANCHISE AREAS. The Initial CATV Franchise shall permit the operation of the Cable Television System throughout the geographic area of the entire Sacramento Community pursuant to the provisions of this Chapter as the Franchise Area.

The Franchise Area for any franchise subsequently issued under the provisions of this Chapter shall be defined by the Board of Directors of the Cable Television Commission.

No Franchisee shall be authorized by the provisions of this Chapter to construct, install or operate a Cable Television System outside its designated Franchise Area.

Installation and extensions of and additions to Cable Television Systems and service is mandated within Franchise Areas pursuant to the terms, conditions and requirements set forth in Article 4-b of Sub-Chapter 4.

5.50.022 UTILITY POLES. No franchise issued pursuant to the provisions of this Chapter shall be deemed to expressly or impliedly authorize the Franchisee to utilize poles owned by the Pacific Gas and Electric Company, Pacific Telephone, the Municipal Utility District or any other public or private utility which are located within Streets, without the express consent of the utility.

5.50.024 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 Franchisee to any office maintained by the Franchisee within the Sacramento 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 or writing is authorized or required to be "filed".

Whenever a provision of this Chapter requires a public hearing to be conducted by the Board of Directors of the Cable Television Commission, 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 commencement of the hearing in a newspaper of general circulation which is published within the Sacramento Community. Each Franchisee who is interested in the hearing and who is providing service on the Subscriber Network shall also, at its sole cost and expense, announce the time, date, place and purpose of the hearing on at least two (2) channels which are included in Basic Service between the hours of 7:00 p.m. and 9:00 p.m. for five (5) consecutive days prior to the hearing. The failure of a Franchisee to announce a public hearing in the manner herein prescribed shall not invalidate such hearing or any action taken as a result of or subsequent to the conduct thereof.

5.50.026 LEASES. Any Franchisee or parent, subsidiary or affiliated company or agent thereof who leases either real property situated within the Sacramento Community or personal property to be located within the Sacramento 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: (i) authorizes that lessee to assign the lease to the Cable Commission or its assignee without the consent of the lessor or payment of additional compensation by virtue of the assignment; or (ii) authorizes such Lessee to so assign such lease without payment of additional compensation by virtue of the assignment and prohibits the lessor from unreasonably withholding consent to such assignment.

5.50.028 AUTHORITY. With respect to the County and chartered Cities enacting this Chapter, it is declared that this Chapter is enacted pursuant to the authority conferred by their charters. With respect to the County and Cities it is also enacted pursuant to the police powers conferred by Article XI, Section 7 of the California Constitution for the promotion and protection of the peace, health, safety and general welfare of the citizens within their respective jurisdictions.

5.50.030 FUTURE INCORPORATIONS. It is hereby declared that the unified process for the administration of franchises

issued pursuant to the provisions of this Chapter is necessary for protection and promotion of the convenience and welfare of all of the citizens of the Sacramento Community, and that fragmentation in administration or right to administer such franchises resulting from the future incorporation of municipalities within the unincorporated area of the County would be detrimental to the convenience and welfare and the purposes of this Chapter.

Therefore, the incorporation of any municipality within the unincorporated area of the County during the initial term of any franchise issued pursuant to the provisions of this Chapter shall not operate to either divest the Franchisee of its authority to install or provide services through its Cable Television System within the newly incorporated area or vest the newly created municipality with any administrative or other authority whatsoever respecting operations by the Franchisee under the franchise. During such initial term, the County, Cities and Cable Television Commission shall continue to administer the provisions of this Chapter for the benefit of the inhabitants of a newly incorporated area in the same manner as if the area had not been incorporated.

Upon expiration of the initial term of a franchise, the provisions of this Chapter shall cease to be applicable to that portion of the Cable Television System and the operations by the Franchisee thereof within the municipal limits of any city which is incorporated subsequent to the commencement of the initial term. The Sacramento Community shall not be deemed to include any area within the limits of a city incorporated after the date this Chapter becomes effective and prior to the filing of the certificate of acceptance of any franchise.

5.50.032 ANNEXATIONS. The annexation by a municipality which has either not enacted this Chapter or is not a member of the Cable Television Commission of unincorporated area of the County during the initial term of any franchise issued pursuant to the provisions of this Chapter shall not operate to either divest the Franchisee of its authority to install or provide services through its Cable Television System within the annexed area or vest the municipality with any administrative or other authority whatsoever respecting operations by the Franchisee under the franchise. During the initial term, the County, Cities and Cable Television Commission shall continue to administer the provisions of this Chapter for the benefit of the inhabitants of the annexed area in the same manner as if the area had not been annexed.

Upon expiration of the initial term of a franchise, the provisions of this Chapter shall cease to be applicable to that portion of the Cable Television System and the operations by the Franchisee thereof within any area which has been annexed

by such a municipality. The Sacramento Community shall not be deemed to include any area annexed by such a municipality subsequent to the date this Chapter becomes effective and prior to the filing of the certificate of acceptance of any franchise.

5.50.034 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 Governing Bodies of the County and Cities shall be fully applicable to the exercise of any franchise issued pursuant to the provisions of this Chapter, and the Franchisee 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.

5.50.036 OPERABILITY - AMENDMENTS. The provisions of this Chapter shall not become effective or operable unless said provisions are enacted in identical form by both the Governing Body of the County and the Governing body of the Municipality of Sacramento. The provisions of this Chapter shall become applicable within the geographic boundaries of the Municipalities of Folsom, Isleton and Galt, respectively, upon the enactment of the Governing Body of each such municipality of the provisions of this Chapter in identical form.

From and after the date on which the certificate of acceptance for the Initial CATV Franchise is filed pursuant to the provisions of Section 5.50.220 in Sub-Chapter 3, no addition to, deletion from, alteration of the provisions of, repeal or other amendment of this Chapter shall become effective unless such amendment or repeal is enacted by the Governing Body of the County and the Governing Body of the Municipality of Sacramento. After enactment of the provisions of this Chapter by the Governing Bodies of the Municipalities of Folsom, Isleton or Galt, no addition to, deletion from, alteration of the provisions of, repeal or other amendment of this Chapter enacted by the Governing Bodies of the County and Municipality of Sacramento shall become effective within the boundaries of any of said Municipalities of Folsom, Isleton or Galt unless such amendment is enacted by the Governing Body of the particular Municipality.

5.50.038 RIGHT TO AMEND. Except as hereinafter provided, any franchise issued pursuant to the provisions of this Chapter shall be subject and subordinate during its term to exercise of the police powers for protection and promotion of the public health, safety and welfare through amendment of this Chapter as authorized by Section 5.50.036, above. In the absence of an emergency, and without the consent of the Franchisee, the following provisions of this Chapter shall not be altered or

repealed as applied to a franchise for which a certificate of acceptance has been filed in compliance with the provisions of Section 5.50.220 in Sub-Chapter 3 in advance of the effective date of the alteration or repeal:

- a. Subparagraphs "a", "m" and "u" of Section 5.50.012 and Sections 5.50.016, 5.50.018, 5.50.034, 5.50.036, 5.50.038, and 5.50.050 in this Sub-Chapter;
- b. The right to receive compensation for acquisition by the Cable Television Commission or its assignee of any of a Franchisee's property utilized in the performance of services under the franchise in accordance with the valuation standards prescribed by Sections 5.50.246 and 5.50.248 in Sub-Chapter 3.
- c. The provisions relating to requirements of the Cable Television System prescribed by Sections 5.50.300 through 5.50.312, the provisions relating to prevailing rates prescribed by Sections 5.50.316 through 5.50.326, and the provisions relating to commitment of channels prescribed by Sections 5.50.328 and 5.50.330 in Article 4-a of Sub-Chapter 4;
- d. The provisions, standards, procedures and remedies relating to construction, completion and service prescribed by Sections 5.50.400 through 5.50.446, inclusive, in Article 4-b of Sub-Chapter 4;
- e. The provisions relating to cable television services contained in Sections 5.50.504, 5.50.506, 5.50.508, and 5.50.510 in Article 4-c of Sub-Chapter 4.
- f. The provisions and procedures relating to the amount of, payment of, and increases in franchise fees prescribed by Sections 5.50.600 through 5.50.606 and 5.50.610 through 5.50.614 in Article 4-d of Sub-Chapter 4;
- g. The provisions relating to security, surety, indemnification and insurance prescribed by Sections 5.50.700 through 5.50.708, inclusive, in Article 4-e of Sub-Chapter 4;
- h. The provisions, relating to transfers and assignments prescribed by Sections 5.50.750 through 5.50.758 and 5.50.762 in Article 5-a of Sub-Chapter 5; or
- i. The provisions relating to remedies prescribed by Sections 5.50.804 through 5.50.826 and 5.50.830 through 5.50.840 in Article 5-b of Sub-Chapter 5.

5.50.040 FRANCHISOR. Any franchise issued pursuant to the provisions of this Chapter shall be in the name of the Cable Television Commission as the franchisor.

5.50.042 RESERVATION OF RIGHTS. The provisions of this Chapter shall not be so construed as to in any manner restrict or impair the power or authority of the Governing Bodies of the County or Cities to issue cable television franchises within their jurisdictional boundaries; provided that no such franchise shall be issued until ninety (90) calendar days following the mailing to each party issued a franchise under the provisions of this Chapter of written notice of the Governing Body's intention to do so.

5.50.044 COMMUNICATIONS WITH REGULATORY AGENCIES. Copies of all petitions, applications, communications, and reports submitted by a Franchisee to the FCC, Securities and Exchange Commission, 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 the System, also shall be filed simultaneously with the Clerk of the Board of Directors of the Cable Television Commission. Copies of responses or any other communications from the regulatory agencies to a Franchisee likewise shall be filed immediately on receipt with said Clerk.

5.50.046 RIGHT OF INTERVENTION. The Cable Television Commission shall have the right of intervention in any suit or proceedings to which a Franchisee is a party, and the Franchisee shall not oppose such intervention by the Commission.

5.50.048 LIMITATIONS 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 amendment thereof or any provision of the other Franchise Documents shall be commenced not later than thirty (30) calendar days following the effective date of the provisions, and 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 adoption, issuance or making of such rule, order, regulation, determination or arbitration award. 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, whether for the recovery of damages or otherwise, commenced by the Cable Television Commission, County or Cities for breach or enforcement of the provisions of this

regulation, determination or arbitration award purporting to have been issued thereunder.

5.50.050 CHANGES IN LAW. Should the State of California or any agency thereof, the United States or any Federal agency, or any State or Federal Court require either the Cable Television Commission, County, Cities or a Franchisee to act in a manner which is inconsistent with any provisions of the Franchise Documents, the Board of Directors of the Cable Television Commission shall be authorized to determine whether a material provision of the Franchise Documents is affected in relation to the rights and benefits conferred by the Franchise Documents upon the Commission, County, Cities or the public. Upon such determination, the Franchise Documents shall be subject to modification or amendment to such extent as may be necessary to carry out the full intent and purposes thereof in relation to the rights and benefits of the Commission, County, Cities or the public. The Board of Directors of the Cable Television Commission may terminate a Franchise issued pursuant to the provisions of this Chapter if it determines that substantial and material compliance with the Franchise Documents in relation to the rights or benefits of the Commission, County, Cities or the public has been frustrated by such a State, Federal or judicial requirement.

5.50.052 ILLEGAL TAPPING. It shall be unlawful for any person to make or use any unauthorized connection, whether physically, electrically, accoustically, inductively or otherwise, with any part of a Cable Television System for which a franchise has been issued pursuant to the provisions of this Chapter for the purpose of taking or receivng or enabling himself or others to receive or use any television signals, radio signals, picture, program or sound, without payment to the owner of said System.

It shall be unlawful for any person, without the consent of the owner, to wilfully tamper with, remove, injury or valdalize any part of such a Cable Television system including any cables, wires, or equipment used for distribution of television signals, radio signals, pictures, programs or sound.

5.50.054 SEVERABILITY. The provisions of Section 1.01.150 in Chapter 1.01 of Title 1 of this Code shall not be applicable to the provisions of this Chapter.

5.50.056 EXCLUSION OF FOLSOM, ISLETON OR GALT. Notwithstanding any provision in this Chapter to the contrary, if any of the Municipalities of Folsom, Isleton or Galt fail to enact the provisions of this Chapter on or before November 30, 1981, the geographical territory within the limits of any such Municipality shall be deemed to be excluded from any Franchise Area and Service Area established by or under this Chapter, there shall be no opportunity to offer Galt as a Proposed Service Area as otherwise authorized by Section 5.50.404 in Article 4-b of Sub-Chapter

4 should Galt fail to enact this Chapter by November 30, 1981, and any and all other provisions of this Chapter which impose or confer a right, privilege, duty or limitation upon any such Municipality per se as included within the definition of "Cities" shall be deemed to be ineffective and null and void.

SUB-CHAPTER 2

CABLE TELEVISION COMMISSION

5.50.100 ESTABLISHMENT OF COMMISSION. Pursuant to the provisions of Title 1, Division 7, Chapter 5 of the Government Code, (commencing with Section 6500), there shall be established a separate and distinct public agency to be known as the Sacramento Metropolitan Cable Television Commission (herein referred to as the "Cable Television Commission" or "Commission").

5.50.102 MEMBERSHIP. The Cable Television Commission shall be formed by and consist of, as members, the County and the Cities.

5.50.104 BOARD OF DIRECTORS. The powers and authority of the Cable Television Commission shall be vested in a Board of Directors which consists of nine (9) members.

- a. Five (5) members of the Board of Directors shall be members of the Governing Body of the County.
- b. One (1) member of the Board of Directors shall be a member of the Governing Body of either the municipalities of Folsom, Isleton or Galt; provided that the member shall be from a Governing Body of municipality which is a member of the Commission. The member shall be appointed by and serve at the pleasure of the Governing Bodies of Folsom, Isleton and Galt jointly, or so many of said municipalities as are members of the Commission.
- c. In the event the municipality of Folsom, municipality of Isleton or municipality of Galt is a member or members of the Commission, three (3) members of the Board of Directors shall be members of, appointed by and serve at the pleasure of the Governing Body of the City of Sacramento.

In the event neither the municipality of Folsom, the municipality of Isleton nor the municipality of Galt is a member of the Commission, four (4) members of the Board of Directors shall be members of, appointed by and serve at the pleasure of the Governing Body of the City of Sacramento.

Each member of the Board of Directors shall be authorized to appoint a personal representative to attend meetings of the Board

in the absence of the member, and, during such meetings, vote and exercise all other powers of the member. Such an appointment shall be effective when the member files with the Clerk of the Board of Directors a written notice executed by the member which identifies by name and residential address the personal representative who has been appointed. Personal representatives shall serve at the pleasure of the members who appoint them, and such appointments may be revoked by the filing of written notice of revocation with the Clerk of the Board of Directors signed by the member and reciting revocation of the appointment of a designated personal representative. In the event of removal from the Board of Directors of a member who serves at the pleasure of a Governing Body, such removal shall automatically effect removal of any personal representative which that member has appointed.

5.50.106 EXISTENCE. The Cable Television Commission shall become operable and be fully competent to exercise the powers and authority vested therein thirty-one (31) calendar days following the date of selection of the Franchisee for the Initial CATV Franchise pursuant to the provisions of Section 5.50.210 in Sub-Chapter 3.

5.50.108 PURPOSES. The purposes of the Cable Television Commission shall be as follows.

- a. To administer pursuant to the terms and conditions of the Franchise Documents, the Initial CATV Franchise and any franchise subsequently issued pursuant to the provisions of this Chapter;
- b. To exercise any and all other powers conferred by the Franchise Documents.

5.50.110 DELEGATION OF POWERS. The Board of Directors of the Cable Television Commission shall be authorized to form and appoint advisory and other committees of citizens, officials or representatives of concerned interests, and delegate to each committee such powers and authority vested in it by the terms of this chapter as it deems appropriate; provided that the Board of Directors shall reserve the right and authority by means of appeal or otherwise, to make the final decision upon any matter relating to issuance or termination of a franchise issued pursuant to the provisions of this Chapter or the administration thereof upon which a discretionary determination is authorized or required by the provisions of this Chapter.

5.50.112 AGREEMENT OF FORMATION. The Cable Television Commission shall be deemed to be created upon execution by each member thereof of an agreement of formation. Enactment of this Chapter constitutes approval by the Governing Bodies of the County and Cities of the terms of the agreement of formation.

The Chairperson of the Governing Body of the County and Mayor of the Municipality of Sacramento shall execute the following agreement of formation on the date of selection of the Franchisee for the Initial CATV Franchise pursuant to the provisions of Section 5.50.210 in Sub-Chapter 3. The Mayors of any of the Municipalities of Folsom, Isleton or Galt which have enacted this Chapter, shall execute the agreement of formation thirty-one (31) calendar days following the date of selection of the Franchisee for the Initial CATV Franchise pursuant to the provisions of Section 5.50.210 in Sub-Chapter 3, unless the Governing Body of that Municipality has adopted a resolution making the selection inapplicable to that Municipality pursuant to the provisions of Section 5.50.212 in Sub-Chapter 3.

AGREEMENT OF FORMATION
SACRAMENTO METROPOLITAN CABLE TELEVISION COMMISSION

THIS AGREEMENT is made and entered into pursuant to the provisions of Section 6500 et seq. of the Government Code of the State of California by and between the County of Sacramento, herein referred to as "County"; and the City of Sacramento and municipalities of Folsom, Isleton and Galt, herein referred to as "Cities"; who do hereby mutually agree as follows:

1. Establishment. There is hereby created an organization known and denominated as the Sacramento Metropolitan Cable Television Commission, which shall be a public entity, separate and apart from the County and Cities. The Sacramento Metropolitan Cable Television Commission (hereinafter referred to as "Commission") shall be governed by the terms of this Agreement, the terms of an ordinance enacted by each agency which enters into this Agreement which is entitled "Cable Television Ordinance", and is hereinafter referred to as the "Ordinance", and by such rules as are duly passed and adopted by the Board of Directors of the Commission.

Notwithstanding the provisions of the introductory paragraph of this Agreement, it is specifically contemplated that each of the Municipalities of Folsom, Isleton and Galt may or may not execute this Agreement and participate in the formation of and become members of the Commission. Therefore, the Commission shall be formed by, as members, the County, the Municipality of Sacramento, and so many of the other Municipalities as approve and execute this Agreement. If neither Folsom, Isleton nor Galt approve and execute this Agreement, this Agreement shall be deemed to have been entered into and the Commission formed by, as members, the County and Municipality of Sacramento.

2. Board of Directors. The Commission shall be

governed by and the powers of the Commission vested in a Board of Directors. The number of members of the Board of Directors, composition thereof, and tenure of Directors shall be prescribed by Sub-Chapter 2 of the Ordinance.

- a. Meetings of the Board of Directors and of such advisory or other committees as the Board may appoint, shall be governed by the provisions of the Ralph M. Brown Act (Government Code Sec. 54950 et seq.). The Board of Directors shall establish a time and place for its regular meetings, which shall be held not less frequently than every three (3) months.
- b. A majority of the members of the Board of Directors shall constitute a quorum for the purpose of transacting business.
- c. No action taken by the Board of Directors shall be effective except by duly adopted motion receiving the votes of a majority of the Directors of the Board.
- d. The Board of Directors shall annually elect its Chairperson.
- e. The Clerk of the Board of Supervisors of the County shall serve as Secretary to the Board of Directors, shall be responsible for recordation of the official actions by the Board, and shall be the official custodian of all records of the Board of Directors.

The County may determine reasonable charges to be made against the Commission for the services of the Clerk and the Commission shall pay such charges.

3. Powers. The Board of Directors of the Commission shall be vested with the following powers:

- a. To employ in the name of the Commission an Executive Director and such other personnel as the Board of Directors deems appropriate. The Executive Director shall be appointed by and serve at the pleasure of the Board of Directors.
- b. To make and enter into contracts in the name of the Commission as authorized by or in order to carry out the objects or purposes of this Agreement or the Ordinance, including, but not limited to, contracts with the County providing for provision by County personnel of services for the Commission and reimbursement of the County by the Commission of the costs thereof.

- c. To acquire in the name of the Commission take title to, hold and dispose of real and personal property.
- d. To incur in the name of the Commission debts, liabilities and obligations, which shall not constitute debts, obligations or liabilities of any of the member agencies.
- e. To accept in the name of the Commission grants, gifts and donations in the public interest to carry out the purposes and functions of the Commission;
- f. To establish and provide for the payment of reasonable compensation to its members or their personal representatives for performance of the duties of office; and
- g. To exercise such other powers as are expressly conferred by the provisions of this Agreement or the Ordinance.

The Board of Directors shall also be authorized to sue in the name of the Commission. The Commission shall be subject to suit in its name.

4. Limitations. Pursuant to the provisions of Government Code Section 6509, the powers of the Commission are subject to the restrictions upon the manner of exercising such powers of one (1) of the designated member agencies. For such purposes, the Municipality of Sacramento is hereby designated.

5. Budget. Prior to July 1st of each fiscal year, the Board of Directors shall adopt a preliminary budget. Prior to September 1st of each fiscal year, said Board shall adopt a final budget.

6. Payments. Not later than the first day of October of each year during the term of this Agreement, the Commission shall distribute to the County and Cities who are members of the Commission the difference between: (i) the revenue required to finance the costs to be incurred in accordance with the Commission's Budget (including a reserve for contingencies) for the fiscal year commencing on the preceding first day of July; and (ii) the revenues from franchise fees actually received by the Commission pursuant to the provision of Article 4-d of Sub-Chapter 4, on or before the preceding first day of August for the preceding fiscal year ending June 30. Notwithstanding the foregoing, the Commission shall distribute to said County and Cities not later than the first day of each October not less than twenty (20%) percent of the revenue from such franchise fees.

The franchise fees shall be paid to the County and Cities who are members of the Commission in the same proportion as the ratios which the population of the unincorporated area of the County and incorporated area of the Cities bear to the total population of the Sacramento Community, as disclosed by the Federal Decennial Census for 1980 during the period ending June 30, 1991, the Federal Decennial Census for 1990 during the period commencing July 1, 1991 and ending June 30, 2001, and the Federal Decennial Census for 2000 during any period succeeding June 30, 2001.

Each distribution shall be accompanied by a statement by the Auditor of the Commission stating the amounts of all franchise fees received by the Commission for the distribution period, the dates of receipt, the amount of revenue required to finance the Commission Budget, and the population ratios upon which apportionment of the distribution is being made.

7. Treasurer. The Treasurer of the County shall be the depository of funds of the Commission, and said Treasurer shall be the ex officio Treasurer of the Commission.

The Treasurer shall receive and have custody of and disburse Commission funds on the warrant of the Auditor and shall make disbursements authorized by this Agreement. The Treasurer shall invest Commission funds in accordance with the general law. All interest collected on Commission funds shall be accounted for and posted to the account of said funds.

The County may determine reasonable charges to be made against the Commission for the Services of the Treasurer, and the Commission shall pay such charges.

8. Auditing. The Auditor of the County shall be the ex officio Auditor of the Commission, and shall draw warrants against the funds of the Commission when the demands are approved by the Executive Director or his designee. At the close of each fiscal year, as provided in Government Code Section 6505, the Auditor shall make an audit. In the alternative, the Board of Directors may contract with a public accountant or certified public accountant to make an audit of the accounts and reports of the Commission.

The Auditor shall establish and maintain such funds and accounts as are deemed necessary to account for and report on receipts and disbursements. The Commission shall keep such additional records and accounts which are deemed necessary to account for and report on sources of funds, expenditures, grants and programs as may be required by good accounting practices. The books and records of the Commission shall be open to inspection at all reasonable times by representatives of the member agencies.

The County may determine reasonable charges to be made against the Commission for the services of the Auditor, and the Commission shall pay such charges.

9. Term. Except as hereinafter provided, this Agreement shall terminate and the Commission shall be deemed dissolved on December 31, 2002.

In the event the Initial CATV Franchise is not renewed at the expiration of its term and at the expiration of said term there is no other franchise issued pursuant to the provisions of this Chapter to operate a Cable Television System in effect within the Sacramento Community, this Agreement shall be deemed terminated and the Commission shall be deemed dissolved on the date of expiration of the Initial CATV Franchise.

10. Disposition of Assets. Upon dissolution of the Commission, its assets shall be distributed to member agencies in the same proportion as distributions to member agencies have most recently been made pursuant to the provisions of Paragraph 6, above. Any real property owned by the Commission shall, in advance of dissolution, be conveyed by the Board of Directors to member agencies as tenants in common with proportional interests equal to the proportion of distributions most recently made pursuant to the provisions of said Paragraph 6.

11. Debts. The debts, liabilities and obligations of the Commission shall not constitute any debts, liabilities or obligations either jointly or severally of the County of Sacramento, City of Sacramento or municipalities of Folsom, Isleton or Galt.

12. Amendment. This Agreement may be amended by written contract approved by and executed in behalf of the Governing Bodies of each member agency. No Franchisee shall be deemed to either expressly or impliedly be a party to this Agreement, a third party beneficiary thereof, or to have any interest which precludes amendment of the terms of this Agreement in any manner in which the Governing Bodies of the member agencies, in their discretion, may mutually agree.

IN WITNESS HEREOF the parties hereto have approved and executed this Agreement as follows.

SUB-CHAPTER 3

ISSUANCE AND RENEWAL OF FRANCHISES

5.50.200 REQUEST FOR PROPOSALS. Except with respect to renewal of a pre-existing Franchisee, no franchise to operate a Cable Television System shall be issued within the Sacramento Community except pursuant to a request for proposals and selection of the Franchisee on the basis of any proposals submitted in response to the request.

5.50.202 ISSUANCE OF REQUEST FOR PROPOSALS. The request for proposals for the Initial CATV Franchise shall be approved and issued by the Governing bodies of the County and Cities. The request for proposals for franchises subsequently issued under the provisions of this Chapter shall be approved and issued by the Board of Directors of the Cable Television Commission.

5.50.204 CONTENTS OF REQUEST FOR PROPOSALS. The request for proposals shall identify bidding alternatives vested in applicants by the terms of this Chapter, establish the procedure for submission of applications, consideration of applications, selection of the successful applicant and issuance of the franchise, establish fees to be paid by applicants and the Franchisee to cover costs of preparation, solicitation, selection and award, and prescribe such terms, conditions and requirements relating to the franchise consistent with the express provisions of this Chapter as the issuing authority, in its discretion, may determine.

5.50.206 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 submission of applications, it shall be unlawful for any applicant and any officer, agent, or employee thereof to, whether directly or indirectly, 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.

5.50.208 ENVIRONMENTAL ANALYSIS. For each franchise issued pursuant to the provisions of this Chapter, one or more environmental analysis shall be undertaken pursuant to the provisions of the California Environmental Quality Act commencing at Section 21000 of the Public Resources Code. The provisions of this Chapter, requests for proposals, and resolution offering the franchise shall be subject to amendment for the purpose of implementing any changes dictated by the environmental analysis.

5.50.210 TENTATIVE SELECTION OF INITIAL FRANCHISEE. The Franchisee for the Initial CATV Franchise shall be tentatively selected by the Governing Body of the County and the Governing Body of the Municipality of Sacramento as a combined issuing authority in accordance with the following procedure.

A public hearing on one or more dates shall be held by the Governing body of the County and the Governing Body of the Municipality of Sacramento sitting jointly for the purpose of receiving presentations by the applicants for the franchise and comments from the public. Notice of the time, date, place and purpose of the hearing shall be given in the manner prescribed by Section 5.50.024 in Sub-Chapter 1, and mailed to each applicant.

After the conclusion of the public hearing, balloting for selection of the Franchisee shall be conducted jointly by the Governing Bodies of the Municipality of Sacramento and County. The joint balloting shall take place either during the meeting at which the public hearing is closed or during a separately scheduled meeting. In any event, the joint balloting shall be conducted solely during a single meeting of the Governing Bodies meeting jointly. The failure of a member of either Governing Body to be present during a portion or the entirety of the public hearing shall not be deemed to disqualify that member from voting in the joint balloting.

During the joint balloting the applicant who first receives three (3) votes by members of the Governing Body of the County and, during the same balloting, five (5) votes by members of the Governing Body of the Municipality of Sacramento shall be deemed to have been selected as the Franchisee for the Initial CATV Franchise.

The joint balloting shall be conducted as follows:

- a. Each member of the Governing Bodies present shall simultaneously cast a written, secret ballot which contains the name of the voting member and name of the applicant for whom the vote for selection is cast. The clerk of each Governing Body shall announce the votes immediately following the balloting. The announcement shall include the name of each voter and identification of the applicant for whom the ballot was cast.
- b. If as a result of the first balloting the Franchisee is not selected a second balloting shall be conducted in the same manner as the first, and announced in the same manner as the first.
- c. If as a result of the second balloting a Franchisee has not been selected, a third balloting shall be

conducted in the same manner as the first two, with the following exception. The applicant who received the lowest combined number of votes on the second balloting shall be deemed eliminated from competition, and no vote on the third balloting may be cast for that applicant.

- d. If as a result of the third balloting a Franchisee has not been selected, a fourth balloting shall be conducted in the same manner as the third, with the following exception. The applicant who received the lowest combined number of votes on the third balloting shall also be deemed eliminated from competition, and no vote on the fourth balloting may be cast either for that applicant or the applicant who was eliminated from the third balloting.
- e. If as a result of the fourth balloting a Franchisee has not been selected, a fifth balloting shall be conducted in the same manner as the fourth, with the following exception. The applicant who received the lowest combined number of votes on the fourth balloting shall also be deemed eliminated from competition, and no vote on the fifth balloting may be cast either for that applicant or the applicants who were eliminated from the third and fourth balloting.

Any member of the Governing Bodies shall be authorized to cast a vote of abstention during a particular balloting, and such a vote shall not prevent the member from casting a vote in favor of a particular applicant on any later ballot.

If as a result of the fifth balloting a Franchisee has not been selected, new balloting shall be conducted in exactly the same manner as prescribed by Subparagraphs "a" through "e", above, and applicants disqualified from competition during balloting initially conducted pursuant to said Subparagraphs shall not be disqualified during the subsequent balloting conducted pursuant to said Subparagraphs except in accordance with those Subparagraphs during the subsequent balloting.

If as a result of the fifth balloting during the subsequent balloting a Franchisee has not been selected, further repetitive balloting may be conducted pursuant to the provisions of Subparagraph "a", above. Applicants previously eliminated from competition shall not be deemed eliminated during such further balloting pursuant to Subparagraph "a".

The meeting during which the joint balloting occurs shall be subject to periodic recess for periods not exceeding fifteen (15) minutes more or less, in duration, and shall not be subject to continuance to a later time or date. Either Governing Body shall be authorized to separately adjourn the meeting by an affirmative

vote of a majority of the members of that Body. If one or both of the Governing Bodies adjourn the meeting prior to selection of the Franchisee, the vote upon the motion for adjournment shall be deemed to constitute a rejection of all applications, and no franchise shall be issued pursuant to that request for proposals.

5.50.212 DISAPPROVAL BY OTHER MUNICIPALITIES. Not later than thirty (30) calendar days after selection of the Franchisee for the Initial CATV Franchise pursuant to the provisions of Section 5.50.210, above, any of the Governing Bodies of the Municipalities of Folsom, Isleton or Galt which have adopted this Chapter may disapprove the selection by resolution duelly adopted by the disapproving Governing Body. In the event of adoption of such a resolution the Initial CATV Franchise shall not be applicable to the geographical area within the boundaries of that Municipality, the Franchise Area shall be deemed to exclude such geographical territory, the Municipality shall be deemed to have withdrawn its membership from the Cable Television Commission, and the Franchisee shall, in advance of adoption of a resolution offering the franchise, redesign the Cable Television System proposed in the application to eliminate installation thereof within the disapproving Municipality.

In the event such a resolution is not adopted by the Governing Body of one or more of the three Municipalities which have enacted this Chapter, the Board of Directors of the Cable Television Commission shall be deemed fully empowered to issue the Initial CATV Franchise, and such franchise shall be deemed to be fully applicable within the geographic terriroty of such Municipality.

5.50.214 TENTATIVE AND FINAL SELECTION PROCEDURES. The Board of Directors of the Cable Television Commission shall tentatively select all Franchisees for franchises issued pursuant to the provisions of this Chapter, except the Franchisee for the Initial CATV Franchise. Prior to tentative selection the Board shall conduct a public hearing for the purpose of receiving presentations from the applicants and comments from the public. Notice of the hearing shall be given in the manner prescribed by Section 5.50.024 in Sub-Chapter 1, and mailed to the applicants.

Not later than thirty (30) calendar days following the date of tentative selection of the Franchisee the Governing Bodies of the County and Municipality of Sacramento sitting jointly with respect to the Initial CATV Franchise, and the Board of Directors of the Commission with respect to any other franchise, shall conduct a hearing for the purpose of receiving comments from proposed recipients of services, resources or benefits and shall make the determinations required by Section 5.50.344 in Article 4-a of Sub-Chapter 4. Written notice of time, date, place and purpose of the hearing shall be mailed to all proposed recipients as identified in the application by the

tentative selectee and pursuant to the provisions of said Section 5.50.344.

With respect to the Initial CATV Franchise, the tentative selection shall not become final until the Governing Bodies of the Municipality of Sacramento and County have approved identical Resolutions offering the franchise. The Resolution offering the franchise approved by the Governing Bodies shall be adopted without change by the Board of Directors of the Commission pursuant to Section 5.50.218, below. The Board of Directors shall not be authorized to adopt a resolution offering the Initial CATV Franchise unless such resolution has been approved in advance by said Governing Bodies.

With respect to any franchise issued pursuant to the provisions of the Chapter other than the Initial CATV Franchise, the tentative selection of the Franchisee shall not become final until the Board of Directors of the Commission adopts the resolution offering the franchise pursuant to Section 5.50.218, below.

If a tentative selection has not been made within nine (9) months following the deadline for submission of applications established by a request for proposals, all applications shall be deemed rejected, and no franchise shall be issued pursuant to that request for proposals.

At any time prior to adoption of the resolution offering the franchise pursuant to Section 5.50.218, below, either the Governing Body of the County or Municipality of Sacramento with respect to the Initial CATV Franchise, or the Board of Directors of the Commission with respect to any other franchise to be issued under this Chapter, may reject the tentative selectee. In the event of such rejection, all applications for the franchise shall be deemed to have been rejected, and no franchise shall be issued pursuant to the request for proposals by which the applications were solicited.

If the resolution offering the franchise has not been adopted within six (6) months following the date of tentative selection of a Franchisee, the tentative selectee shall be deemed to have been rejected, all applications for the franchise shall be deemed to have been rejected, and no franchise shall be issued pursuant to the request for proposals by which the applications were solicited.

5.50.216 CRITERIA - REJECTION. Determination of whether a request for proposals will be issued shall be vested within the exclusive discretion of the issuing authority. Upon the receipt of applications for a franchise to operate a Cable Television System, the issuing authority may, in its sole discretion, either award a franchise to the successful applicant or reject all applications. Selection of the successful applicant and party to whom a franchise will be issued shall be vested within the exclu-

sive discretion of the issuing authority, and may be made upon the basis of such factors or criteria as the issuing authority, in its sole discretion, may elect.

5.50.218 FRANCHISE RESOLUTION. Each franchise issued pursuant to the provisions of this Chapter shall be issued by and in the name of the Board of Directors of the Cable Television Commission as the issuing authority. A franchise shall be offered to the successful applicant by resolution duly adopted by the Board of Directors of the Cable Television Commission. The resolution 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 resolution 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.

5.50.220 ACCEPTANCE OF FRANCHISE. The resolution offering the franchise shall be deemed repealed and all applications shall be deemed rejected thirty (30) calendar days after its adoption unless not later than the thirtieth (30th) day following adoption of the resolution the party to whom the franchise is offered files a certificate in writing which expressly and unconditionally accepts the franchise in compliance with terms, conditions and requirements of the resolution, application, request for proposals and this Chapter. The certification shall be signed by a person duly authorized to act in behalf of the Franchisee, shall be notarized, shall have attached thereto a certified copy of an order by the Board of Directors of the Franchisee directing execution and filing of the certification, and shall be accompanied by any fee required by the request for proposals, and the performance bond, security deposit and policy or policies of insurance prescribed by Sections 5.50.700, 5.50.702, and 5.50.706, respectively, in Article 4-e of Sub-Chapter 4, and the documents required by Section 5.50.764 in Article 5-a of Sub-Chapter 5. The certification and accompaniments shall be filed with the Clerk of the Board of Directors of the Cable Television Commission. A certification which constitutes a qualified acceptance or places other limits or conditions thereon, shall be deemed to be a nullity and the resolution shall be deemed to be repealed and all applications rejected. The thirty (30) day period for acceptance prescribed by this Section may be extended either prior or subsequent to its expiration by the Board of Directors of the Commission through express action which prescribes the period of extension.

Filing of the certification in the manner and within the time prescribed above shall effect issuance of the Initial CATV Franchise. With respect to any franchise other than the Initial CATV Franchise, the procedure prescribed above shall effect

issuance of the franchise, unless issuance is disapproved pursuant to the provisions of Section 5.50.222, below.

5.50.222 DISAPPROVAL OF ISSUANCE. Not later than thirty (30) calendar days after certification of acceptance of any franchise other than the Initial CATV Franchise, issuance of the franchise may be disapproved by resolution adopted by the Governing Body of any directly affected jurisdiction as follows:

- a. The Governing Bodies of the County of Sacramento and Municipalities of Sacramento, Folsom, Isleton and Galt whose territories are situated within the Sacramento Community -- with respect to any franchise whose Franchise Area would include the geographic area within the entire Sacramento Community;
- b. The Governing Body of the Municipality of Sacramento -- with respect to any franchise whose Franchise Area is limited to the geographic area within the entire municipal limits of the Municipality of Sacramento; and
- c. The Governing Body of the County of Sacramento -- with respect to any franchise whose Franchise Area is limited to the geographic area within the entire unincorporated area of the County of Sacramento.

Adoption of such a resolution shall be deemed to nullify the resolution offering the franchise and certification of acceptance, and all applications shall be deemed rejected.

5.50.224 TERM OF FRANCHISES. The term of the Initial CATV Franchise shall be fifteen (15) years from the date of filing of the certificate of acceptance pursuant to the provisions of Section 5.50.220, above. The term of any franchise issued pursuant to the provisions of this Chapter other than the Initial CATV Franchise shall be as prescribed by the Board of Directors of the Cable Television Commission in its sole discretion, and set forth in the request for proposals; provided that no such franchise shall expire later than December 31, 2002.

5.50.226 AUTHORITY TO RENEW. Any franchise issued pursuant to the provisions of this Chapter, may be renewed by the Cable Television Commission upon such terms, conditions and requirements as the Commission, in its discretion, may prescribe for a period which does not exceed the term of the agreement of formation of the Commission as prescribed by Paragraph 9, thereof.

5.50.228 REQUEST FOR RENEWAL. A Franchisee who desires to renew its franchise shall file a written request for renewal

with the Clerk of the Board of Directors of the Cable Television Commission not later than forty-eight (48) calendar months prior to the date of expiration of the franchise. The request for renewal shall include the following:

- a. A statement of the period of renewal proposed by the Franchisee;
- b. A description of any improvements in the Cable Television System and in services proposed by the Franchisee in the event the franchise is renewed;
- c. Any changes in the terms, conditions or requirements of the franchise proposed by the Franchisee to be applicable during the period of renewal; and
- d. Such other and further information as the Commission may request.

5.50.230 PUBLIC HEARING. The Board of Directors of the Cable Television Commission shall schedule a public hearing upon the request for renewal to commence not later than one hundred eighty (180) calendar days after request is filed. Notice of the hearing shall be given in the manner prescribed by Section 5.50.024 in Sub-Chapter 1.

The Commission shall be authorized to retain a consultant to provide information and advice respecting any issues raised by the request for renewal.

5.50.232 DECISION. Not later than one (1) year after a request for renewal is filed, the Board of Directors of the Cable Television Commission shall decide whether renewal of the franchise will be offered to the Franchisee. Decision as to whether renewal will be offered to the Franchisee, shall, except as provided by Section 5.50.238, below, be vested within the sole discretion of the Board of Directors of the Commission, shall be made on the basis of such factors or criteria as the Board of Directors of the Commission may in its discretion elect, and upon such terms, conditions or requirements as the Board of Directors in its discretion may prescribe.

If the Board of Directors of the Commission fails to decide whether to offer renewal of the franchise to the Franchisee within the time prescribed above, the request for renewal shall be deemed denied and the franchise shall terminate at the expiration of its terms.

5.50.234 RENEWAL RESOLUTION. In the event the Board of Directors of the Cable Television Commission decides to offer

renewal to the Franchisee, it shall, not later than one (1) year after the request for renewal is filed, adopt a resolution offering renewal of the franchise to the Franchisee. The resolution 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 resolution 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 renewal and original franchise resolution. In the event of a conflict between the provisions of the request for renewal and the provisions of the resolution adopted pursuant to this Section, the provisions of the resolution shall prevail. In the event of a conflict between the provisions of the original franchise resolution and the provisions of the resolution adopted pursuant to this Section, the provisions of the later resolution shall prevail.

5.50.236 ACCEPTANCE OF RENEWAL. The resolution offering renewal shall be deemed repealed and the request for renewal rejected twenty (20) calendar days after its adoption unless not later than the twentieth (20th) day following adoption the Franchisee files a certification in writing which expressly and unconditionally accepts renewal of the franchise in compliance with the terms, conditions and requirements of the resolution, request for renewal and this Chapter. The certification shall be signed by a person duly authorized to act in behalf of the Franchisee, shall be notarized, shall have attached thereto a certified copy of an order by the Board of Directors of the Franchisee directing execution and filing of the certification, and shall be accompanied by the performance bond, security deposit and policy or policies of insurance prescribed by Sections 5.50.700, 5.50.702, and 5.50.706, respectively, in Article 4-e, Sub-Chapter 4, and the documents required by Section 5.50.764 in Article 5-a of Sub-Chapter 5. The certification and accompaniments shall be filed with the Clerk of the Board of Directors of the Cable Television Commission. A certification which constitutes a qualified acceptance or places other limits or conditions thereon shall be deemed to be a nullity and the resolution shall be deemed to be repealed and the request for renewal denied. The twenty (20) day period for acceptance prescribed by this Section may be extended either prior or subsequent to its expiration by the Board of Directors of the Commission through express action which prescribes the period of extension.

Filing of the certification in the manner and within the time prescribed above shall renew the franchise, unless renewal is disapproved pursuant to the provisions of Section 5.50.238, below.

5.50.238 DISAPPROVAL OF RENEWAL. Not later than thirty (30) calendar days after certification of acceptance of renewal of

a franchise, the County and Cities shall be authorized to disapprove renewal.

- a. If the Governing Body of either the County or City of Sacramento adopts a resolution disapproving renewal of the franchise within the time prescribed above, the resolution adopted by the Board of Directors of the Cable Television Commission offering renewal and certification of acceptance thereof by the Franchisee shall be deemed null and void, the request for renewal deemed denied, and the franchise shall terminate upon the expiration of its term.
- b. If the Governing Body of either of the Municipalities of Folsom, Isleton or Galt adopt a resolution disapproving renewal with the time prescribed above, renewal of the franchise shall nevertheless be effective in all areas of the Sacramento Community except within the geographical limits of the municipality so disapproving, upon the expiration of the original term of the franchise the Franchisee shall be required to remove that portion of the Cable Television System which is situated in the Streets of the disapproving municipality as, to the extent, and upon such terms and conditions as the Governing Body of the disapproving Municipality may prescribe, the disapproving Municipality shall immediately cease to be a member of the Cable Television Commission, the Governing Body of the disapproving Municipality shall thereafter be authorized to issue other franchises to operate Cable Television Systems within its geographical boundaries, and the Cable Television Commission shall not thereafter be authorized to issue or renew a franchise within the geographical boundaries of the disapproving municipalities.

5.50.240 AUTHORITY TO PURCHASE SYSTEM. The Cable Television Commission shall have the right to purchase all real and personal property situated within the Sacramento Community which is owned or in which an interest is held by the Franchisee, any parent company of the Franchisee, any subsidiary of the Franchisee or any other entity in which the Franchisee, 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 termination of a franchise in advance of the expiration of its term pursuant to

the provisions of Sections 5.50.818 through 5.50.826 in Article 5-b of Sub-Chapter 5;

- b. At the expiration of the term of a franchise, if the franchise is not renewed to the Franchisee by the Commission pursuant to the provisions of Sections 5.50.226 through 5.50.238, above; or
- c. Pursuant to an election by the Commission to terminate a franchise and purchase the property under Section 5.50.758 in Article 5-a of Sub-Chapter 5.

5.50.242 SCOPE OF PURCHASE. The property which is subject to purchase by the Cable Television Commission shall consist of the following:

- a. The Cable Television System;
- b. Land, buildings and other improvements situated within the Sacramento Community and utilized by the Franchisee to provide services under the Franchise, including studio facilities;
- c. 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 utilized within the Sacramento Community to provide services under the franchise and which the Board of Directors determines is peculiarly designed for that purpose; and
- d. Books, accounts and records relating to the Franchisee's business, including subscriber lists.

There shall be excluded from the purchase any parcel of land and improvements or leasehold space which is utilized exclusively for business office purposes and not, for example, jointly for both business office and studio, warehousing or repair purposes associated with operation of the Cable Television System.

Notwithstanding any provision to the contrary, the Board of Directors of the Commission, 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 Television System is situated and which the Board determines is not essential to the System or the provision of services thereunder.

5.50.244 ASSIGNMENT. The right to purchase as prescribed by Section 5.50.240, above, may be exercised by the Cable

Television Commission for public ownership and use by the Commission, in behalf of a third party, or by any party to whom the Commission may assign the right. The Commission shall have the right to 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 Franchisee. Such an assignee shall, subsequent to the date of assignment, be vested with any and all discretion respecting purchase which is vested in the Board of Directors of the Commission.

5.50.246 VALUATION DEFINITIONS. As used in this Section through Section 5.50.260, below, the following terms shall be ascribed the following meanings:

- a. "Book Value" -- shall mean the capital amount at which property is shown on the books of account consisting of original cost, less reserves for depreciation which for purposes of application of this definition shall be calculated on a straight-line basis for a period of fifteen (15) years, plus additions to capital.
- b. "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.
- c. "Replacement Cost" -- shall mean the direct cost of construction at current prices of an improvement having utility and technological capacity and function equivalent to the improvement being appraised but built with modern materials and according to current standards, design and layout; less depreciation and obsolescence from physical, functional and economic causes.

Except to the extent inconsistent with the express provisions of this Section through Section 5.50.260, below, the words in this Section shall be ascribed the meanings and the appraisal and valuation standards, methodology, approaches and processes respecting determination of the amount to be paid for property which the Cable Television Commission or its assignee is entitled to purchase shall comply and be consistent with those set forth in that 1975 publication entitled Real Estate Appraisal Terminology, issued by the Center for 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 Society of Real Estate Appraisers.

5.50.248 VALUATION LIMITS. The property which is purchased shall be valued as follows:

- a. In the event the right of purchase is exercised pursuant to the contingency prescribed by Sub-paragraph "a" in Section 5.50.240, above, as a result of termination of a franchise on grounds identified by Section 5.50.818 in Article 5-b of Sub-Chapter 5, the value of the Cable Television System, personal property and improvements attached to land to be acquired shall be solely based on the Book Value of the tangible assets, and the value of land owned by the seller or in which the seller has a leasehold interest with option to purchase shall be based upon the original cost thereof.
- b. In the event the right of purchase is exercised pursuant to either the contingency prescribed by Sub-paragraph "a" in Section 5.50.240, above, as a result of termination of a franchise on grounds identified by Section 5.50.050 in Sub-Chapter 1, or the contingency prescribed by Sub-paragraph "b" in Section 5.50.240, above, the value of the Cable Television System, personal property and improvements attached to real property to be acquired shall be the Replacement Cost of the tangible assets, and the value of land owned by the seller or in which the seller has a leasehold interest with option to purchase shall be the Market Value thereof.
- c. In the event the right of purchase is exercised pursuant to the contingency prescribed by Sub-paragraph "c" in Section 5.50.240, above, the value of the Cable Television System, personal property, land(owned by the seller or in which the seller has a leasehold interest with option to purchase) and improvements attached to land to be acquired shall be the Market Value of the tangible assets; provided that in determining Market Value it shall be assumed that the property to be purchased is not subject to utilization for the provision of cable television services within the Sacramento Community subsequent to the expiration of the stated term of the franchise to which the property pertains.

When real or personal property subject to the purchase is leased, the lease shall be subject to assignment to the Cable Television Commission or its assignee, as prescribed by Section

5.50.026 in Sub-Chapter 1, above, and except as otherwise provided above no value shall be assigned to such property.

No value or benefits shall be assigned to the books, accounts or records, including subscriber lists, utilized in connection with the Franchisee's business.

A Franchisee shall not be entitled to relocation costs, and any right to such costs authorized or prescribed by law shall be deemed to have been waived by filing of the certificate of acceptance of the franchise.

5.50.250 DATE OF VALUATION. The date of valuation for purchase pursuant to the provisions of this Chapter shall be the day immediately following the date of expiration or termination of the franchise.

5.50.252 REQUEST FOR INVENTORY. Proceedings for the acquisition by the Cable Television Commission or its assignee under this Chapter shall be commenced by written notice mailed to the Franchisee of a request by the Commission or its assignee for an inventory of the Franchisee's property. Such a notice shall not be mailed earlier than the following dates:

- a. The date a determination by the Board of Directors of the Commission to terminate the franchise becomes final under Sections 5.50.822 or 5.50.824 in Article 5-b of Sub-Chapter 5, when the purchase is made pursuant to the contingency prescribed by Subparagraph "a" of Section 5.50.240, above;
- b. The date of a determination made pursuant to the provisions of Section 5.50.232, above, by the Board of Directors of the Commission not to renew the franchise, or the date renewal is deemed denied, when the purchase is made pursuant to the contingency prescribed by Subparagraph "b" of Section 5.50.240, above; or
- c. The date of a determination made pursuant to the provisions of Section 5.50.758 in Article 5-a of Sub-Chapter 5 by the Board of Directors of the Commission to purchase the property, when the purchase is made pursuant to the contingency prescribed by Subparagraph "c" in Section 5.50.240, above.

5.50.254 INVENTORY. Not later than thirty (30) calendar days after the date of mailing of the notice of request for inventory, the Franchisee shall file with the Clerk of the Board of Directors of the Cable Television Commission a written inventory which includes the following:

- a. A complete plan, with specifications, of the entire Cable Television 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 Commission or its assignee, showing the address and 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 service and repairs; inventories of materials, supplies and parts; tools; and other personal property utilized within the Sacramento Community to provide services under the franchise (such lists shall show the the manufacturers, model and serial numbers, dates or 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.

5.50.256 DEMAND FOR ARBITRATION. Not later than thirty (30) calendar days after the date on which the Franchisee files the inventory, the Cable Television Commission or its assignee may mail to the Franchisee written notice of its tentative intention to exercise its right to purchase, including a list of all property which the Commission or its assignee has tentatively elected to purchase, and a demand for arbitration.

5.50.258 ARBITRATION OF VALUE. The arbitration panel shall be selected, the hearing scheduled within the time prescribed, notice given, the hearing conducted, decision made and costs divided in the manner prescribed by Section 5.50.830 through 5.50.840, inclusive in Article 5-b of Sub-Chapter 5. The Franchisee shall make its Cable Television System, other property and books, accounts and other records available, upon request, for inspection by the Cable Television Commission, its assignee or their experts. The discovery provisions of the California Arbitration Act (Code of Civil Procedure, Section 1280 et seq.) shall be applicable to the arbitration proceeding under this Section.

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

- a. The amount to be paid by the Commission or its assignee under the valuation limits prescribed by Section 5.50.248, above; and
- b. Interpretation of the provisions of the Franchise Documents solely in relation to the issues within its jurisdiction.

Upon request by the Commission or its assignee or the Franchisee 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 judicial review or vacation except on grounds set forth in Section 1286.2 of the Code of Civil Procedure.

5.50.260 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 5.50.258, above. Such determinations shall be initiated by written notice mailed to the arbitration panel by the Franchisee and filed with the Clerk of the Board of Directors of the Cable Television Commission, shall be governed by all standards, procedures and other provisions in Section 5.50.246 through this Section, and written recital thereof shall be mailed to the Franchisee, Commission and its assignee (if any) not later than ninety (90) calendar days following the date of mailing of the notice initiating the determination. No such notice shall be mailed or filed later than one hundred twenty (120) calendar days prior to the date of expiration or termination of the franchise.

5.50.262 JUDICIAL RELIEF. In the event a Franchisee or the Cable Television Commission or its assignee fails to comply with any provision contained in Sections 5.50.240 through 5.50.264, inclusive, above, the injured party shall be authorized to either seek judicial relief or relief from the arbitrator during the arbitration proceeding. In the event judicial relief is sought, the provisions of Section 5.50.258 and 5.50.260, above, 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.

5.50.264 SALE - TRANSFER OF TITLE. Not later than thirty (30) calendar days following the date of expiration or termination of the franchise, the Cable Television Commission or its assignee

shall notify the Franchisee of its intention to purchase the property identified in the notice mailed pursuant to the provisions of Section 5.50.256, above. 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 Franchisee not later than thirty (30) calendar days following the date of expiration or termination of the franchise. The failure to mail such notice within the time prescribed herein shall be conclusively presumed to constitute an election not to purchase the property pursuant to the provisions of this Chapter, and the Franchisee shall not be entitled to any compensation for such property or other costs or damages, whether related to conduct of the arbitration proceedings, or otherwise. If any notice, memorandum or report required by Sections 5.50.258 or 5.50.260, above, has not been received by the date of expiration or termination of the franchise, the notice of election herein need not be mailed until thirty (30) calendar days following the date of receipt of such notice, memorandum or report.

The purchase price shall be deposited into an escrow of a title company named by the Commission or its assignee. The title company shall be authorized to pay the purchase price as directed by the Franchisee when it can provide for the Commission 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 Commission 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.

5.50.266 NEGOTIATED ACQUISITION. The provisions of this Sub-Chapter shall not be deemed to preclude acquisition by the Cable television Commission or its assignee through a negotiated agreement; provided that the commencement or existence of such negotiations shall not be deemed to waive or relieve any actions or times therefore prescribed by Sections 5.50.254 through 5.50.264, above.

SUB-CHAPTER 4

TERMS - CONDITIONS - REQUIREMENTS
OF FRANCHISES

ARTICLE 4-a

SYSTEM CAPABILITY AND STANDARDS
PREVAILING RATES
COMMUNITY USE

5.50.300 MINIMUM REQUIREMENTS. The provisions of Sections 5.50.302 through 5.50.308, below, constitute minimum standards for a Cable Television System installed pursuant to the provisions of this Chapter within an Imposed Service Area as defined by Section 5.50.402 in Article 4-b. Higher standards and additional requirements for such a Cable Television System may be established by the request for proposals, the application and other Franchise Documents applicable to each franchise.

The provisions of Sections 5.50.302 through 5.50.308, below, shall not be applicable to a Cable Television System or that portion of such a System which is installed pursuant to the provisions of this Chapter within a Proposed Service Area, as defined by Section 5.50.402 in Article 4-b. Minimum standards for such a Cable Television System or portion thereof installed within a Proposed Service Area may be established by the request for proposals, the application and other Franchise Documents applicable to each franchise.

5.50.302 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 permitting conversion from cable to antenna reception;

5.50.304 CABLE - CAPACITY. The Cable Television System installed pursuant to the Initial CATV Franchise shall consist of not less than two (2) cables for the Subscriber Network, plus a third cable for the Institutional Network. Each of the three cables shall have a capacity of not less than thirty-five (35) channels.

The cables for the Subscriber Network shall be installed within Service Area and outside thereof in such a manner as to comply with the availability of service requirements established by Article 4-b. One of the cables for the Subscriber Network shall be fully operational as services are required to be made available pursuant to the provisions of Article 4-b. The second cable for the Subscriber Network shall be installed at the same time as the other two cables, but may be initially inoperable. The second cable for the Subscriber Network shall become operable by such date or within such time as is prescribed within the application submitted by the Franchisee or resolution offering the franchise.

The cable for the Institutional Network shall be fully operational as services are required to be made available pursuant to the provisions of Article 4-b. The cable for the Institutional Network may, but shall not be required to, be installed in all areas in which the Subscriber Network cables are installed. Within Service Areas applicable to a franchise, the cable for the Institutional Network shall pass such public and institutions, facilities and buildings as are prescribed by the request for proposals.

5.50.306 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 all safeguards necessary to prevent injury to a lineman resulting from a standby generator powering a "dead" utility line.

5.50.308 OVERRIDE CAPABILITY. Each Cable Television System shall include an "Emergency Alert Capability" which will permit the County and Cities, 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 Civil Defense, Disaster and Emergency Services.

5.50.310 INTERCONNECTION. The interconnection capability of Cable Television Systems with other Cable Systems within the greater Sacramento metropolitan area and obligations of each Franchisee with respect to such interconnection shall be as prescribed by the request for proposals or other Franchise Documents for each franchise.

5.50.312 PLANS AND SPECIFICATIONS. Each application for a Franchise 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 Franchisee in compliance with the plans and specifications contained in the application, except as modified by other Franchise Documents.

5.50.314 TECHNICAL STANDARDS. Each Franchisee 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, FCC technical standards and detailed standards set forth in the Franchise Documents. Each Franchisee shall provide to the Cable Television Commission, upon request, written reports of the Franchisee's annual proof of performance tests conducted pursuant to FCC standards and requirements.

- a. Each Franchisee 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 Utility 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 and Cities.

- b. In any event, the Cable Television System shall not endanger or interfere with the safety of persons or property within the Sacramento Community or other areas where the Franchisee 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 Sacramento Community following accepted construction procedures and practices and working through existing committees and organizations.
- e. 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.

- 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 checked at reception locations for emergency radio services to prove no interference signal combinations are possible. Radiation shall be measured adjacent to any proposed aeronautical navigation or communication radio sites to prove no interference to air navigational reception.

5.50.316 PREVAILING RATE PROGRAM. The purposes of this Section through Section 5.50.326, below, are to require that workers engaged in the initial construction of Cable Television Systems and in the ongoing installation, maintenance, repair, extension, reconstruction and subsequent construction of such Systems are compensated during the term of each franchise at not less than prevailing rates as defined by Section 5.50.318, and to establish self-enforcing mechanisms to insure compliance with such requirements.

5.50.318 PREVAILING RATE STANDARD. The compensation for workers engaged in the initial construction of Cable Television Systems and in the installation, maintenance, repair, extension, reconstruction and subsequent construction of such Systems shall in each instance be not less than the prevailing rate for comparable service in other employment associated with initial construction, installation, maintenance, repair, extension, reconstruction and subsequent construction of cable systems within the Counties of Los Angeles, San Diego, Orange, Alameda, San Bernardino, Santa Clara, Sacramento (other than the Franchisee in connection with whom the prevailing rate is to be paid), San Francisco (City and County), Riverside, and Contra Costa, whenever such prevailing rate can be ascertained within such Counties.

The provisions of Sections 5.50.316 through 5.50.326 shall not be applicable to the installation of cable within subdivisions; when the work of installation is undertaken by the owner of the subdivision or a general contractor or subcontractor of the owner, and the cable is installed during the development of the subdivision at the same time as other utilities and public improvements including sewers, storm drains, electrical, gas and telephone lines, and street improvements are being installed, whether the work of installation of the cable is performed pursuant to a contract between the Franchisee and the owner of the subdivision or otherwise.

5.50.320 METHOD OF DETERMINATION. Whenever under Section 5.50.322, below, a prevailing rate is required to be ascer-

tained, the Board of Directors of the Cable Television Commission shall appoint a person or firm to conduct a prevailing rate study and determine the prevailing rates. The person or firm appointed shall not be an officer, agent, employee or representative of the Franchisee, the Cities, the County, the Commission or any labor union or organization, and the Board of Directors shall be the sole judge of the qualifications of the appointee. All compensation and costs payable to the appointee for services rendered shall be paid by the Franchisee. The Board of Directors may, prior to execution of any contract by which the appointee is retained to render services, require the Franchisee to deposit a sum equal to the reasonably estimated cost of compensating the appointee for the services to be rendered.

The appointee shall identify the jobs and positions with respect to which the prevailing rate determination will be applicable. The Franchisee shall provide all data and information requested by the appointee including, but not limited to, data relating to job titles, job descriptions, work functions, and rates of compensation, and shall, upon request, admit the appointee to the inspection of records and work areas as necessary to allow the appointee to make such personal examination as the appointee desires. The appointee shall conduct a survey of rates of compensation in connection with the initial construction, installation, maintenance, repair, extension, reconstruction and subsequent construction associated with cable systems within the Counties identified by Section 5.50.318, above.

Not later than ninety (90) calendar days following the date of the contract by which the appointee is retained, the appointee shall arrive at prevailing rate determinations based upon the survey and the appointee's analysis, without hearings, and shall prepare and file with the Clerk of the Board of Directors of the Commission and with the Franchisee a written report which contains the following information:

- a. The methodology utilized in conducting the survey;
- b. The methodology utilized in arriving at prevailing rate determinations;
- c. The types of compensation, in addition to salary, considered in arriving at the prevailing rate determinations;
- d. With respect to prevailing rate determinations in connection with initial construction, installation, maintenance, repair, extension, reconstruction or subsequent construction of a Cable Television System to be performed by the Franchisee through independent contracts, a list of all crafts and other jobs associated therewith, together with the determined prevailing rates therefor;

e. With respect to prevailing rate determinations in connection with initial construction, installation, maintenance, repair, extension, reconstruction or subsequent construction of a Cable Television System to be performed by the Franchisee through its own personnel, the following:

- (1) The job titles of the Franchisee with respect to which a prevailing rate could not be ascertained within the Counties, and the reasons why;
- (2) The prevailing rate for each job title of the Franchisee for which a prevailing rate could be ascertained within the Counties;
- (3) A list of those job titles of the Franchisee with respect to which compensation paid by the Franchisee equals or exceeds the determined prevailing rate; and
- (4) A list of those job titles of the Franchisee, if any, with respect to which compensation paid by the Franchisee is lower than the determined prevailing rate, together with the amount of difference or differences between the determined prevailing rate and the actual compensation paid for each job title.

All investigations, analyses and surveys undertaken by an appointee shall be performed independently, and the appointee shall not receive or consider any opinions, argument, claims, suggestions, or other persuasion concerning such matters or the prevailing rate determination from the Franchisee, interested workers, or labor unions or organizations. All compensation data received by an appointee from the Franchisee and others shall be held by the appointee in strict confidence, and shall not be subject to disclosure to either the Franchisee, the Commission, the Cities, the County, interested workers, any labor union or organization, or any member of the public.

Any and all determinations made by an appointee, whether or not appearing in the written report, and including, but not limited to, all decisions concerning comparability of services or the absence of comparability, decisions relating to whether a prevailing rate can be ascertained, and decisions concerning the amounts of prevailing rates, shall be final, conclusive, and not subject to judicial review as to the Franchisee, the Cities, the County, the Commission, interested workers, labor unions or organizations or any other interested party; provided that the function performed by the appointee and determinations made shall not be deemed to constitute an arbitration, nor shall the appointee

be deemed to be an arbitrator, within the meaning of the provisions of this Chapter. The determinations by the appointee shall be judicially enforceable in the manner prescribed by Section 5.50.326, below.

5.50.322 FREQUENCY OF DETERMINATIONS. A report pertaining to prevailing rates respecting initial construction of the Cable Television System under the Initial CATV Franchise shall be filed by an appointee with the Clerk and the Franchisee not later than thirty (30) calendar days following the date of filing of the certificate of acceptance of that franchise. Notwithstanding the provisions of Section 5.50.320, above, the appointee may be appointed and retained by the Governing Body of the County, and the Governing Body shall be vested with the same rights, powers and duties connected with the selection, appointment and retention of the appointee as are otherwise vested in the Board of Directors of the Cable Television Commission, including the right to compensation for the cost of the appointee's services.

Not later than each March 1 during the term of a Franchise, the Board of Directors of the Commission shall select, appoint, and retain an appointee whose responsibility it shall be to analyze, investigate and survey rates of compensation and make prevailing rate determinations in connection with workers engaged in initial construction, installation, maintenance, repair, extension, reconstruction and subsequent construction of Cable Television Systems, whether such workers are employed by the Franchisee or general contractors or subcontractors or other contractors engaged by the Franchisee to perform such functions.

5.50.324 PREVAILING RATE OBLIGATIONS. With respect to each contract issued by a Franchisee for work involving the initial construction, installation, maintenance, repair, extension, reconstruction or subsequent construction of the Cable Television System, the Franchisee shall include within the contract prevailing rate data from the latest report filed by an appointee for all workers performing services in connection with such initial construction, installation, maintenance, repair, extension, reconstruction or subsequent construction and require that such workers be compensated in accordance with such data, and in accordance with prevailing rate determinations contained in any subsequent report filed during the term of the contract from and after the date of filing of such report. Any call for bids with respect to such a contract, shall contain notice of such requirements. Any such contract shall also include a provision making the contractor and any subcontractor under him liable for the difference between actual compensation paid to the workers and the determined prevailing rates.

Each Franchisee shall, from and after the date of filing of each report containing prevailing rate determinations by an appointee, increase the compensation of any of its workers who

engage in initial construction, installation, maintenance, repair, extension, reconstruction or subsequent construction of the Cable Television System by an amount necessary to provide compensation which equals the prevailing rate for the job title shown in the report.

5.50.326 ENFORCEMENT. Any worker who has rendered services in connection with the initial construction, installation, maintenance, repair, extension, reconstruction or subsequent construction of a Cable Television System and any labor union which represents members who perform services of the same general type as that performed by such workers, shall be vested with standing to maintain an action for the recovery of the difference between compensation actually paid for services rendered and prevailing rates stated in a report filed by an appointee. The Franchisee, contractor and subcontractor, if any, shall be jointly and severally liable for any such damages.

Any employee of a Franchisee who, subsequent to the filing with the Franchisee of a written report by an appointee determining a prevailing rate for that employee, has been compensated by the Franchisee in an amount or amounts less than such prevailing rate, and any labor union which represents members performing services of the same general type as such an employee, shall be vested with standing to maintain an action against the Franchisee for the recovery of any such difference between amounts of compensation actually paid by the Franchisee and the determined prevailing rate.

5.50.328 CHANNEL ALLOCATIONS TO K.V.I.E. AND CONSORTIUM. K.V.I.E., through Channel 6, has traditionally made a significant community contribution through non-commercial broadcasts of programming of an educational, scientific and cultural nature. Two of the positive benefits to the Sacramento Community which the Initial CATV Franchise may present, and benefits which constitute material inducements to the County and Cities to issue a franchise, are the opportunities to extend instructional services by educational institutions to the home through cable service and expansion of the non-commercial services provided by K.V.I.E.'s educational, scientific and cultural programming to the viewing public.

Subject to the terms and conditions prescribed by this Section and Section 5.50.330, below, the Franchisee under the Initial CATV Franchise shall allocate four (4) channels on the Subscriber Network (in addition to K.V.I.E.'s existing station channel) for the exclusive use of K.V.I.E., and four (4) channels on the Subscriber Network for the exclusive use of the Educational Consortium.

As a condition precedent to allocation of such channels, K.V.I.E. and the Educational Consortium shall each enter into a

written contract with the Franchisee by which they agree to indemnify, hold harmless and insure the Franchisee, County, Cities and Cable Television Commission against the risk of liability which arises out of use of the channels. The insurance shall be in amounts which do not exceed those prescribed by Section 5.50.706 in Article 4-e. Any disagreements or disputes between K.V.I.E. or the Educational Consortium and the Franchisee shall be resolved and determined by the Board of Directors of the Cable Television Commission, and the decision by the Board shall be final and binding upon all parties.

The Franchisee shall make two (2) of the four (4) channels available for cable cast use to K.V.I.E., and three (3) of the four (4) to the Educational Consortium for broadcast use, not later than the date on which the Franchisee first provides service on the Subscriber Network to Dwelling Units. The remaining channels shall be made available to K.V.I.E. and the Educational Consortium at such time as it is ordered by the Board of Directors of the Commission. Such an order shall be made upon application by K.V.I.E. or the Educational Consortium, and shall not be issued except upon a showing by the applicant and finding by the Board of Directors that the additional channels will immediately be committed to Full-Time Use by the applicant.

5.50.330 UTILIZATION STANDARDS. The channels allocated under Section 5.50.328, above, shall not be assigned, leased or otherwise made available by K.V.I.E. or the Educational Consortium for use by any third party for the provision of instructional services or programming for the viewing public, whether for consideration or otherwise, without the advance written consent by the Franchisee under the Initial CATV Franchise.

As used in this Section and Section 5.50.328, above, the terms "Full-Time Use" shall mean that a particular channel is in use at least ten (10) hours per day, one hundred-eighty (180) days during any thirty-two (32) consecutive week period within any twelve (12) month period. With respect to channels allocated to K.V.I.E., broadcast time consumed by programs repeated more than four (4) times during any thirty (30) day period and eight (8) times during any twelve (12) month period on a particular channel shall not be considered in determining whether the Full-Time Use standard is utilized. The Educational Consortium and K.V.I.E. shall be the sole judge of the nature, quality and content of both instructional services and programming for the viewing public presented on channels allocated pursuant to the provisions of Section 5.50.328, above, and the Board of Directors of the Commission shall not in making any determination authorized by Section 5.50.328, above, or this Section, consider such matters or exercise any discretion or control thereover. Neither the Educational Consortium nor K.V.I.E. shall utilize nor shall they by assignment, leased access or otherwise permit use of any of the channels allocated pursuant to the provisions of Section 5.50.328, above, for any commercial use or any use which does not

consist of the provision of instructional services or programming to the viewing public, without advance written approval by the Board of Directors of the Commission. Except as otherwise provided by this Section, such approval may be granted or withheld upon such conditions as the Board of Directors deems proper. The repeat programming standard applicable to K.V.I.E.'s use of channels shall not be applicable to uses approved by the Board of Directors which do not consist of instructional services or programming for the viewing public.

All channels allocated to K.V.I.E. and the Educational Consortium not later than the date on which the Franchisee first provides services on the Subscriber Network to Dwelling Units, which are not committed to Full-Time Use by sixty (60) months following the date on which the certificate of acceptance is filed for the Initial CATV Franchise, shall be released by the recipient entity back to the exclusive use and control of the Franchisee. Except as provided above, any channel committed to K.V.I.E. or the Educational Consortium pursuant to Section 5.50.328, above, which at any time during the term of the Initial CATV Franchise is not committed to Full-Time Use shall be released by the recipient entity back to the exclusive use and control of the Franchisee. The exclusive means of enforcing the requirements of this Section shall be by an action commenced in a court of competent jurisdiction by the Commission or Franchisee against K.V.I.E. or the Educational Consortium, and the Franchisee shall not be authorized to use self-help or any other measure to enforce the provisions of this Section.

5.50.332 COMMUNITY USE PROPOSALS. The purpose of this Section through Section 5.50.340, below, is to permit applicants for the Initial CATV 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.

An applicant who chooses not to make such a proposal shall not be disqualified from bidding or consideration in selection of the Franchisee. 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 award of the Initial CATV Franchise will be based.

5.50.334 APPLICATION CONTENTS. Applicants for the Initial CATV Franchise shall be authorized, alternatively, to propose in their applications: (i) no Community Use Programming, by making no reference to Community Use Programming therein; (ii) to propose Community Use Programming in the form of and in accordance

with Alternative No. 1, as described by Section 5.50.336, below; or (iii) to propose Community Use Programming in the form of and in accordance with the provisions of Alternative Nos. 1 and 2, as described by Sections 5.50.336 and 5.50.340, below.

An applicant who proposes Community Use Programming in its application shall include in the application the following in relation to the Alternative or Alternatives proposed:

- a. Any standard or criteria which will be utilized in connection with the following matters:
 - (1) The time made available for and Community Use Programming covering candidates for public elective offices during election campaigns;
 - (2) Program quality control;
 - (3) The legality of program content and violation of the legal rights of others;
 - (4) Any and all pre-conditions of whatever kind or nature relating to use by third parties of studio facilities or production equipment and broadcast of programming presented thereby.
- b. The establishment of an independent body proposed by the applicant to administer Community Use Programming. Such a body shall not include any officer or employee of the County, Cities, or Cable Television Commission. Nor shall the Body include appointees of officers, employees, Governing Bodies or boards or committees of the County, Cities or Commission. Any such proposal shall specifically identify the following respecting such a body:
 - (1) The legal form of existence;
 - (2) How the body will be established and who will be responsible for establishment;
 - (3) The size, composition and method of selection and appointment of members;
 - (4) The terms of members, and grounds and procedures for removal of members, if any;
 - (5) The specific powers of the body in relation to administration of Community Use Programming and the means by which such powers will be exercised and enforced; and

- (6) The sources and amounts of funding for support of operation of the body.

5.50.336 ALTERNATIVE NO. 1 - ACCESS USE. The type of Community Use Programming envisioned by this Alternative 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 Franchisee, on a first-come-first-serve basis.

Applicants desiring to propose this Alternative shall include the following within their applications:

- a. That one (1) 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;
- b. 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 such channels except the one (1) included in Basic Service will be placed;
- c. A description of the location, nature and extent of 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;
- d. A commitment to make the studio facilities, production equipment, personnel resources, other resources and channel(s) available for use, program production and broadcasts twenty-four (24) hours per day, seven (7) days per week, during the term of the Franchise; the actual number of days per week and hours per day such resources are available for use, program production and broadcasts being subject to regulation from time to time by the independent authority created pursuant to Subparagraph "b" in Section 5.50.334, above;
- e. A commitment to operate and provide the studio facilities, production equipment, personnel resources, other resources, channel(s) broadcast time and programming opportunity at the sole cost of the applicant without any charge whatsoever;
- f. A statement of the nature and extent of all training to be offered by the applicant respecting equipment operation and training required as a condition of facility and equipment use and operation by members of the public; and

- g. A commitment to allow use of the studio facilities, production equipment, personnel resources, other resources, and channel(s) for the production and broadcast of Community Use Programming by members of the general public, including individuals and local non-profit community organizations, on a first-come-first-serve basis during the term of the franchise.

5.50.338 ALTERNATIVE NO. 2 - FRANCHISEE SPONSORED PROGRAMMING. The type of Community Use Programming contemplated by this Alternative is that which is produced as a result of an affirmative effort by the Franchisee to interest community organizations and groups in program ideas, development and production, is presented on the Subscriber Network in minimum quantities prescribed by the application, and is distributed among the various Tiers of Service as prescribed by the application.

Applicants desiring to propose this Alternative shall include the following within their applications:

- a. Schedules showing the number of hours per week new (not previously broadcast within the Sacramento Community) Community Use Programming will be shown on the Subscriber Network within each Tier of Service proposed in the application, categorized according to minimum number of hours per week per Tier of Service between the hours of 6:00 a.m. and 5:00 p.m., 5:00 p.m. and 11:00 p.m., and 11:00 p.m. and 6:00 a.m., with respect to the following variables:
- (1) Differences in volumes of hours of Community Use Programming at various times during the term of the Franchise, if the applicant proposes different volumes of such Programming at various times during the term of the Franchise;
 - (2) Volumes of hours of audio only Community Use Programming, if the applicant proposes both audio only and audio and visual Community Use Programming;
 - (3) The minimum numbers of hours respecting Community Use Programming to be produced by the Franchisee;
 - (4) The minimum numbers of hours respecting Community Use Programming to be produced by the County or Cities;
 - (5) The minimum numbers of hours respecting Community Use Programming to be produced by local non-profit community organizations; and

- (6) Volumes of hours of automated Community Use Programming, as distinguished from regular non-automated Community Use Programming, if such automated Programming is to be shown.
- b. A commitment by the applicant to provide during the entire term of the Franchise all hours of programming which it has proposed in the schedules identified by subparagraph "a", above;
 - c. A description of the location, nature and extent of studio facilities, production equipment and personnel and other resources proposed to be made available at the sole cost of the applicant and without any charge whatsoever to produce and assist the County, Cities and local non-profit community organizations in the presentation of Community Use Programming. The applicant shall indicate whether the studio facilities, production equipment, staffing resources and other resources will be exclusively available for Community Use Programming to the County, Cities and local non-profit community organizations, or whether such resources will be shared with the applicant's operation or others. If shared, specific criteria shall be stated showing how time priorities will be allocated among competing interests to insure, for example, that studio space and production resources will not be made available to local organizations only at the least desirable times;
 - d. Specific and detailed affirmative strategies to be utilized by the applicant to solicit and encourage interest by the County, Cities and local non-profit community organizations in planning, producing and presenting Community Use Programming to fulfill the broadcast time commitments proposed; and
 - e. A statement of all criteria intended to be utilized by the applicant to select between and apportioned time among local non-profit community organizations, the County, and the Cities if the demand to produce Community Use Programming exceeds the broadcast time proposed in the schedules identified by subparagraph "a", above.

In addition to the foregoing, and as a part of this Alternative, an applicant may, but is not required to, propose in its application a specific number of channels on the Subscriber Network which it would set aside for the exclusive provision of Community Use Programming on a Leased Access basis by individuals and local non-profit community organizations. Such channels, if proposed, shall be subject to lease, in whole

or in part, for Community Use Programming. Programming meeting the definition of "Community Use Programming" shall be included in fulfilling the broadcast time proposal contained in subparagraph "a", above. With respect to any such proposal, the application shall contain the following:

- a. An itemization of the amounts of fees and charges, if any, to be levied by the applicant at various times during the Franchise term for Leased Access use -- the fees and charges, if any, to include all rights and privileges associated with the lease, use of studio facilities, production equipment and personnel and other resources, and broadcast time;
- b. Copies of all contract documents to be utilized in connection with such leases; and
- c. A statement as to whether identification of parties to whom channels will be leased and apportionment of leased time thereon 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 leased time should the demand therefor exceed the channel supply.

5.50.340 COMPLIANCE WITH PROPOSAL. A Franchisee under the Initial CATV Franchise who has included within its application for the Franchise a proposal for Community Use Programming under the above Sections shall comply during the entire term of the Franchise with all such commitments contained in its application and the resolution offering the franchise, including, but not limited to, provision of the specified number of hours of Community Use Programming pursuant to the terms and conditions stated, allocation and use of channels 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 Franchisee 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 paragraph shall be deemed to constitute a material violation and breach of the Franchise Documents.

If a Franchisee has included within its application a proposal under both Alternative No. 1 as described by Section 5.50.336, above, and Alternative No. 2 as described by Section 5.50.338, above, Community Use Programming broadcast on

the access channel(s) provided under Alternative No. 1, as described by Section 5.50.336, above, shall not count for the purposes of fulfilling the broadcast commitments assumed under Alternative No. 2, as described pursuant to subparagraph "a" of Section 5.50.338, above.

If a Franchisee has included within its application a proposal under Alternative No. 2 as described by Section 5.50.338, above, any Community Use Programming previously broadcast on channels operated by K.V.I.E. or the Educational Consortium shall not count for purposes of fulfilling the broadcast commitments assumed under Alternative No. 2, as described pursuant to subparagraph "a" of Section 5.50.338, above. The provisions of this paragraph shall not preclude programming produced by K.V.I.E. which fulfills the definition of "Community Use Programming" from being used to fulfill the Franchisee's broadcast commitment assumed pursuant to said Subparagraph "a" of Section 5.50.338, if, prior to broadcast by the Franchisee, the programming has not been broadcast on any channel or otherwise broadcast within the Sacramento Community.

5.50.342 RESOURCES FOR PUBLIC AGENCIES. Applicants for a franchise shall be authorized, but not required, to include within their applications proposals for services, resources or benefits to the County, Cities or Educational Consortium, including, but not limited to, free or discounted rates for subscription to services on the Subscriber Network or Institutional Network, channels or time thereon on the Subscriber Network or Institutional Network, electronic or other equipment, use of the Institutional Network, staffing resources or other services, resources or benefits for improvement in the delivery of governmental services or efficiency of governmental operations. A Franchisee who has proposed the provision of such services, resources or benefits in its application shall comply during the entire term of the Franchise with all such commitments contained in its application and the resolution 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.

An applicant who chooses not to make such a proposal shall not be disqualified from bidding or consideration in selection of the Franchisee. 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 award of a franchise will be based.

5.50.344 RESOURCES FOR OTHERS. Applicants for a franchise may, for the purpose of promoting improvement in cable services to the community and influencing the motivation of the awarding authority to select the particular applicant as the Franchisee, 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, Cities or Educational Consortium. 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 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.

During the hearing conducted for the purpose of receiving comments from such recipients pursuant to the provisions of Section 5.50.214 in Sub-Chapter 3, the body of bodies conducting the hearing shall:

- a. 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 objects 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 body or bodies conducting the hearing;
- b. Approve as to form all legal instruments determined to be sufficient to adequately express the commitments and terms and conditions thereof; and
- c. Determine which, if any, of such legal instruments are to be incorporated into the Franchise Documents and made a part of the terms and conditions of the franchise, and order such incorporation by reference to the instrument in the resolution offering the franchise.

With respect to any legal instrument which is made a part of the Franchise Documents by reference in the resolution offering the franchise, the violation and breach by the Franchisee of the obligations therein shall be deemed to constitute a material violation and breach of the Franchise Documents. Obligations and prohibitions assumed by the recipient under such legal instruments by either execution of the instruments or acceptance of the services, resources or benefits committed shall be enforceable either by the Franchisee or the Cable Television Commission. Violation and breach by the Franchisee of any legal instrument which is not made a part of the Franchise Documents by reference in the resolution offering the franchise shall not be deemed to constitute a violation or breach of the Franchise Documents. Incorporation of such a legal instrument into the Franchise Documents by reference in the resolution offering the franchise shall not be deemed to obligate the County, Cities or Commission to fulfill any promise contained therein. Services, resources or benefits committed to specifically identified parties other than the County, Cities or Educational Consortium which are not evidenced by separate legal instruments included with the application, shall not be considered in the selection process.

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 selection of the Franchisee. 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 award of a franchise will be based.

ARTICLE 4-b

CONSTRUCTION AND EXTENSION OF SYSTEM USE OF STREETS

5.50.400 DWELLING UNITS. As used in this Chapter, the terms "Dwelling Units" means Residential living units 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 and other multiple family residential units.

5.50.402 SERVICE AREAS. As used in this Chapter the terms "Imposed Service Area" with respect to the Initial CATV Franchise, means that geographical territory shown on that map which is marked Exhibit A, and which is approved by resolution adopted by the Governing Bodies on the dates this Chapter is enacted. The terms "Imposed Service Area" with respect to a franchise issued pursuant to the provisions of this Chapter other than the Initial CATV Franchise means a geographical territory defined by resolution adopted by the Board of Directors of the Cable Television Commission on or before the date of approval of a request for proposals for that franchise. The boundaries of an Imposed Service Area shall not be subject to amendment or revision during the term of a franchise to which the Imposed Service Area pertains.

As used in this Chapter, the terms "Proposed Service Areas" refer to geographical units within a Franchise Area defined by a Franchisee in its application for the franchise, which are situated outside an Imposed Service Area established for the franchise to which the application is directed. Each applicant shall plan the Proposed Service Areas which it offers in such a manner that it can complete construction and provide such services within the entirety of each such Service Area within the times prescribed herein. The minimum number of Proposed Service Areas shall be one (1) and the maximum number shall be ten (10). No franchise shall be issued to an applicant who offers in its application more than ten (10) Proposed Service Areas. Each application for a franchise shall contain a map or maps showing the locations of proposed Proposed Service Areas, together with word descriptions either in the form of meets and bounds or by reference to the names of public roads or highways and parcel lines shown on County Assessor's Parcel Maps. Each applicant shall also state the number of Dwelling Units within each Proposed Service Area, and the number of such Dwelling Units shall be stated in the resolution offering the franchise.

As used in this Chapter the terms "Service Areas" generically refer to both the Imposed Service Area and Proposed Service Areas, or either of such types of Service Areas.

5.50.404 SYSTEM COVERAGE - INITIAL CATV FRANCHISE. The Franchisee under the Initial CATV Franchise shall install the Cable Television System throughout the entirety of the Imposed Service Area in compliance with the construction standards set forth in Article 4-a and the applicable standards for the System including, but not limited to, channel capacity, number of cables and other functional and technological features of the System as identified in the Franchise Documents, and shall make Basic Service and other services identified pursuant to Section 5.50.504 in Article 4-c, available within the times prescribed by Section 5.50.410, below.

The Governing Bodies hereby find as follows: (i) that at the current time construction of the Cable Television System under the Initial CATV Franchise within areas outside the Imposed Service Area, except, perhaps, within the geographical boundaries of the Municipality of Galt, would be uneconomic, even with reduced System design and capability, reduced services and higher rates, because of the sparsity of residential development to support construction costs; (ii) that subjecting potential service of areas outside the Imposed Service Area and the geographical boundaries of the Municipality of Galt to the competitive selection process could result in issuance of a franchise for service in areas which is not economically justified and threatens imposition of unreasonably high service costs upon subscribers in urban areas in order to underwrite the cost of service in sparsely populated areas; and (iii) that permissive proposal of service outside the Imposed Service Area and the geographical boundaries of the Municipality of Galt would result in competing applications which variously propose service only within the Imposed Service Area, within the Imposed Service Area and the Municipality of Galt, and within the Imposed Service Area and a potential number of other areas, and would make the applications extremely difficult to compare in relation to such factors as economic feasibility, cross-subsidization, propriety of system design and service levels, and rates with respect to applicants who propose Basic Service rate restrictions.

Therefore, applicants for the Initial CATV Franchise shall be authorized to propose in their applications a single Proposed Service Area which consists of the entirety of and is limited to the geographical boundaries of the Municipality of Galt. An applicant shall not include in its application a Proposed Service Area other than Galt. A Franchisee under the Initial CATV Franchise who has identified the geographical boundaries of the Municipality of Galt as a Proposed Service Area shall install the Cable Television System throughout the entirety of such Proposed Service Area in compliance with the construction standards set forth in Article 4-a and the applicable standards for the System including, but not limited to, channel capacity, number of cables and other functional and technological features of the System

as identified in the Franchise Documents and shall make Basic Service and other services identified pursuant to Section 5.50.504 in Article 4-c, available within the times prescribed by Section 5.50.410, below.

An applicant who chooses not to include within its application the geographical boundaries of the Municipality of Galt as a Proposed Service Area shall not be disqualified from bidding or consideration in selection of the Franchisee. 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 award of the Initial CATV Franchise will be based.

5.50.406 SYSTEM COVERAGE - OTHER FRANCHISES. If an Imposed Service Area has been adopted for a franchise other than the Initial CATV Franchise, the Cable Television System shall be installed throughout the entirety of the Imposed Service Area in compliance with the construction standards set forth in Article 4-a, and the applicable standards for the System including but not limited to, channel capacity, number of dable, and other functional and technological features of the System as identified in the Franchise Documents, and the Franchisee shall make Basic Service and other services identified pursuant to Section 5.50.504 in Article 4-c, available within the times prescribed by Section 5.50.410, below.

Applicants for a franchise other than the Initial CATV Franchise may be authorized to include within their applications Proposed Service Areas. In the event such a franchise is issued to an applicant who has included Proposed Service Areas within its application, the Franchisee shall install the Cable Television System throughout the entirety of each Proposed Service Area in compliance with the construction standards set forth in Article 4-a and the applicable standards for the System including, but not limited to, channel capacity, number of cables and other functional and technological features of the System as identified in the Franchise Documents, and shall make Basic Service and other services identified pursuant to Section 5.50.504 in Article 4-c. available within the times prescribed by Section 5.50.410, below.

5.50.408 QUANTITY OF DWELLING UNITS. The number of Dwelling Units within an Imposed Service Area shall be estimated in the request for proposals issued for the franchise to which the Imposed Service Area pertains. The identification of Dwelling Units in the request for proposals shall be deemed to be an estimate only, shall not constitute a basis for reliance by an applicant, and each applicant shall by means which it chooses

ascertain the number of Dwelling Units within such Imposed Service Areas and state same in its application.

Each applicant for a franchise shall ascertain by means which it chooses the number of Dwelling Units within any Proposed Service Area which is included within its application, and state such number or numbers in the application.

Each resolution offering a franchise shall state therein the number of Dwelling Units within the Imposed Service Area and any Proposed Service Area to which it pertains.

5.50.410 CONSTRUCTION SCHEDULE. The Cable Television System shall be constructed and installed in accordance with the construction standards set forth in Article 4-a, above, within the entirety of each Service Area and Basic Service and other services identified pursuant to the provisions of Section 5.50.504 in Article 4-c, shall be made available to all Dwelling Units within each Service Area within the times prescribed below, regardless of density, and the standards for line extensions set forth in Section 5.50.424, below, shall not be applicable to territories within Service Areas. Each Franchisee shall:

- a. Commence construction of the Cable Television System in each Service Area by stringing or laying cable not later than nine (9) months following the date of filing of the certificate of acceptance of the franchise pursuant to the provisions of Section 5.50.220 in Sub-Chapter 3;
- b. Make Basic Service and other services identified pursuant to the provisions of Section 5.50.504 in Article 4-c, below, available to at least twenty (20%) percent of all Dwelling Units within each Service Area not later than twenty-three (23) months following the date of filing of the certificate of acceptance of the franchise pursuant to the provisions of Section 5.50.220 in Sub-Chapter 3;
- c. Make Basic Service and other services identified pursuant to the provisions of Section 5.50.504 in Article 4-c, below, available to at least fifty (50%) percent of all Dwelling Units within each Service Area not later than thirty-seven (37) months following the date of filing of the certificate of acceptance of the franchise pursuant to the provisions of Section 5.50.220 in Sub-Chapter 3; and
- d. Make Basic Service and other services identified pursuant to the provisions of Section 5.50.504 in Article 4-c, below, available to one hundred (100%)

percent of all Dwelling Units within each Service Area not later than fifty-one (51) months following the date of filing of the certificate of acceptance of the franchise pursuant to the provisions of Section 5.50.220 in Sub-Chapter 3.

Except as otherwise provided by or pursuant to the Franchise Documents, any and all studio facilities, equipment, channels and other services, resources or benefits required of a Franchisee under any provision of the Franchise Documents shall be completed and made available, and the provision of any Community Use Programming which the Franchisee has proposed pursuant to the provisions of Sections 5.50.332 through 5.50.340 in Article 4-a, shall commence not later than thirty-seven (37) months following the date of filing of the certificate of acceptance of the franchise pursuant to the provisions of Section 5.50.220 in Sub-Chapter 3. When other times are prescribed by or pursuant to the Franchise Documents, such services, resources, benefits and programming shall be completed, made available or commenced, as the case may be, within the times required.

5.50.412 ISOLATED DWELLING EXCEPTION. For purposes of determining compliance with the provisions of subparagraph "d" of Section 5.50.410, above, and of Section 5.50.416, below, and notwithstanding any other provision of this Chapter, a Franchisee shall be excused from making Basic Service and such other services available to a particular Dwelling Unit within a Service Area if that Dwelling Unit is situated at least five hundred (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 five hundred (500) feet from an otherwise existing aerial or underground trunk cable. The sole purpose of this exception is to relieve a Franchisee from providing service to an isolated Dwelling Unit within a Service 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 Franchisee 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.

5.50.414 DUTY TO REPORT. Commencing at the beginning of the sixth (6th) month following the filing of the certificate of acceptance of a franchise pursuant to the provisions of Section 5.50.220 in Sub-Chapter 3, and continuing every three (3) months thereafter until the date Basic Service and other services identified pursuant to the provisions of Section 5.50.504 in Article 4-c, are made available to one hundred (100%) percent of the Dwelling Units within each Service Area, the

Franchisee shall, by the first day of each such third month file with the Clerk of the Board of Directors of the Cable Television Commission a written statement identifying the number and percentage of dwelling units in each Service Area to which such services have been made available as of the date on which the statement is filed, together with such other information concerning progress by the Franchisee in complying with the schedule prescribed by Section 5.50.410, above, as is pertinent.

If any Franchisee is unable to comply with the schedule prescribed by Section 5.50.410, above, it shall when it first knows that it will be unable to so comply, file with its quarterly statement a written certification which explains that it will be unable to comply, identifies the detailed reasons for its inability to comply, and proposes a new schedule for completion consistent with the delays which are explained.

5.50.416 COMPLETION. A Final Order of Completion shall be issued by the Board of Directors of the Cable Television Commission when: (i) construction of the Cable Television System has been completed within the entirety of each Service Area in compliance with construction standards set forth in Article 4-a and the design and other requirements of the Franchise Documents; (ii) Basic Service and other services identified pursuant to the provisions of Section 5.50.504 in Article 4-c have been made available to one hundred (100%) percent of the Dwelling Units within each Service Area; (iii) any and all studio facilities, equipment, channels and other services, resources or benefits required by the Franchise Documents have been completed and made available; (iv) any Community Use Programming which the Franchisee has proposed pursuant to the provisions of Section 5.50.332 through 5.50.340 in Article 4-a shall have commenced in compliance with the Franchise Documents; and (v) a Notice of Completion has been filed by the Franchisee as hereinafter provided.

For purposes of Section 5.50.410, above, and this Section, Basic Service and other services identified pursuant to the provisions of Section 5.50.504 in Article 4-c shall be deemed to be made available when Basic Service (at rates and charges in amounts proposed within the application for the franchise and as permissibly adjusted pursuant to Section 5.50.622 in Article 4-d, or if none are included in the application, at rates and charges in amounts customarily offered by the Franchisee) and other services identified pursuant to the provisions of Sections 5.50.504 and in Article 4-c (at rates and charges in amounts customarily offered by the Franchisee) are offered 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.

For the purpose of determining compliance with the provisions of Subparagraph "b" and "c" of Section 5.50.410, above; the

total number of Dwelling Units within each Service Area to which the percentages apply shall be deemed to be the numbers stated in the resolution offering the franchise. For the purpose of determining compliance with the provisions of Subparagraph "d" of Section 5.50.410, above, and of determining completion under this Section, the total number of Dwelling Units within each 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 filing by the Franchisee of the Notice of Completion; provided that the Franchisee 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 of Directors of the Cable Television Commission makes a final decision as to whether a Final Order of Completion will be adopted.

A Franchisee who asserts completion shall file a written Notice of Completion with the Clerk of the Board of Directors of the Commission. The Notice of Completion shall state the total number of Dwelling Units available for occupancy within each 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 each Service Area as of the date of filing, and shall otherwise certify completion as defined by the first paragraph in this Section. Neither the Notice of Completion nor the statements, assertions or certifications contained therein shall be deemed to be binding upon the Board of Directors of the Commission.

During the period of construction of the Cable Television System or during the sixty (60) day period following filing of the Notice of Completion the Cable Television System, all elements and components thereof, and all equipment and studio facilities required by the Franchise Documents shall be subject to inspection by the Cable Television Commission, employees or authorized agents or representatives thereof, for the purpose of determining whether the System and related facilities comply with the Franchise Documents. The Franchisee 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 non-existence of such compliance.

5.50.418 HEARING AND DETERMINATION. Not later than forty-five (45) calendar days following the filing of the Notice of Completion, the Board of Directors of the Cable Television Commission 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 Franchisee. Notice of the time, date, place and purpose of the hearing shall be publicized in the manner prescribed by Section 5.50.024 in Sub-Chapter 1.

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 of Directors may direct such investigations of issues or questions raised during the hearing as it deems appropriate.

During the public hearing, the Board of Directors may, by resolution, identify specific deficiencies respecting completion and decline to adopt a Final Order of Completion pending 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 of Directors shall, by resolution, identify specific deficiencies respecting completion which must be corrected in advance of issuance of a Final Order of Completion.

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 defined by the first paragraph in Section 5.50.416, above, have been completed. Issuance of such a Final Order of Completion shall constitute a determination of completion which is conclusive for all purposes of this Chapter.

5.50.420 REQUEST FOR ARBITRATION. At any time on or after one hundred twenty (120) calendar days following the date of filing by a Franchisee of the Notice of Completion the Franchisee may, if a Final Order of Completion has not been adopted by the Board of Directors of the Cable Television Commission, make a written request for arbitration. If a Final Order of Completion has been issued and the Franchisee disagrees with the actual date of completion stated therein, the Franchisee may, within thirty (30) calendar days following mailing to the Franchisee of the Order, 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 of Directors of the Commission.

If arbitration is requested, the arbitration panel shall be selected, the hearing scheduled within the time prescribed, notice given, the hearing conducted, decision made and costs divided in the manner prescribed by Sections 5.50.830 through 5.50.840, inclusive in Article 5-b of Sub-Chapter 5. The Discovery provisions of the California Arbitration Act (Code of Civil Procedure, Section 1280, et seq.) shall be applicable to arbitration proceedings under this Section. The questions which may be submitted to the arbitration panel and jurisdiction of the arbitration panel shall be limited to the following:

a. The interpretation of the provisions of the Franchise Documents solely in relation to the decision required by Subparagraph "b", below; and

b. 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 proceedings conducted under Sections 5.50.438 through 5.50.444, inclusive, below.

If ordered by the Arbitration Panel, the Board of Directors of the Commission shall issue a Final Order of Completion not later than ten (10) calendar days following 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 grounds set forth in Section 1286.2 of the Code of Civil Procedure.

5.50.422 FUTURE DEVELOPMENTS WITHIN SERVICE AREAS. A Franchisee shall, if practical, install its Cable Television System at the time the public improvements are being installed with respect to any territory within Service Areas for which an application has been filed by the time the franchise is issued to subdivide the territory into five (5) or more lots for residential purposes. In any event, Basic Service and other services identified pursuant to the provisions of Section 5.50.504 and in Article 4-c, shall be made available to all lots within such territory the subdivision of which has been completed not later than fifty-one (51) months following the date of filing of the certificate of acceptance of the franchise pursuant to the provisions of Section 5.50.220 of Sub-Chapter 3.

With respect to all territories within Service Areas for which application for approval of a tentative map for such subdivision purposes is made after issuance of the franchise, the Franchisee shall install its Cable Television System at the time the public improvements for the subdivision are being installed. Basic Service and other services identified pursuant to the provisions of Section 5.50.504 and in Article 4-c, shall be made available to each lot within such subdivisions not later than the date of occupancy of each Dwelling Unit, or fifty-one (51) months following the date of filing of the certificate of acceptance of the franchise pursuant to the provisions of Section 5.50.220 in Sub-Chapter 3, whichever occurs later.

5.50.424 LINE EXTENSIONS. After completion of the construction, installation and service schedule prescribed by Section 5.50.410, above, as that schedule may be modified pursuant to the provisions of Sections 5.50.438 through 5.50.444, inclusive, below, each Franchisee may, within its Franchise Area, extend its Cable Television System beyond the Service Areas described in the Franchise Documents, and shall so extend its System pursuant to the following requirements:

- a. The Franchisee shall extend the Cable Television System and make Basic Service and other services identified pursuant to Sections 5.50.504 and in Article 4-c, 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 six hundred sixty (660) feet, as measured from the existing System.
- b. The Franchisee shall extend the Cable Television System and make Basic Service and other services identified pursuant to Section 5.50.504 in Article 4-c, available to any isolated resident outside the Service Area, requesting connection at the standard connection charge, if the connection to the isolated resident would require no more than a standard one hundred fifty (150) foot aerial drop line.

With respect to requests for connection requiring an aerial drop line in excess of one hundred fifty (150) feet, the Franchisee shall extend the Cable Television System and make available such services to such residents at a connection charge not to exceed the actual installation costs incurred by the Franchisee for the distance exceeding one hundred fifty (150) feet plus an administrative charge of ten (10%) percent of said amount to cover overhead costs.

- c. Whenever the Franchisee shall have received written requests for services from at least fifteen (15) assured subscribers within thirteen hundred (1,300) cable feet of its aerial trunk cable, it shall extend its Cable Television 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 thirteen hundred (1,300) cable feet shall be measured in extension length of the Franchisee's cable required for service located within the street and shall not include the length

of necessary drop to the subscriber's house or premises.

When a Cable Television System is extended from the boundaries of an Imposed Service Area the standards for the System so extended including, but not limited to, channel capacity, number of cables and other functional and technological features of the System shall be the same as are applicable to the System within the Imposed Service Area, the services provided through the System so extended shall be the same as are provided within the Imposed Service Area, and the rates and charges associated with Basic Service (if the Franchisee has proposed restrictions upon such rates and charges pursuant to the provisions of Sections 5.50.616 through 5.50.624 in Article 4-d) shall be the same as rates and charges associated with Basic Service within the Imposed Service Area. When a Cable Television System is extended from the boundaries of a Proposed Service Area the standards for the System so extended including, but not limited to, channel capacity, number of cables and other functional and technological features of the System shall be the same as are applicable to the System within the Proposed Service Area from which extension is made, the services provided through the System so extended shall be the same as are provided within the Proposed Service Area from which extension is made, and the rates and charges associated with Basic Service (if the Franchisee has proposed restrictions upon such rates and charges pursuant to the provisions of Sections 5.50.616 through 5.50.624 in Article 4-d) shall be the same as rates and charges associated with Basic Service within the Proposed Service Area from which extension is made.

5.50.426 OTHER PROVISIONS. Any applicant for a franchise may propose in its application line extension provisions which are more liberal than prescribed by Section 5.50.424, above. In the event of any inconsistency between the line extension provisions prescribed by Section 5.50.424, above, and the express terms in other Franchise Documents, the provisions in the other Franchise Documents shall prevail if the issuing authority has found that the provisions in the other Franchise Documents will better serve the needs of the public and promote the public interest.

An applicant who chooses not to make a more liberal proposal for line extension shall not be disqualified from bidding or consideration in selection of the Franchisee. 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 award of a franchise will be based.

5.50.428 TIME. Line extensions required pursuant to Sections 5.50.424 or 5.50.426, above, shall be made and completed within reasonable periods of time consistent with the relative cost and periods required for planning and construction. A Franchisee shall not be deemed to be in breach of said Sections until after written notice is mailed to the Franchisee by the Cable Television Commission identifying a particular extension which the Commission asserts is required. If within thirty (30) calendar days following mailing of such notice the Franchisee has not filed with the Clerk of the Board of Directors of the Commission a written notice specifying the date of completion of such extension, the Franchisee shall be deemed to be in breach, if it has failed to comply with the requirements of said Sections, from and after the expiration of the thirty (30) day period. A Franchisee's designation of a completion date shall not be presumed to be reasonable or binding upon the Commission.

5.50.430 NEW SUBDIVISIONS BEYOND SERVICE AREAS. Notwithstanding the provisions of Section 5.50.424, above, with respect to developing territories within a Franchise Area which are situated outside of a Service Area, a Franchisee shall, at any time, be authorized to install its Cable Television System at the time public improvements for new subdivisions or units thereof are being installed, if either:

- a. The subdivision is adjacent to the boundaries of a Service Area, or so situated that the density between the boundaries of the subdivision and the boundaries of a Service Area require extension to the subdivision under the standards set forth in Subparagraphs "a" through "c" of Section 5.50.424, above; or
- b. The Franchisee has been authorized by the Board of Directors of the Cable Television Commission to provide cable television service within the subdivision pursuant to a plan approved by the Board under the provisions of Section 5.50.446, below.

5.50.432 COMPLAINTS. Any citizen who asserts that there has been a violation of any of the provisions of Sections 5.50.404 through 5.50.416, 5.50.422 through 5.50.430, above, or 5.50.446, below, may file a written complaint asserting such violation with the Clerk of the Board of Directors of the Cable Television Commission.

5.50.434 EXCUSES FOR VIOLATIONS. Except as hereinafter provided, violation by a Franchisee of any of the provisions set forth in Sections 5.50.404 through 5.50.416, 5.50.422 through 5.50.430, above, or 5.50.446, below, caused by circumstances beyond the control of the Franchisee shall constitute good and sufficient excuse and justification for such violations

precluding the Franchisee from being in breach of said Sections. The following are examples of acts or omissions by a Franchisee or circumstances which shall be deemed not to be beyond the control of the Franchisee and which shall not constitute excuses or justifications for violations:

- a. The failure at any time by a Franchisee 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 actions necessary to comply or facilitate compliance with any of the provisions of Sections 5.50.404 through 5.50.416, 5.50.422 through 5.50.430, above, or 5.50.446, below;
- c. Considerations relating to economy or cost efficiency, as respects acts or omissions by a Franchisee;
- d. Delays occasioned by the failure of a Franchisee 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 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 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; and
- g. Delays occasioned by the customary and usual time required to process and secure approvals under zoning ordinances of the County and Cities 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; provided that if a Franchisee submits specific sites and plans for all headends, towers and transmitters to the County and requests the County to perform a single environmental analysis upon all such facilities as the lead agency, any time consumed by such environmental analysis which is longer than one hundred twenty (120) calendar days during a period subsequent to the filing of the certificate of acceptance of the franchise pursuant to Section 5.50.220 in Sub-Chapter 3 shall be deemed to excuse the Franchisee from any violations which are proximately caused by such delay in excess of one hundred twenty (120) calendar days.

Notwithstanding the provisions of Subdivision "a" through "f", inclusive, above, a Franchisee shall not be excused from any violation of the provisions of Sections 5.50.404 through 5.50.416, 5.50.422 through 5.50.430, above, or 5.50.446, below, except for causes which are beyond the control of the Franchisee, and except with respect to violations which have not been contributed to or aggravated by acts or omissions by the Franchisee.

Except as otherwise provided above, violations caused exclusively by acts or omissions by the County, the Cities, the Cable Television Commission or their officers, agents or employees shall constitute an excuse and justification for failure of a Franchisee to comply with the provisions of Sections 5.50.404 through 5.50.416, 5.50.422 through 5.50.430, above, or 5.50.446, below, precluding a determination that the Franchisee is in breach. However, violations as a result of such exclusive causes shall not be deemed to excuse the Franchisee from other violations, shield the Franchisee from a determination that it is in breach for violations, or bar any relief for damages or otherwise as a result of such breach.

5.50.436 EXAMPLES OF EXCUSES FOR VIOLATIONS. Examples of circumstances beyond the control of a Franchisee which excuse a Franchisee from violation and being in breach of the provisions of Sections 5.50.404 through 5.50.416, 5.50.422 through 5.50.430, above, or 5.50.446, below, when such violations are caused thereby, include the following: strikes; acts of public enemies; orders by military authority; insurrections; riots; epidemics; landslides; lightening; earthquakes; fires; floods; civil disturbances; explosions; and partial or entire failure of utilities.

5.50.438 ENFORCEMENT PROCEEDINGS. At any time and from time to time proceedings may be commenced by the Board of Directors of the Cable Television Commission.

The purpose of such proceedings shall be, and the powers of the Board of Directors of the Commission shall include, the following:

- a. Determination of whether there has been a violation of any of the terms, conditions or requirements set forth in Sections 5.50.404 through 5.50.416, 5.50.422 through 5.50.430, above, or 5.50.446, below, or any requirements in relation thereto established pursuant to previously conducted enforcement proceedings;
- b. Establishment of new or revised schedules for compliance with any of the terms, conditions or requirements set forth in Sections 5.50.404 through 5.50.416, 5.50.422 through 5.50.430, above, or 5.50.446, below, or any requirements in relation thereto established pursuant to previously conducted enforcement proceedings, with respect to any such terms, conditions or requirements which are determined to have been violated;
- c. Determination of whether the Franchisee is in breach of any of the terms, conditions or requirements set forth in Sections 5.50.404 through 5.50.416, 5.50.422 through 5.50.430, above, or 5.50.446, below, 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
- d. With respect to any finding of breach, determination of the remedy.

In connection with determinations by the Board of Directors that there has been a violation of any time limit prescribed by Sections 5.50.404 through 5.50.416, 5.50.422 through 5.50.430, above, or 5.50.446, below, 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 5.50.440 and 5.50.442, below, 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 Franchisee has breached any of the time limitations set forth in Sections 5.50.404 through 5.50.416, 5.50.422 through 5.50.430, above, or 5.50.446, below, or established pursuant to prior enforcement proceedings, the Board shall be authorized to determine and assess the amount of liquidated damages, if any, which the Franchisee shall be required to pay as a result of such breach, and whether, and if so, the extent to which the term of the Franchise should be

reduced with respect to any such breach. Such determinations shall, without appeal to arbitration or as affirmed by arbitration, be self-executing.

In the event the Board of Directors determines that the Cable Television System fails to comply with any of the requirements of the Franchise Documents or that the Franchisee 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 shall, without appeal to arbitration or as affirmed by arbitration, be self-executing.

5.50.440 COMMENCEMENT OF ENFORCEMENT PROCEEDINGS. The Board of Directors of the Commission shall commence enforcement proceedings by scheduling a hearing for the purpose of inquiring into matters specified in Section 5.50.438, above. Written notice of the time, date and place of the hearing shall be mailed to the Franchisee and to the Franchisee's surety on the performance bond filed pursuant to Section 5.50.700 in Article 4-e, below 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, identify the terms, conditions or requirements alleged to be violated, and generally describe the areas or subject matter with respect to which the violation or violations are alleged to have been committed.

The hearing may be conducted either by the Board of Directors of the Commission 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, who shall not be an officer or employee either of a Franchisee, the Commission, the County or the Cities.

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 Cable Television Commission. The cost of preparing a transcript and record of the hearing shall be borne by the Franchisee. 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.

5.50.442 CONDUCT OF HEARING. 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 this State shall not be applicable to the hearing. The provisions of the Administrative Procedure Act, commencing at Section 11500 of the California Government Code, or

any successor legislative enactment, shall not be applicable to any such hearing. The burden of proving violation by the Franchisee 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 Franchisee. The hearing may be continued from time to time.

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, conclusions and all determinations authorized by Section 5.50.438, above. The recommended decision shall be filed with the Clerk of the Board of Directors of the Commission 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 Directors may, without a hearing except as otherwise required below, either:

- a. Adopt the findings of fact, conclusions and determinations contained in the recommended decision;
- b. Adopt the findings of facts and conclusions contained in the recommended decision, modify the determinations, and adopt the recommended decision as so revised;
- c. Based upon the record of the hearing, modify the findings of fact, conclusions or determinations, and adopt the recommended decision as so revised; or
- d. Reject the recommended decision and conduct a new hearing.

If the hearing is conducted by the Board of Directors of the Commission, upon conclusion of the hearing, the Board of Directors shall adopt a decision which includes findings of fact, conclusions, and determinations authorized by Section 5.50.438, above. Copies of the decision adopted by the Board of Directors shall be mailed to the parties.

5.50.444 ARBITRATION OF ENFORCEMENT PROCEEDINGS. Not later than thirty (30) calendar days following the date of mailing to the Franchisee of the decision by the Board of Directors, the Franchisee 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 of Directors. The notice of appeal shall specifically identify the determination or determinations from which the appeal is taken, the grounds therefor, and shall be accompanied by a fee equal to the estimate by the Clerk of the cost of preparing the transcript and record of the hearing or hearings. In the event the Franchisee fails to file the notice of appeal within the time and in compliance with the requirements prescribed above, the determinations by the Board

of Directors shall become final, binding, conclusive and not subject to review or reversal by any authority. Judicial enforcement of such determinations may be sought.

Except as otherwise provided herein, the arbitration panel shall be selected, the hearing scheduled within the time prescribed, notice given, the hearing conducted, decision made and costs divided in the manner prescribed by Sections 5.50.830 through 5.50.838, inclusive, in Article 5-b of Sub-Chapter 5.

The questions which may be submitted to the arbitration panel and 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 of Directors from which 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 review of the decision by the Board of Directors.

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 of Directors 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 of Directors. No new evidence shall be introduced, received or considered by the arbitration panel; provided that where the panel finds that 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 of Directors to be reconsidered in light of such evidence. The determinations by the Board of Directors shall be sustained by the arbitration panel if it finds that there is substantial evidence in the record to sustain the determinations, 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 it shall remand the matter to the Board for further determinations, reserving jurisdiction to review the determinations. Objections by the Franchisee 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.

The decision by the Board of Directors as affirmed by an 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 grounds set forth in Section 1286.2 of the Code of Civil Procedure to the extent such grounds are consistent with the express terms of this Chapter.

5.50.446 SERVICE IN NEW AREAS. The purpose of this Section is to encourage Franchisees to install Cable Television Systems and provide services within geographical locations which are outside of Service Areas and within which installation of such Systems and services is not required under the line extension provisions of Sections 5.50.424 or 5.50.426, and to establish a flexible framework by which the magnitude of the Cable Television System, services and rates and charges associated with Basic Service (if a Franchisee has proposed limitations upon such rates and charges pursuant to the provisions of Sections 5.50.616 through 5.50.624 in Article 4-d) may be regulated in order to encourage such expansion, and insure that the uncompensated costs thereof are not so excessive as to impose an unreasonable burden upon subscribers within urbanized areas which are already being served. The provisions of this Section shall be applicable to all territory outside of Service Areas whether extensions of a Cable Television System are required by or pursuant to the provisions of Sections 5.50.424 or 5.50.426, above, or not.

A Franchisee shall not be authorized to install its Cable Television System or provide services within a geographical location outside a Service Area except pursuant to an application requesting authority for such installation and service which is approved by the Board of Directors of the Cable Television Commission.

An application for such approval shall be filed with the Clerk of the Board of Directors of the Commission, shall describe the boundaries of the area proposed to be served, shall describe in detail the standards for the System proposed to be installed including, but not limited to, channel capacity, number of cables and other functional and technological features of the System, shall describe in detail the services proposed to be provided, shall identify the rates and charges associated with Basic Service (if the Franchisee has proposed limitations upon such rates and charges pursuant to the provisions of Sections 5.50.616 through 5.50.624 in Article 4-d), shall include a budget of construction costs and a projection of operating revenues and costs, shall identify a proposed time schedule for installation of the System and provision of service, and shall contain such other and further information as the Board of Directors may require. The Board of Directors of the Commission shall schedule a public hearing upon the application to commence not later than thirty (30) calendar days after the application is filed, notice of which is given in the manner prescribed by Section 5.50.024 in Sub-Chapter 1.

After the conclusion of the public hearing, the Board of Directors shall approve the application if it finds that the nature and extent of the System to be installed, services to be provided, time within which installation will be complete and services provided, and rates and charges associated with Basic Service (if the Franchisee has proposed limitations upon such rates and charges pursuant to Sections 5.50.616 through 5.50.624 in Article 4-d) will adequately serve the needs of the residents within the geographical location proposed to be served; provided, that notwithstanding such determinations, the Board may deny an application if it finds that uncompensated costs of constructing the System or providing service will cause increases in rates or charges paid by subscribers who are already being served by the Franchisee. In approving such an application, the Board of Directors may impose conditions relating to such matters as the following:

- a. The standards for the System to be installed, including, but not limited to, channel capacity, number of cables and other functional and technological features of the System;
- b. The nature and extent of services to be provided;
- c. Interconnection of the System to be installed with the System operated by the Franchisee within Service Areas;
- d. The amounts of rates and charges associated with Basic Service (if the Franchisee has proposed limitations upon such rates and charges pursuant to Sections 5.50.616 through 5.50.624 in Article 4-d); and
- e. The time schedule for installation and completion of the System and delivery of services.

A Franchisee shall comply with the provisions of an approved application and any terms or conditions of approval.

5.50.448 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 or persons, or interfere with any improvements the County, Cities or 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 Franchisee within the Sacramento 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.

5.50.450 PERMITS AND APPROVALS. During the term of each franchise, in advance of occupying, working upon or otherwise utilizing any Street, the Franchisee shall apply for and obtain any encroachment permit, license, authorization or other approval required by ordinances in force within the County and Cities, pay any fees and post any security required by such ordinances, 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 and Cities shall be authorized to establish special fees payable by a Franchisee to defray the costs incurred by the Department of Public Works of the respective agencies in supervising and regulating the installation of a Cable Television System within the Streets of the respective agencies. The respective Directors of Public Works of the County and Cities shall be authorized to formulate reasonable schedules for installation of a Cable Television System within the Streets of the agencies for the purpose of promoting safety, reducing inconvenience to the public, and insuring adequate restoration and repair of the Streets, and a Franchisee and its officers, agents, contractors and subcontractors shall comply with any and all such schedules.

5.50.452 RESTORATION OF STREETS AND PRIVATE PROPERTY. All disturbance by a Franchisee of pavement, sidewalk, driveways, landscaping or other surfacing of Streets shall be restored, repaired or replaced by the Franchisee 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 Franchisee 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 Franchisee, shall, at the sole expense of the Franchisee, 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 Franchisee shall, through

authorized representatives, 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 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.

5.50.454 ERECTION OF POLES. No franchise shall be deemed to expressly or impliedly authorize the Franchisee 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 or Cities within which the Street is situated. Such consent shall be given or withheld in the sole discretion of the Governing Body, and may be given upon such terms and conditions as the Governing Body in its sole discretion may prescribe which shall include a requirement that the Franchisee 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 Franchisee is authorized to construct and install within Streets, the County or Cities with jurisdiction over the Street or a public utility or public utility district serving the County or Cities may, if denied the privilege of utilizing such poles or wire-holding structures by the Franchisee, apply for such permission to the Cable Television Commission. If the Commission finds that such use would enhance the public convenience and would not unduly interfere with the Franchisee's operations, the Commission may authorize such use subject to such terms and conditions as it deems appropriate. Such authorization shall include the condition that the County, Cities, public utility or public utility district pay to the Franchisee any and all actual and necessary costs incurred by the Franchisee in permitting such use.

5.50.456 UNDERGROUNDING. Except as hereinafter provided, in all areas of the Sacramento Community where the cables, wires and other like facilities of a public utility or public utility district are placed underground, each Franchisee shall construct and install its cables, wires and other facilities underground. Amplifier boxes and pedestal mounted terminal boxes may be placed above ground if existing technology reasonably requires, but shall be of such size and design and shall be so located as not to be unsightly or unsafe. In any area of the Sacramento Community where there are certain cables, wires and other like facilities of a public utility or public utility district underground and at least one operable cable wire or like facility of a public utility or public utility district suspended above ground from poles a Franchisee may construct and install its cables, wires and other facilities from the same poles.

With respect to any cables, wires and other like facilities constructed and installed by a Franchisee above ground, the Franchisee shall, at its sole expense, reconstruct and re-install such cables, wires or other facilities underground pursuant to any project under which the cables, wires or other like facilities of such utilities are placed underground within an area. The duty of a Franchisee to underground shall arise only if all existing above ground like facilities of such utilities are placed underground.

5.50.458 RELOCATION. If during the term of a franchise the County, Cities, a public 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 Franchisee, 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 a 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 neither the Cities nor County shall be liable to a Franchisee for such costs. Regardless of who bears the costs, a Franchisee 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 Franchisee advising the Franchisee of the date or dates removal or relocation is to be undertaken.

5.50.460 TREE TRIMMING. The Franchisee shall not, and shall prohibit any officer, agent, employee, contractor or subcontractor which it retains from, removing or trimming any tree or portion 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 or City in which the Street is located. Such consent may be given or withheld upon such terms and conditions as the Director of Public Works deems appropriate. Each Franchisee shall be responsible for, shall indemnify, defend and hold harmless the County, Cities, Cable Television Commission, and their 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 Franchisee or its officers, agents, employees, contractors or subcontractors.

5.50.462 MOVEMENT OF BUILDINGS. Each Franchisee shall, upon request by any person holding a building moving permit, license or other approval issued by the County, Cities 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 Franchisee shall be authorized to require such payment in advance. A Franchisee shall be given not less than forty-eight (48) hours oral or written notice to arrange for such temporary wire changes.

5.50.464 REMOVAL. At the conclusion of the term of a franchise, if the franchise is not renewed and if neither the Cable Television Commission nor an assignee purchase the Cable Television System, the Franchisee 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 Franchisee 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 Franchisee 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 Directors of the Cable Television Commission 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 of Directors to remove cable or conduit shall be mailed to the Franchisee not later than thirty (30) calendar days following the date of expiration of the franchise. A Franchisee shall file written notice with the Clerk of the Board of Directors not later than thirty (30) calendar days following the date of expiration of the franchise of its intention to remove cable authorized by this paragraph 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 of the County and Cities with jurisdiction over the Streets from which cable is to be removed. Removal shall be completed not later than twelve (12) months following the date of expiration of the franchise. Underground cable and conduit in the Streets which is not removed shall be deemed abandoned and title thereto shall be vested in the Cities and County within whose jurisdiction the cable or conduit is situated.

The Franchisee, at its sole expense, shall, unless relieved of the obligation by the County or Cities, 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 Commission or its assignee.

The Franchisee 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 ordinance of the County or Cities in which the Streets are located, 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 (1) year following the date of expiration of the franchise.

5.50.466 ENFORCEMENT. Any Director of Public Works of the County or Cities who determines that within his or her jurisdiction a Franchisee has committed an act or omission in violation of any of the provisions of Sections 5.50.448 through 5.50.464, inclusive, above, shall be authorized to mail written notice of the violation to the Franchisee.

Not later than seven (7) calendar days following the mailing of such notice the Franchisee shall be authorized to file an appeal with the Clerk of the Governing Body of the County or Cities by whom the Director of Public Works is employed. The Franchisee shall also file a copy of the notice in the office of the Director of Public Works. The Governing Body shall hear the appeal, and shall be authorized to do so at its earliest convenience. The Franchisee 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 Franchisee has failed to correct the violation, or if an appeal is filed and within five (5) calendar days following mailing to the Franchisee of an order by the Governing Body the Franchisee has failed to correct the violation as directed in the order, the Director of Public Works shall be authorized to correct the violation through assignment of such task to his or her 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 Franchisee shall be liable for the full amount of any charges made for such corrective action, any 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 provision of this Section shall not be construed to fix the date of a breach by a Franchisee of any of the provisions of Sections 5.50.448 through 5.50.464, inclusive, above, at the

prescribed period following mailing of the notice of violation, or to prevent a determination that a Franchisee 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 Franchisee. Nor shall the provisions of this section be so construed as to relieve the Franchisee from liability for any damages which may arise out of and be proximately caused by breach by a Franchisee of any of the provisions of said sections.

ARTICLE 4-c

SERVICES

5.50.500 PURPOSES. It is anticipated that the cost of installing the Cable Television System under the Initial CATV Franchise could range from \$75 to \$100 million. It is also anticipated that annual gross revenues derived by the Franchisee after the System has been completed and is fully operable could range as high as \$100 million. Whereas Cable Television Services have traditionally been limited to television programming primarily for purposes of entertainment, advancing technology permits 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 as yet unidentified.

Such services promise significant benefit to the 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 Franchisee refuse to comply. The need to regulate could extend to:

- a. Potentially unfair and unlawful competitive practices by a Franchisee in operating and utilizing the Cable Television System to provide services;
- b. Inadequate maintenance or repair by the Franchisee of the Cable Television System;
- c. Invasion of the privacy of Subscribers;
- d. Unethical or unfair business practices in relation to Subscribers or others; and
- e. A variety of other regulatory measures which are necessary to protect the health, safety or welfare of inhabitants of the Sacramento Community.

The provisions of this Chapter address these issues by, with few exceptions, placing no limit upon the services which a Franchisee 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 Franchisee may provide to those which may be listed in the Franchisee's proposal, and reserving broad authority to amend the provision of this Article under Section

5.50.038 in Sub-Chapter 1. The purposes of this Chapter and this Article are to:

- a. Reserve and vest broad regulatory authority in the Cable Television Commission 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 operation of a Cable Television System;
- b. Establish general regulatory guidelines defining the rights, duties and responsibilities of Franchisee and the Cable Television Commission which may be made more specific, expanded or otherwise modified to meet future regulatory needs by regulations enacted by the Commissioner amendment of this Article.

5.50.502 SYSTEM OWNERSHIP. Legal and equitable title to the Cable Television 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 Franchisee.

5.50.504 SERVICES. Within a Service Area services provided by a Franchisee through its Cable Television System upon both the Subscriber and Institutional Networks shall be offered uniformly upon non-discriminatory terms to Subscribers and users, and shall not differ based upon geographical location. The nature, extent and volume of services offered within a Proposed Service Area and, except as provided by Section 5.50.424 and 5.50.426 in Article 4-b, outside of a Service Area, may differ from those offered within an Imposed Service Area, and may differ from one Proposed Service Area to another. Each application for a franchise shall describe in detail the manner, if at all, the nature, extent or volume of services offered within Proposed Service Areas will differ from those offered within an Imposed Service Area, and the manner, if at all, the nature, extent or volume of services offered will differ from one Proposed Service Area to another.

Each application for a franchise shall contain schedules of all home educational and entertainment programming proposed to be shown on the Subscriber Network within each Service Area. The applications shall show for each Service Area:

- a. All Tiers of Service, Basic Service being the lowest Tier;
- b. The number of channels within each Tier of Service offered at the subscription rate applicable to the

Tier, together with an identification of the Tier placement of channels allocated pursuant to Sections 5.50.328 and 5.50.330, and any channels allocated pursuant to Section 5.50.336, the second main paragraph in Section 5.50.358, and Section 5.50.342 in Article 4-a;

- c. 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 Subparagraphs "b", "c" and "d" of Section 5.50.410 in Article 4-b;
- d. A statement of the minimum number of hours per day and week programs or types of programming described in Subparagraph "c", above, will be shown within the times prescribed by Subparagraphs "b", "c" and "d" of Section 5.50.410 in Article 4-b;
- e. 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 Sacramento Community; and
- f. 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 Subparagraphs "b", "c" and "d" of Section 5.50.410 in Article 4-b.

The provisions of Subparagraphs "c", "d", "e" and "f", above, shall not be applicable to channels described by Subparagraph "a-(1-5)" of Section 5.50.012 in Sub-Chapter 1, or channels allocated pursuant to Sections 5.50.328 and 5.50.330 in Article 4-a.

5.50.506 SERVICE RIGHTS. The resolution offering a franchise may contain program descriptions the substance of which is contained in the application by the applicant to whom the franchise is offered respecting home educational and entertainment programming services on the Subscriber Network. Subject to the regulatory authority reserved by Section 5.50.512, below, a Franchisee shall be deemed to have a contractual right to provide during the term of the franchise any such programming as is defined in the resolution offering the franchise.

With the exception of home educational or entertainment programming identified in a resolution offering a franchise, a

Franchisee shall not be deemed to be vested with a contractual right to provide programming or any other services whether or not identified in the application for the franchise, either on the Subscriber Network or the Institutional Network. A Franchisee shall be deemed to be authorized by the franchise to provide such service or services in the absence of contrary provisions in this Chapter, whether or not added by amendment, or contrary rules or regulations enacted by the Board of Directors of the Cable Television Commission. Authority of the County, Cities and Cable Television Commission to prohibit or otherwise regulate any service which a Franchisee provides through its Cable Television System shall be either authorized by laws of the State of California or United States or co-extensive with the police power defined by Article XI, Section 7 of the California Constitution. A Franchisee shall not, in relation to the provisions of Section 5.50.500, above, through Section 5.50.012, below, or Section 5.50.552, below, be deemed to have contractually or otherwise waived any constitutional right which would otherwise be applicable to a franchised cable television operator.

5.50.508 PROGRAMMING CHANGES. It is understood that with respect to home educational and entertainment programming on the Subscriber Network, Tier arrangements, premium services, and program selection and content which a Franchisee has elected to propose in its application are among the material factors which are considered in selecting the Franchisee. The hierarchy of programming arranged within Tiers of Service and placement of premium programs therein as shown by the application, cost relationships between Tiers of Service (other than Basic Service) to the extent an operator includes such rates in its application, and number of channels within Tiers and programming thereon also constitute material factors considered in selection.

It is also understood that changing circumstances, including marketing strategy, program availability and other factors, will require that programming identified in the Franchisee's application pursuant to Section 5.50.504, above, will be changed from time to time during the term of the franchise.

Therefore, a Franchisee shall be authorized to alter the allocation of channels to Tiers of Service and home educational and entertainment programming from time to time during the term of the franchise from that identified in its application and provided at the times defined by Subparagraphs "b", "(c)" and "d" of Section 5.50.410 in Article 4-b; provided that no such change shall materially reduce or eliminate programming of the nature, extent, volume or quality identified in the application or provided at the above times or materially alter the hierarchy or program relationships identified by the application or provided at the above times. A Franchisee shall be authorized to move particular premium services from one Tier of Service to another during the term of a franchise if with respect to a specifically

identified premium service, the application clearly shows that the Franchisee has placed the premium service in a particular Tier only for purposes of illustration, and reserves the right, in its sole discretion, to place the premium service in any Tier which it elects from time to time during the term of the franchise.

5.50.510 ARBITRATION. If at any time the Board of Directors of the Cable Television Commission asserts that a Franchisee has violated the provisions of Section 5.50.508, above, it shall be authorized to mail to the Franchisee written notice of its demand for arbitration. The notice shall specify the particulars underlying the Board's assertions.

If arbitration is requested, the arbitration panel shall be selected, the hearing scheduled within the time prescribed, notice given, the hearing conducted, decision made and costs divided in the manner prescribed by Sections 5.50.830 through 5.50.840, inclusive, in Article 5-b of Sub-Chapter 5. The discovery provisions of the California Arbitration Act (Code of Civil Procedure, Section 1280 et seq.) shall be applicable to arbitration proceedings under this Section. The questions which may be submitted to the arbitration panel and jurisdiction of the arbitration panel shall be limited to the following:

- a. The interpretation of the provisions of the Franchise Documents solely in relation to the decision required by Subparagraph "b", below;
- b. Determination of whether the Franchisee has materially reduced or eliminated programming of the nature, extent, volume or quality identified in its application or provided at the times defined by Subparagraphs "b", "c" or "d" of Section 5.50.410 in Article 4-b, or materially altered the programming relationships between Tiers of Service identified by the application or provided at the above times; and
- c. In the event of an affirmative determination under Subparagraph "b", above, the remedy, which may include, but is not limited to, the re-allocation of channels among Tiers of Service, the re-allocation of programming among Tiers of Service, increases of particular types of programming or reinstatement of terminated programming.

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 grounds set forth in Section 1286.2 of the Code of Civil Procedure.

5.50.512 CABLE TELEVISION SERVICES. No home educational entertainment service provided through a Cable Television 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 Cable Television Commission or any other public authority to establish bans upon services in advance of the offering thereof, and may be invoked solely pursuant to the following procedure.

If the Board of Directors of the Cable Television Commission determines that there is reason to believe that a particular service provided through a Cable Television 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 of provision subject to the determination shall be mailed to the Franchisee not later than thirty (30) days in advance of the hearing. Notice of the hearing shall be given in the manner prescribed by Section 5.50.024 in Sub-Chapter 1. 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 this state.

5.50.514 SUBSCRIBER ANTENNAS. No Franchisee shall remove or offer to remove any potential or existing Subscriber antenna, or provide any inducement for removal as a condition respecton the provision of service.

5.50.516 ANTI-COMPETITIVE PRACTICES. No franchise issued pursuant to the provisions of this Chapter shall be deemed to expressly or impliedly authorize the Franchisee to utilize its Cable Television 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 Unites States or State of California. Nor shall any Franchisee, 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 Franchisee by any party who alleges injury as a result of an alleged violation thereof.

Each Franchisee shall hold harmless, indemnify and defend the County, Cities and Cable Television Commission, and their 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 Franchisee the allegation of which would constitute a violation of the provisions of this Section.

5.50.518 POST FRANCHISE SERVICE. In the event the Cable Television Commission fails to renew a franchise, a franchise is cancelled in advance of the expiration of its term, or a new operator succeeds to the franchise by assignment or otherwise, the preceding Franchisee shall, without compensation, cooperate with the Cable Television Commission, new operator or new Franchisee 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.

Upon written notice mailed by the Commission to the Franchisee for the purpose of insuring continuity of service to Subscribers and Users, a Franchisee, without compensation or other special consideration, shall operate the Cable Television System during the period subsequent to the termination of the franchise and shall repair and maintain the System, conduct the business associated with operation of the System, and provide uninterrupted services during the post franchise period during such time as is requested by the Commission pursuant to the terms and conditions of the Franchise Documents for the franchise which has expired or terminated. During such period, the Franchisee shall be entitled to revenues, profits and shall be solely responsible for any operating losses; provided that franchise fees prescribed pursuant to Article 4-d shall be payable during said period.

5.50.520 AUDIO AND VIDEO QUALITY. Each Franchisee shall furnish to its Subscribers, Users and other customers all services through a Cable Television System at the best possible signals available under the circumstances existing at the time, to the satisfaction of the Cable Television Commission, and shall provide quality reception of Basic Service and other services described pursuant to Section 5.50.504, above, to each Subscriber so that both sound and picture are produced free from visible and audible distortion and ghost images on standard television receivers in good repair.

No Franchisee shall permit its Cable Television System to interfere with television reception of persons not served by the Franchisee. Nor shall any System interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the Sacramento Community.

5.50.522 CONTINUITY OF QUALITY. Each Franchisee shall continue throughout the term of the franchise to maintain the technical standards and quality of service set forth in the Franchise Documents for that franchise.

5.50.524 MAINTENANCE AND REPAIR. During the term of each franchise, the Franchisee 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.

5.50.526 OFFICE - SERVICE. Each Franchisee shall maintain at least one business office and repair center within the Sacramento Community. The business office shall be open at least during the hours of 9:00 a.m., through 5:00 p.m., Mondays through Fridays, excepting legal holidays. Staffing shall be maintained to provide repair services at least during the hours 9:00 a.m., through 5:00 p.m., seven (7) days a week, legal holidays other than Saturdays and Sundays excepted. Capacity shall be maintained to receive and record service calls for maintenance and repairs seven (7) days per week, twenty-four hours per day, including legal holidays.

The business office and repair center shall be reachable by local toll-free telephone, and the telephone number or numbers shall be listed in all directories published by all telephone companies containing telephone numbers within the Sacramento Community.

Each Franchisee shall promptly respond to, investigate and resolve complaints. Necessary maintenance or repairs shall be made expeditiously, permitting as little interruption of service as possible. No direct charge shall be made to subscribers for service calls or for repairs which do not result from damage caused by subscribers.

5.50.528 CONTINUITY OF SERVICE. Each Franchisee shall take such affirmative action as is necessary in order to avoid interruptions of services and minimize unavoidable interruptions of services.

- a. If during the term of the franchise, the Franchisee determines that it is necessary to significantly interrupt receipt by some or all subscribers or users of services as a result of the need to undertake major repairs or extend, expand, modify or otherwise improve the Cable Television System, such work shall be planned, designed and scheduled in such a manner as to avoid continuous interruption of service to the maximum extent possible, keep prolonged interruption to a minimum, and restrict interruptions to periods of least viewing intensity. Plans for such interruptions of service shall be subject to approval of the Cable Television Commission in advance of implementation.
- b. The Board of Directors of the Cable Television Commission shall be authorized to enact, and a

Franchisee shall comply with, rules which excuse subscribers from the payment of rates to a Franchisee for services provided through a Cable Television System during periods transmission or receipt of signals for such services is interrupted as a result of defects in, malfunctions of, periods required for repair of or periods required for expansion, modernization or improvement of the Cable Television System, or any part or portion thereof.

5.50.530 RECORDS. Each Franchisee shall maintain for a period of five (5) years and make available for inspection and copying by authorized representatives of the Cable Television Commission, 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 repair was made or the request otherwise resolved, and method of resolution);
- b. A permanent record of each request for subscription to Basic Service, including the name and address of the person making the request, and the date of the request;
- c. A permanent record of each written complaint received by the Franchisee pursuant to the provisions of Section 5.50.540, below, 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.

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

- a. A summary of the activities of the Franchisee during its previous fiscal year in the development and operation of the Cable Television System, including, but not limited to: a description of all services provided through the Cable Television System as of the conclusion of the fiscal year; a description of all such

services which were added or terminated during 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 Franchisee for improvement in Community Use;

- b. A specific and detailed description of all components, elements and extensions of the Cable Television System which have been installed during the Franchisee's previous fiscal year, showing the locations of all such installations, and including copies of plans, specifications and drawings showing the components, elements and extensions as installed;
- c. A statement showing the Franchisee's investments in property within the Sacramento Community during the Franchisee's previous fiscal year, including an identification of all real property or interests therein within the Sacramento Community acquired or transferred by the Franchisee and the amounts which the Franchisee paid for the acquisition of said property or interests, a description of all buildings or other improvements which the Franchisee constructed upon or added to real property within the Sacramento 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 Television System;
- d. An audited statement signed by a public or certified public accountant of all income received by the Franchisee during its previous fiscal year, including an itemization of all services provided through the Cable Television 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 Franchisee's previous fiscal year signed by a public or certified public

accountant, including a balance sheet and profit and loss statement.

A Franchisee shall prepare and furnish to the Board of Directors of the Cable Television Commission, at the times 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.

5.50.534 DISCRIMINATION IN SERVICE PROHIBITED. No Franchisee 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 lawful rates and reasonable terms and conditions established by a Franchisee or the Board of Directors of the Cable Television Commission, to receive and continue to receive services. Initial subscription to service shall not be denied to any person on the basis of the person's credit rating or for other reasons relating to economic condition.

5.50.536 FRANCHISEE'S RULES. Each Franchisee shall have authority to promulgate rules and conditions governing the conduct of its business. No such rules or regulations shall conflict with the Franchise Documents applicable to the franchise, the provisions of Federal or State statutes or regulations, or County or Cities' ordinances.

Such rules shall be reasonable and subject to approval as to reasonableness by the Board of Directors of the Cable Television Commission, after public hearings, notice of which has been given in the manner prescribed by Section 5.50.024 in Sub-Chapter 1, above, and shall not conflict with Rules and Regulations enacted by the Board of Directors of the Commission.

5.50.538 PRIVACY. Each Franchisee, and its officers, agents, employees, contractors and sub-contractors, 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 Franchisee 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 Franchisee 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 Fran-

chisee 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 Inter-Active Services shall not be construed to be "tapping" or "monitoring" under this sub-paragraph.

- b. The Franchisee 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 sub-paragraph 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 Franchisee. 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 Franchisee shall not make such written consent a condition precedent to receipt by a Subscriber of non-interactive service. The provisions of this sub-paragraph 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, convertor, 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 a subsequent owner or tenant, the Franchisee shall remove forthwith all of the equipment and promptly restore the property to its original condition. The Franchisee

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 Franchisee 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 Franchisee shall, upon request, provide lists of names and addresses of its subscribers to authorized representatives of the Cable Television Commission when the Board of Directors of the Commission deems such information necessary for performance of the regulatory functions of the Commission. Names and addresses of Subscribers within the possession of the Commission shall not be subject to public inspection or review.
- e. A Franchisee 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 Franchisee 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 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 Franchisee shall supervise and monitor all polls in which responses are received through the Cable Television 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 Franchisee shall not tabulate any test results, nor permit the use of the System for 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.

5.50.540 COMPLAINTS. The Cable Television Commission and each Franchisee 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 re-connected to a Cable Television System and at least annually as respects continuing subscriptions each Franchisee shall by appropriate means, such as card or brochure, furnish information concerning the opportunity to make complaints, including the names, addresses and telephone numbers of the representatives designated by the Franchisee and Commission.

Each Franchisee shall make available for inspection and copying, all records relating to complaints, and make such other information available to the Commission's representative as necessary to permit a complete investigation of complaints by the representative.

5.50.542 EVALUATION SESSIONS. Upon request by either a Franchisee or the Cable Television Commission and, in any event, not less frequently than thirty (30) calendar days following the third, sixth, ninth and twelfth years' anniversary dates following the date of filing of the certificate of acceptance of each franchise, the Franchisee and the Commission shall conduct evaluation sessions. The evaluation sessions shall be conducted during public hearings held by the Board of Directors or an advisory or other committee appointed by the Board of Directors of the Commission, notice of which has been given in the manner prescribed by Section 5.50.024 in Sub-chapter 1, above. Topics discussed at such sessions may include service rate structures, franchise fees, free and discounted services, application of new technologies, System performance, services provided, programming offered, customers complaints, privacy of Franchisee or Commission rules and regulations; and shall include any topic which the Franchisee, the Commission or members of the public request be discussed.

5.50.544 STANDARDS FOR SYSTEM QUALITY. After public hearings notice of which is given in the manner prescribed by Section 5.50.024 in Sub-Chapter 1, the Board of Directors of the Cable Television Commission 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 Franchisee 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 Franchise Documents.

5.50.546 TESTING AND IMPROVEMENT OF SYSTEM. When the Board of Directors of the Cable Television Commission finds that complaints from Subscribers or other factors cast doubt upon the reliability or quality of service, the Board of Directors shall have the right to order a Franchisee to test, analyze and report upon the performance of the Cable Television System. Such tests shall be conducted at the sole expense of the Franchisee. The Board of Directors may require that the tests be supervised by an engineer selected by the Board and compensated by the Franchisee who signs all test records and provides an independent report or advice to the Board. Within forty-five (45) calendar days following the date on which an order requiring the tests is mailed to the Franchisee, the Franchisee shall file with the Clerk of the Board of Directors a report which identifies the System component or components tested, describes the equipment used and procedures employed in testing, and explains the nature, extent and cost of feasible alternative methods of correcting any deficiencies revealed.

If after a public hearing notice of which has been given in the manner prescribed by Section 5.50.024 in Sub-Chapter 1, above, the Board of Directors of the Commission finds that a Franchisee has failed to comply with or maintain the technical standards or quality of service prescribed pursuant to Section 5.50.544, above, or otherwise set forth in the Franchise Documents for that franchise, the Board of Directors may order the Franchisee to make specifically enumerated repairs of or improvements in the System or changes in the maintenance, repair or operation of the System. The Franchisee 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 repair or improvement is mailed to the Franchisee.

5.50.548 AFFIRMATIVE ACTION. No Franchisee shall discriminate in employment or selection of contractors or sub-contractors on the basis of race, color, religion, national origin or sex (including marital status). Each Franchisee 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 and Cities. Each Franchisee shall establish as objectives the employment of a work force and retention of contractors and sub-contractors based upon merit and achievement of a racial balance within its work force and among its contractors and sub-contractors consistent with that which pertains within the residential population of the Sacramento Community.

5.50.550 COMMUNITY USE. Whether or not a Franchisee has proposed Community Use Programming pursuant to the provisions of Sections 5.50.332 through 5.50.340 in Article 4-a, a Franchisee shall make studio facilities, channel capacity, and viewing time

available for Community Use Programming without charge, and personnel resources, materials and supplies, and other resources available at charges which do not exceed actual cost for the planning, production and broadcast for such Programming.

The Board of Directors of the Cable Television Commission shall be empowered to enter into contracts with the Franchisee, an independent body established to oversee Community Use Programming pursuant to Subparagraph "b" of Section 5.50.334, or community organizations or entities, public agencies or others which provide for or for the promotion of Community Use Programming or the funding by the Commission of the costs thereof.

The obligations imposed upon a Franchisee by the provisions of this Section are independent of and in addition to any which the Franchisee may assume pursuant to the provisions of Sections 5.50.332 through 5.50.340 in Article 4-a.

5.50.552 COMMISSION POWERS. Except as otherwise expressly provided in this Chapter, the Board of Directors of the Cable Television Commission shall be authorized to regulate all Cable Television System operations and services provided by a Franchisee for the purpose of promoting and protecting the public convenience, health, safety and welfare. The Board of Directors of the Commission may exercise regulatory powers conferred herein by the enactment, from time to time, of rules and regulations, after a public hearing by the Board or an advisory committee appointed by the Board, notice of which is given in the manner prescribed by Section 5.50.024 in Sub-Chapter 1, above. The rule making powers of the Board of Directors shall include, but not be limited to, the authority to interpret, clarify, make specific and apply the provisions of Section 5.50.500 through this Section, inclusive, and to enact rules and regulations which impose specific duties or prohibitions for the purpose of implementing the duties, responsibilities and restrictions set forth in said Sections. Each Franchisee shall comply with all such rules and regulations.

ARTICLE 4-d

FRANCHISE FEES - RATES

5.50.600 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 issuance of franchises under this Chapter and promoting, assisting and financing Community Use Programming and other cable services of a public character, each Franchisee shall pay franchise fees in the amount prescribed by Section 5.50.602, below. Each Franchisee shall cooperate with the Cable Television Commission in filing with the FCC and supporting a waiver request permitting payment of the amount prescribed by Section 5.50.602, below.

5.50.602 AMOUNT AND PAYMENT OF FRANCHISE FEES. During the term of each franchise, each Franchisee shall pay to the Cable Television Commission an amount equal to five (5%) percent per year of the Franchisee's annual Gross Revenues.

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, respectively, June 30, September 30, December 31, and March 31. Not later than the date of each payment, each Franchisee shall file with the Clerk of the Board of Directors of the Cable Television Commission and with the Governing Bodies of the County and Cities a written statement signed under penalty of perjury by an officer of the Franchisee which identifies in detail the sources and amounts of Gross Revenues received by a Franchisee 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 Commission may have for further or additional sums payable under the provisions of this Section.

5.50.604 MINIMUM ADVANCE PAYMENT. From and after the date of filing of a certificate of acceptance of a franchise pursuant to the provisions of Section 5.50.220 in Sub-Chapter 3, above, the Franchisee shall pay to the Cable Television Commission an annual amount equal to the lesser of the following: (i) one hundred twenty (120%) percent times each annual budget of the Commission; or (ii) a minimum annual amount of Three Hundred Twenty-Five Thousand Dollars (\$325,000). Said annual amount shall be paid by the Franchisee in equal quarterly installments (prorated for the first quarter if a franchise is issued in the middle of a quarter) at the times and for the periods prescribed by Section 5.50.602, above. At the commencement of the first full fiscal year following issuance of a franchise and at the commencement of each fiscal year thereafter, said minimum annual amount of Three Hundred Twenty-Five Thousand

Dollars (\$325,000) shall be increased by a percentage equal to the annual percentage increase in the Consumer Price Index for all urban consumers published by the United States Department of Labor for the San Francisco-Oakland Bay Area for the twelve month period ending June 30 immediately preceding the commencement of the fiscal year for which adjustment is to be made.

At such time as annual franchise fees due to the Commission pursuant to the provisions of Section 5.50.602, above, shall exceed the annual sum payable under this Section, the amounts previously paid to the Commission pursuant to the provisions of this Section which have exceeded annual amounts otherwise owing under Section 5.50.602, above, shall be credited against the franchise fee in an amount not to exceed twenty (20%) percent of the total franchise fee payment each year until the entire amount advanced to the Commission is accounted for; provided that in no event shall such credits be used to reduce actual payments to the Commission below the minimum amount specified above; provided further that at no time during the term of a franchise shall the amount payable by a Franchisee be lower than prescribed by this Section; and provided further, that in no event shall the Commission, County or Cities become or be liable to the Franchisee for payments made pursuant to the provisions of this Section.

The purpose of this Section is to provide operating capital with which to defray the costs of regulation and other operations incurred by the Cable Television Commission, County and Cities during any period in which the Franchisee's Gross Revenues are too low to provide adequate funds from franchise fees to finance such functions.

5.50.606 FUTURE LAWS. Neither the County nor Cities have or expect in the foreseeable future to receive sufficient funds with which to defray the costs of administering and regulating cable television franchises within the Sacramento Community. The ability to finance such costs through franchise fees pursuant to the provisions of Sections 5.50.602 and 5.50.604, above, constitutes a material inducement to initiate a cable television program within the Sacramento Community, because neither the County nor Cities would 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 television program.

Therefore, should any future law or regulation limit or prevent the Cable Television Commission from imposing a franchise fee in the amount provided for herein, each Franchisee shall nevertheless pay to the Commission the same amounts at the same times as are prescribed by Sections 5.50.602 and 5.50.604, above. Each Franchisee shall make a good faith effort to obtain any possible waiver or permission to pay the full amounts pro-

vided for herein, and, to the extent such future law or regulation permits a Franchisee discretion to make the limitation or prohibition applicable or inapplicable, each Franchisee shall elect to make the limitation or prohibition inapplicable.

The failure of the Commission to receive the fees prescribed by this Article shall be deemed to constitute a substantial and material failure to comply with the Franchise Documents within the meaning of Section 5.50.050 in Sub-Chapter 1, above.

5.50.608 AUDITING AND FINANCIAL RECORDS. The Auditor of the Cable Television Commission may, from time-to-time during the term of a franchise prescribe standards governing the nature, extent and type of accounting system and accounting procedures utilized by a Franchisee and require changes in accounting standards or procedures utilized by a Franchisee, 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 of Directors of the Commission, and shall be mailed to the Franchisee to whom directed. A Franchisee shall promptly comply with all such standards.

During the term of each franchise, the Cable Television Commission may, not more frequently than once each year, conduct an audit of the books, records and accounts of the Franchisee for the purpose of determining whether the Franchisee has paid franchisee fees in the amounts prescribed by Section 5.50.602, above. The audit may be conducted by the Auditor of the Commission or by an independent certified public accounting firm retained by the Commission, and shall be conducted at the sole expense of the Commission. 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 Directors of the Commission, and mailed to the County, Cities and Franchisee. Notwithstanding the foregoing, the Commission shall conduct such an audit at any time, if requested to do so by the Governing Body of the County or any of the Cities. The cost of such an audit so requested shall be borne by and at the sole expense of the County or any of the Cities making the request, and the cost shall be paid within thirty (30) calendar days following receipt of billing therefore by the Commission. The report of the audit shall be filed and mailed as prescribed above.

At any time during the term of a franchise, the Cable Television Commission may, through its Auditor or a certified public accounting firm which it retains, and at its sole expense, conduct an audit of the books, records and accounts of the Franchisee for the purpose of identifying any information which the Board of Directors of the Commission 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 Directors of the Commission, and mailed to the County, Cities and Franchisee. The Franchisee shall comply with any recommendations or directives set forth in such report respecting changes in its accounting system.

Each Franchisee shall make available for inspection by authorized representatives of the Cable Television Commission, 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.

5.50.610 DELINQUENT FEES - LIMITATIONS - DAMAGES. The period of limitation for recovery of any franchise fees payable pursuant to the provisions of Sections 5.50.602 or 5.50.604, above, shall be five years from the date on which payment by the Franchisee is due. Unless within five years from said date, the Cable Television Commission initiates recovery pursuant to the provisions of Section 5.50.612, below, 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 above prescribed, a ten (10%) percent per annum penalty shall be paid on all delinquent franchisee fees in recognition of the fact that fluctuating interest rates on borrowed funds makes it impossible to establish a reliable interest rate standard as a measure of damage for delinquency in the payment of franchise fees, and other elements of damage resulting from delinquency, such as the inadequacy of revenue with which to adequately administer and enforce the franchise, arising out of such delinquency are subjective and impossible to estimate.

5.50.612 DELINQUENT FEES - ARBITRATION. In the event a Franchisee fails to pay franchise fees pursuant to Sections 5.50.602 or 5.50.604, above, or the Board of Directors of the Commission determines that a Franchisee has paid franchisee fees in a lower amount or amounts than prescribed, written notice thereof shall be mailed to the Franchisee. 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.

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

Within thirty (30) calendar days following the date of mailing of such notice, the Franchisee may, alternatively, file a written request for arbitration with the Clerk of the Board of Directors of the Commission objecting to payment, and specifically identifying why objection is made and wherein the Franchisee disagrees with the determination. At the time of filing such a request for arbitration, the Franchisee may deposit with the Commission, under protest, any amount, including interest and penalties, which the Franchisee estimates to be in dispute. Any such deposit shall be accompanied by a written statement by the Franchisee 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 as prescribed by Section 5.50.610, above, on the amount deposited shall terminate, and no such interest or penalties on such amount shall accrue subsequent to the date of 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 Franchisee, such amount, without interest, shall be credited against and reduce the amount of franchise fees which become owing by the Franchisee subsequent to the date of such final determination; provided that no such future payment shall be reduced as such a credit by an amount greater than ten (10%) per cent of the franchise fee payment otherwise owing; and provided further, that in no event shall the Commission, County or Cities become or be liable to the Franchisee for reimbursement of any portion of an amount so deposited under protest except as a credit against any future franchise fees which become owing.

If the notice to the Franchisee by the Commission 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 Franchisee requests arbitration within the time and in the manner prescribed above.

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

If arbitration is requested, the arbitration panel shall be selected, the hearing scheduled within the time prescribed, notice given, the hearing conducted, decision made and costs divided in the manner prescribed by Sections 5.50.830 through 5.50.840, inclusive of Article 5-b of Sub-Chapter 5 below. The discovery provisions of the California Arbitration Act (Code

of Civil Procedure, Section 1280 et seq.) shall be applicable to arbitration proceedings under this Section. The questions which may be submitted to the arbitration panel and jurisdiction of the arbitration panel shall be limited to the following:

a. The interpretation of the provisions of the Franchise Documents solely in relation to the decision required by Subparagraph "b", below, and

b. The amount, if any, owing by the Franchisee.

The Franchisee 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 grounds set forth in Section 1286.2 of the Code of Civil Procedure.

5.50.614 INCREASE IN FRANCHISEE FEES - ARBITRATION. The amount of the franchise fees prescribed by Section 5.50.602, above, has been established pursuant to limitations set forth in State law (California Government Code, Section 53066) and regulations of the FCC (47 C.F.R. 76.31).

In the event the above described limitations upon the amount of franchise fees should, during the term of any franchise issued pursuant to the provisions of this Chapter, be increased or eliminated, the Franchisee, upon request by the Commission, shall enter into negotiations with the Cable Television Commission for the purpose of formulating a mutually agreeable increase in the franchise fees prescribed by Section 5.50.602, above.

Any agreement relating to such an increase shall be embodied in a written contract between the Commission and Franchisee, which shall be deemed to amend Section 5.50.602, above, respecting the amount of the fees. If within ninety (90) calendar days following the date of request by the Commission for negotiations, mutual agreement has not been reached respecting an amendment of the provisions of Section 5.50.602, above, increasing the fees, the Board of Directors of the Commission may cause written notice of its request to arbitrate to be mailed to each concerned Franchisee and the County and Cities. 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 Commission, County and Cities are incurring or desire to incur in administering the franchise or franchises and promoting, assisting and regulating the various types of Access use.

The arbitration panel shall be selected, the hearing scheduled within the time prescribed, notice given, the hearing

conducted, decision made and costs divided in the manner prescribed by Sections 5.50.830 through 5.50.840, inclusive, in Article 5-b of Sub-Chapter 5. Parties to the arbitration proceeding may include each Franchisee who would be affected by an amendment of Section 5.50.602, above, the Commission, the County, and the Cities. The questions which may be submitted to the arbitration panel and jurisdiction of the panel shall be limited to:

a. The interpretation of the provisions of the Franchise Documents solely in relation to the determination required by Subdivision "b" below; and

b. The amount, if any, by which the franchise fees prescribed by Section 5.50.602, above, may be increased.

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 Commission, County and Cities of administering each franchise issued pursuant to the provisions of this Chapter and promoting, assisting and financing any types of Community Use proposed pursuant to the provisions of Sections 5.50.332 through 5.50.340 in Article 4-a or provided pursuant to Section 5.50.548 in Article 4-c, provided that the annual franchisee fee shall under no circumstances exceed ten (10%) percent per year of a Franchisee's annual gross revenues from all sources attributable to the operations and enterprises of the Franchisee within its franchise area. In the event more than one (1) franchise is issued pursuant to the provisions of this Chapter, the arbitration panel shall establish such an amount with respect to each Franchisee. Any increase or increases ordered by the arbitration panel shall be deemed to amend the provisions of Section 5.50.602, above, respecting the amount of the fees. The County and Cities shall be authorized to amend Section 5.50.602, above, by increasing the franchise fees by any amounts authorized under the decision of the arbitration panel.

Negotiations and arbitration proceedings pursuant to this Section may be initiated by the Commission 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 law.

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 grounds set forth in Section 1286.2 of the Code of Civil Procedure.

5.50.616 RATE PROPOSALS. The purpose of this Section through Section 5.50.624, below, is to permit applicants for a franchise to propose the provision of minimal service during the term of a franchise at rates and charges designed to insure that all residents within the Franchise Area, including the economically underprivileged, will have the opportunity to benefit from the educational, recreational and other advantages made available by the Cable Television System.

An applicant who chooses not to make such a proposal shall not be disqualified from bidding or consideration in selection of the Franchisee. 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 award of a franchise will be based.

5.50.618 APPLICATION CONTENTS. Each applicant for a franchise may state in its application the rates and charges at which various services on the Subscriber Network will be offered when service is first made available under the franchise.

In addition, an applicant may (but is not required to) propose that the rates and charges for the provision of Basic Service be maintained during the term of the franchise at levels not greater than those described by Sections 5.50.622 and 5.50.624, below. An applicant desiring to make such a proposal shall state in its application, for each Service Area applicable to the franchise, the amounts and types of all rates and charges, including deposits, of whatever kind or nature to be applicable to the provision of Basic Service, including, but not limited to, rates and charges for connection, installation, reinstatement and the monthly subscription or service charge; and in relation thereto refer to and incorporate by express reference into the application the provision of both Sections 5.50.622 and 5.50.624, below. The amounts and types of any deposits required in relation to connection, installation, reinstatement subscription or otherwise shall be stated separately. The acquisition or rental costs of converters required to provide Basic Service, if any, shall not be separately stated and shall be included in the monthly subscription or service charge for Basic Service, if any. An applicant desiring to make different rates and charges for Basic Service applicable to single family residential and commercial or certain types of commercial uses, shall separately state the rates and charges according to categories of uses with respect to which differences will apply. As used in this Section the terms "commercial uses" shall include, in addition to other types of business enterprises,

hotels, motels, apartments, condominiums, other multiple family residential units, and areas served by master antenna systems.

5.50.620 COMPLIANCE WITH PROPOSAL. A Franchisee who has referred to and incorporated in its application the provisions of Sections 5.50.622 and 5.50.624, below, shall comply with the provisions of said Sections during the term of the franchise. Such a Franchisee shall not during the term of the franchise elect or take any other type of action to exempt itself from the requirements of said Sections or elect any rate increase or other limitations inconsistent with the provisions of said Sections, whether under Section 53066.1 of the Government Code, any amendment thereof, or any other statute, regulation or law of the State of California or the United States in existence on the date this Chapter becomes effective or which may be enacted during the term of the franchise.

If a franchise is issued to an applicant who has referred to and incorporated the provisions of said Sections in its application, the receipt by such applicant at any time during the term of the franchise of rates or charges which are inconsistent with the provisions of said Sections shall be deemed to constitute a substantial and material failure to comply with the Franchise Documents within the meaning of Section 5.50.050 in Sub-Chapter 1.

5.50.622 BASIC SERVICE RATES AND CHARGES - INCREASES. The provisions of this Section shall be applicable only to a Franchisee who has referred to and incorporated the provisions hereof by reference in its application for the franchise.

There shall be no charge for the provision of Basic Service to subscribers, whether residential or commercial, except with respect to rates and charges, if any, stated in the application for the franchise and as otherwise authorized by this Section. There shall be no fee or charge to subscribers in connection with the repair or replacement of convertors, except in connection with repair or replacement required as a result of mis-use or abuse of or damage to the convertor while on the premises of the subscriber without fault by the Franchisee or its agents.

All rates and charges for Basic Service stated in the Franchisee's application, including those for connection, installation, reinstatement and the monthly subscription or service charge, shall remain in effect until the date on which the Franchisee makes Basic Service available to one hundred (100%) percent of the dwelling units within each Service Area identified by the Franchise Documents for that franchise. The date on which the Franchisee shall be deemed to have made Basic Service available to one hundred (100%) percent of the dwelling units, shall be deemed to be the date on which the Final Order of Completion is issued pursuant to the provisions of Sections 5.50.418 or 5.50.420 in Article 4-b.

Effective on the date the Franchisee is deemed to have made Basic Service available to one hundred (100%) percent of the dwelling units as prescribed above, the rates and charges for Basic Service stated in the Franchisee's application, including those for connection, installation, reinstatement and the monthly subscription or service charge or any of them, may be increased by amounts which do not individually exceed fifty (50%) percent of the increase, if any, in the Consumer Price Index for all urban consumers published by the United States Department of Labor for the San Francisco-Oakland Bay Area during the twelve calendar month period ending ninety (90) days prior to the effective date of such increases. Such rates and charges for Basic Service shall not exceed the amounts as increased in the manner herein authorized during the twelve calendar month period following the date on which the adjustments become effective.

At the conclusion of the term of the first increase as identified above, and each twelve (12) calendar months thereafter during the remainder of the term of the franchise, such rates and charges for Basic Service stated in the application, or any of them, may be increased in a like manner. In each instance, the increase in the amounts stated in the application shall not exceed fifty (50%) percent of the increase, if any, in the Consumer Price Index for all urban consumers published by the United States Department of Labor for the San Francisco-Oakland Bay Area during the twelve (12) month period ending ninety (90) days prior to the date the increase is to become effective.

In the event a Franchisee increases rates or charges pursuant to the provisions of this Section less frequently than authorized by this Section or in of any amounts lower than authorized by this Section, the provisions of this Section shall apply prospectively respecting any such increases as the limitations herein permit, and cumulative or multiple increases based upon the authorization of this Section are prohibited. For example, a Franchisee who elects to increase Basic Service rates and charges for the first time effective six (6) months following the date on which Basic Service is deemed to have been made available to one hundred (100%) percent of the dwelling units, rather than effective on the date that Basic Service is deemed to have been made available to one hundred (100%) percent of the dwelling units, shall apply the Consumer Price Index increase for the twelve (12) month period ending ninety (90) days prior to the actual effective date of the increase, rather than the date when the increase is permitted by this Section to be effective, and shall not be authorized to increase rates thereafter until the end of a twelve (12) month period following the actual date of the increase, rather than the date when the increase was permitted by this Section to become effective. A potential increase lost by failure to increase rates as authorized by this Section, may not be re-captured through its addition to future rate increases authorized hereby. If certain types of Basic Service rates are increased effective on a particular date and others are not,

though they might have been, the rates not increased may be individually increased at any time without waiting for expiration of the twelve (12) month period applicable to the types of rates actually increased.

No increase in rates or charges pursuant to this Section shall become effective until the expiration of thirty (30) days following the date on which written notice showing the types of rates or charges to be increased, the amount of the increase, the Consumer Price Index increase upon which the rate or charge increase is predicated, and the date on which such rates or charges were last increased is mailed to all existing subscribers of the Franchisee who would be affected thereby and filed with the Clerk of the Board of Directors of the Cable Television Commission.

5.50.624 DISCRIMINATORY PRACTICES. The provisions of this Section shall apply only to a Franchisee who has made reference to this Section and incorporated the provisions hereof by reference in its application for the franchise.

Except as hereinafter provided, or as otherwise expressly authorized by this Chapter, a Franchisee shall not, in its rates or charges, or in making available the services or facilities of its Cable Television System, or in its rules or regulations, or in any other respect, make or grant preference or advantages to any subscriber or user with respect to Basic Service; and such services shall be offered upon terms and conditions which are not discriminatory. A Franchisee may offer or make the following distinctions with respect to the terms or conditions of Basic Service.

- a. Rates and charges associated with Basic Service offered within a Proposed Service Area and, except as provided by Sections 5.50.424 and 5.50.426 in Article 4-b, outside of a Service Area, may differ from those associated with Basic Service offered within an Imposed Service Area and may differ from one Proposed Service Area to another. Any such differences in rates and charges between an Imposed Service Area and Proposed Service Areas or among Proposed Service Areas shall be specifically identified in the application pursuant to Section 5.50.618, above, and in the absence of such identification rates and charges set forth in the application shall apply uniformly within all Service Areas.
- b. Rates and charges associated with Basic Service offered outside of a Service Area shall, except as otherwise provided by Sections 5.50.424 and 5.50.426 in Article 4-b, be subject to review and approval

by the Board of Directors of the Cable Television Commission pursuant to the provisions of Section 5.50.446 in Article 4-b.

- c. Within a Service Area, a Franchisee may generally or within limited geographical areas offer, on a limited term basis, reduced rates or charges as part of a promotional campaign to stimulate subscriptions. The monthly subscription or service rate or charge for Basic Service shall not be eliminated or reduced for a period longer than ninety (90) calendar days during any thirty-six (36) month period for any particular occupant of the same dwelling unit, including both single family and multiple family dwelling units.
- d. A Franchisee may, in connection with the provision of Basic Service to commercial uses, as the terms "commercial uses" are defined by Section 5.50.618, above, establish charges for installation or connection (exclusive of deposits) which are either higher or lower than amounts stated in its application, or as permissibly adjusted pursuant to the provisions of Section 5.50.622, above. The amount of any such variance in such rates and charges shall be predicated upon and limited to differences in costs incurred for installation or connection with respect to particular commercial uses in relation to those estimated as set forth in the application. The sole purpose of this sub-paragraph is to permit variances in connection or installation charges for particular commercial uses based upon the circumstances specially applicable to any individual commercial use, in view of the impracticality of estimating connection or installation costs for commercial uses at the time an application is filed.
- e. A Franchisee may grant preferential rates or charges to hospitals, rest homes and prisons or detention facilities.
- f. With advance approval by the Commission a Franchisee may grant preferential rates or charges for services to the elderly, the handicapped, or the economically disadvantaged.
- g. A Franchisee may require residential subscribers to pay for each month of Basic Service in advance at the beginning of each month. Service shall not be terminated for delinquency in making a monthly advance payment earlier than fifteen (15) calendar

days following the date upon which the advance payment is due, and monthly statements to subscribers shall provide notice of the Franchisee's policy respecting termination of service for delinquency in making advance payments. With the foregoing exception, and except as otherwise expressly authorized by this Chapter, a Franchisee shall not, without advance approval by the Commission, require any other advance payment or deposit of any kind with respect to the provision of Basic Service to subscribers.

The authority vested in the Cable Television Commission by this Section shall be exercised by the Board of Directors of the Commission after public hearings conducted by the Board or an advisory committee which it designates, notice of which is given in the manner prescribed by Section 5.50.024 in Sub-Chapter 1, above. The determinations by the Board of Directors shall be final, binding, conclusive and not subject to review or reversal by any authority.

ARTICLE 4-e

SECURITY - INDEMNIFICATION - INSURANCE

5.50.700 PERFORMANCE BOND. Each Franchisee shall file with the certificate of acceptance which it files pursuant to the provisions of Section 5.50.220 in Sub-Chapter 3, above, and at all times thereafter maintain in full force and effect, an acceptable corporate surety bond in the amount of two million five hundred thousand dollars (\$2,500,000) effective for the entire term of the franchise, and conditioned that in the event the Franchisee 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, Cities, or Cable Television Commission 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 Television System, and compensation, and cost of removal or abandonment of property and repair of streets and other public or private improvements, up to the full amount of the bond; said condition to be a continuing obligation for the duration of the franchise and thereafter until the Franchisee 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 Franchisee or to limit the liability of the Franchisee 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 of Directors of the Cable Television Commission.

The form of the bond and surety shall be subject to the approval by the County's Risk Manager.

On or after the date of issuance of the Final Order of Completion pursuant to the provisions of Section 5.50.418 or 5.50.420 in Article 4-b, the Board of Directors of the Commission may, in its sole discretion, reduce, for the remainder of the term of the franchise, the required amount of the bond to a sum not less than one million dollars (\$1,000,000).

5.50.702 SECURITY DEPOSIT. Each Franchisee shall file with the certificate of acceptance which it files pursuant to the provisions of Section 5.50.220 in Sub-Chapter 3, above, a certified or cashier's check in the amount of two

hundred fifty thousand dollars (\$250,000) made payable to the order of the Cable Television Commission. The check shall be cashed and the proceeds retained by the Treasurer of the Commission in a special account. Said sum shall be maintained by the Treasurer as security for the faithful performance by the Franchisee of all of 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 Television System, and compensation and costs of removal of abandoned property, and repair of streets, and other public or private improvements incurred as a result of the failure of the Franchisee 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 5.50.808 in Article 5-b of Sub-Chapter 5, below. Interest earned upon the sum shall accrue to the credit of the account.

Within ten (10) calendar days after notice is mailed to the Franchisee that any amount has been withdrawn from the special account, the Franchisee shall deposit with the Treasurer of the Commission such sum as may be necessary to restore the account to its required amount, including any interest which may have accrued and been credited to the account.

On the date of issuance of the Final Order of Completion pursuant to Sections 5.50.418 or 5.50.420 in Article 4-b, the Commission shall reduce the amount of said security deposit by paying so much thereof to the Franchisee as will reduce the amount of said deposit retained to one hundred thousand dollars (\$100,000), unless on said date there are scheduled or pending or intended to be scheduled or pending proceedings relating to the alleged violation by the Franchisee of any of the provisions of Section 5.50.410 in Article 4-b. 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, said deposit shall be maintained at one hundred thousand dollars (\$100,000) plus interest accumulations credited thereto during the remainder of the term of the franchise.

Upon termination of the franchise and 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 Franchisee.

The rights reserved with respect to the special account are in addition to all other rights of the County, Cities and Cable Television Commission, 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, Cities, or Commission may have.

5.50.704 INDEMNIFICATION BY FRANCHISEE. Each Franchisee shall, at its sole expense, fully indemnify, defend and hold harmless the County, the Cities, the Cable Television Commission, 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:

- a. 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 Franchisee or its officers, agents, employees, or contractors or to which the Franchisee's or its officers, agents, employees or contractors acts or omissions in any way contribute;
- b. 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
- c. Arising out of or alleged to arise out of Franchisee'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 Franchisee in its business.

The indemnification and hold harmless provisions of this Section shall include those prescribed by Section 5.50.516 in Article 4-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 Franchisee's sole expense. Such participation shall not under any circumstances relieve the Franchisee from its duty of defense against liability or of paying any judgment entered against such party.

5.50.706 FRANCHISEES INSURANCE. As a part of the indemnification provided by Section 5.50.704, above, but without limiting the foregoing, each Franchisee shall file with the certificate of acceptance which it files pursuant to the provisions of Section 5.50.220 in Sub-Chapter 3, and at all times thereafter maintain 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, contractual liability, automobile liability (owned; non-owned and hired automobiles), workers compensation and employer liability. The policy or policies shall name as primary insured the County, the Cities, the Cable Television Commission, and in their capacity as such, their officers, agents and employees. The Franchisee and said County, Cities, Commission and officers, agents and employees shall be named as co-insureds, 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 dollars (\$5,000,000) per occurrence. The insurance policy or policies shall contain contractual liability insurance naming the Franchise Documents, and shall insure against the types of liabilities covered by the indemnification and hold harmless provisions of Section 5.50.704.

The insurer or insurers shall be authorized to write the required insurance, approved by the Insurance Commissioner of the State of California, and subject to the approval of the County's Risk Manager. The form and substance of the policy or policies of insurance shall also be subject to approval by the County's Risk Manager.

The policy or policies of insurance shall be maintained by the Franchisee in full force and effect during the entire term of the franchise. 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 non-payment or premium, or otherwise, and whether at the request of the Franchisee or for other reasons, except after thirty (30) calendar days advance written notice mailed by the insurer to the Clerk of the Board of Directors of the Sacramento Metropolitan Cable Television Commission, and that such notice shall be transmitted postage prepaid, with return receipt requested, and addressed to the Clerk at 700 H Street, Room 2450, Sacramento, California, 95814.

5.50.708 WAIVER OF SUBROGATION. Each Franchisee 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, Cities, Cable Television Commission and in their capacities as such the officers, agents and employees thereof in connection with any damage covered by any policy. The County, Cities, Commission and in their capacities as such the officers, agents and employees thereof shall not be liable to the Franchisee for any damage caused by any of the risks insured against under an insurance policy obtained by the Franchisee.

5.50.710 COMMISSION'S INDEMNIFICATION. The Cable Television Commission shall, at its sole expense, fully indemnify, defend and hold harmless the County, the Cities, and in

their capacities as such the officers, agents and employees of the County and Cities from and against any and all claims, suits, actions, liability and judgments for damages for actual or alleged injury to persons or property in any way arising out of or through or alleged to arise out of or through the acts or omissions of the Commission or its officers, agents or employees, or to which the Commission's or its officers, agents or employees acts or omissions in any way contribute.

5.50.712 COMMISSION'S INSURANCE. As a part of the indemnification provided by Section 5.50.710, above, but without limiting the foregoing, the Cable Television Commission shall file with the clerk of each of the Governing Bodies of the County and Cities not later than one hundred twenty (120) calendar days after the initial CATV Franchise is issued and at all times thereafter maintain in full force and effect at its sole expense, a policy of liability insurance naming as primary insureds the County, the Cities, and in their capacities as such, their officers, agents and employees in the minimum single limit amount of five million dollars (\$5,000,000) per occurrence insuring against the types of liabilities covered by the indemnification and hold harmless provisions of Section 5.50.710, above. The insurance policy shall contain a contractual endorsement clause naming the Franchise Documents. The Commission, County, Cities and in their capacities as such the officers, agents and employees thereof shall be named as co-insureds, and the policy or policies shall contain cross-liability endorsements.

The Commission shall cause the policy or policies to provide that the insurance company waives all right of recovery by way of subrogation against any Franchise in connection with any damage covered by the policy or policies. No Franchisee shall be liable to the County, Cities or Commission for any damage by any of the risks insured against under the policy or policies.

The insuror shall be authorized to write the required insurance, and approved by the Insurance Commissioner of the State of California.

The policy of insurance shall be maintained by the Commission in full force and effect during the period of the Commission's existence. The policy of insurance shall contain a statement on its face that the insuror will not cancel the policy or fail to renew the policy, whether for non-payment of premium, at the request of the Commission or for other reasons, except after thirty (30) calendar days advance written notice mailed by the insuror to the clerk of each of the Governing Bodies of the County and Cities.

SUB-CHAPTER 5

ASSIGNMENTS - REMEDIES

ARTICLE 5-a

ASSIGNMENTS

5.50.750 TRANSFERS PROHIBITED. Except as provided by either Section 5.50.752 or 5.50.754, below, no part or element of a Cable Television System or any other real or personal property which is mandatorily included by Section 5.50.242 in Sub-Chapter 3 within a purchase which the Cable Television Commission 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 Sections 5.50.752 or 5.50.754, below, a franchise 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.

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.

5.50.752 ENCUMBRANCES FOR FINANCING PURPOSES. Upon written application by a Franchisee, the lender, and any and all signa-tors or guarantors upon the proposed loan, the Board of Directors of the Cable Television Commission may, in its sole discretion, from time to time, 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 5.50.242 in Sub-Chapter 3 within a purchase which the Commission 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 of capital or constituting a purchase money security interest. Such infor-mation 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 of Directors 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 expenditure or disposition of such capital;
- b. The terms and conditions of 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. Subordination of the encumbrance to the rights of the County, Cities and Commission under the franchise, consistent with the terms and conditions of the encumbrancy approved by the Board; and
- f. 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 whose names the franchise is issued by the resolution offering the franchise and certificate of acceptance.

5.50.754 TRANSFERS OF SYSTEM OR FRANCHISE. The Board of Directors of the Cable Television Commission may, pursuant to the provisions of Section 5.50.758, below, 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 5.50.242 in Sub-Chapter 3 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, Cities and Commission 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.

5.50.756 TRANSFER OF CONTROL. Every change, transfer or acquisition of control of the Franchisee or of any owner of the Franchisee who is named in the resolution offering the franchise shall render the franchise subject to cancellation by the Board

of Directors of the Cable Television Commission unless the Board of Directors consents thereto by duly adopted resolution pursuant to the provisions of Section 5.50.758, below. As used in this Section, the word "control" shall mean the acquisition of sufficient dominance to determine the operational and financial policies of the Franchisee, including disposition of its assets. A rebuttable presumption that a transfer of control has occurred shall arise upon: (i) the acquisition or accumulation by any party or association of parties of ten (10%) percent or more of the voting shares or stock of the Franchisee or named owner of the Franchisee; (ii) a change in general partners of a Franchisee or named owner of the Franchisee; or (iii) a merger or consolidation of the Franchisee or named owner of the Franchisee. The presumption is subject to rebuttal only by determination by the Board of Directors of the Commission.

5.50.758 DETERMINATION OF PROPOSED TRANSFERS. A Franchisee shall file written notice with the Clerk of the Board of Directors of the Cable Television Commission as soon as it acquires knowledge of any impending transaction or other event consent to which by the Board is required by Sections 5.50.754 or 5.50.756, above. 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.

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 acknowledgement of subordination to the rights of the County, Cities and Commission under the Franchise Documents and agreement to comply with and be bound thereby required by the provisions of Section 5.50.754, above, shall be filed with the notice.

The Franchisee shall immediately submit such additional information concerning such a transaction as the Board of Directors or other authorized representative of the Commission may request.

The Board of Directors of the Commission shall schedule a public hearing to determine whether consent required by the provisions of Sections 5.50.754 or 5.50.756, above, will be given. Notice of the hearing shall be given in the manner prescribed by Section 5.50.024 in Sub-Chapter 1, above. The hearing shall be commenced not later than sixty (60) calendar days following filing of the notice by the Franchisee pursuant to this Section. At the conclusion of the hearing the Board shall determine whether consent will be given.

In determining whether consent will be given, the Board shall consider the following factors:

- a. 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;
- b. The financial capability and capacity of the party or parties to whom the transfer is contemplated;
- c. Whether the terms, conditions or other circumstances of the transfer are likely to result in an increase in the rates or charges for services;
- d. Whether at the time of the transfer the Franchisee is in compliance with the terms, conditions and requirements of the Franchise Documents and any rules, regulations or determinations promulgated thereunder;
- e. Whether installation of the Cable Television System has been completed in the manner and within the times prescribed by Section 5.50.410 in Article 4-b of Sub-Chapter 4. In the absence of extraordinary circumstances, a transfer shall not be approved in advance of such completion.
- f. The reasons for the proposed transaction; and
- g. Whether the transactions would detrimentally affect the public.

The determination by the Board of Directors 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 above. Such consent may be given upon such express conditions relating to the above factors, including maintenance or operation of the Cable Television 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 of Directors, in its sole discretion, may order.

In the event the Board does not consent and such failure is reversed by a trial or appellate court, the Board of Directors of the Commission shall have the right, in its sole discretion, to elect to terminate the franchise and purchase the property associated therewith as defined by Section 5.50.242 in Sub-Chapter 3.

5.50.760 PURCHASE OF FRANCHISEE'S PROPERTY. Purchase of the property associated with the franchise pursuant to an election under Section 5.50.758, shall be made in accordance with

the standards, procedures and provisions set forth in Sections 5.50.240 through 5.50.266, inclusive, in Sub-Chapter 3. No compensation shall be payable by the Cable Television Commission or its assignee in relation either to the determination to terminate the franchise or purchase the property, except pursuant to and in accordance with said sections 5.50.240 through 5.50.266.

The effective date of termination of the franchise shall be the date of transfer of titles to the properties pursuant to the provisions of Section 5.50.264 in Sub-Chapter 3. In the event of an election, pursuant to said Section 5.50.264, not to purchase the properties, the franchise shall not terminate.

5.50.762 RECEIVERSHIP. The Board of Directors of the Cable Television Commission shall have the right to cancel a franchise one hundred twenty (120) calendar days after the appointment of a receiver, or trustee, to take over and conduct the business of the Franchisee, 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 one hundred twenty (120) calendar days, or unless within such one hundred twenty (120) calendar days 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, Cities and Cable Television Commission under the Franchise Documents for the franchise, and promising to comply with and be bound by the terms, conditions and requirements of the Franchise Documents and any orders, directives, rules or regulations issued thereunder.

5.50.764 RECORDING AND FILING. Each Franchisee shall execute a document in a form determined by the Cable Television Commission evidencing the Franchise Documents appropriate for recording in the office of the Sacramento County Recorder, and a Financing Statement in a form determined by the Commission for filing pursuant to the provisions of Sections 9401 through 9403, inclusive, of the California Commercial Code.

ARTICLE 5-b

REMEDIES

5.50.800 CRIMES. Violation of the provisions of Section 5.50.052 in Sub-Chapter 1, Section 5.50.206 in Sub-Chapter 3, and Section 5.50.538 in Article 4-c of Sub-Chapter 4, shall constitute a misdemeanor. With the foregoing exception, violation of the provisions of this Chapter shall not constitute a misdemeanor, infraction or other crime.

5.50.802 IMPRACTICALITY OF ASCERTAINING DAMAGES. At the time of 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 Franchisee of its obligations under the Franchise Documents as prescribed by Section 5.50.804, below. The provisions of Section 5.50.804, below, shall apply in the event of breach as liquidated damages therefor. Factors relating to the impracticality of ascertaining damages include, but are not limited to, the following:

- a. The facts that: (i) the primary damage resulting from breaches by the Franchisee of the schedules for construction and extension of the Cable Television System and provision of services prescribed by Sections 5.50.404 through 5.50.416, 5.50.422 through 5.50.430 and 5.50.446 in Article 4-b of Sub-Chapter 4, and of the duty prescribed pursuant to Section 5.50.544 in Article 4-c of Sub-Chapter 4, will be to members of the public who are denied services or denied quality or reliable services; (ii) 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; (iii) that services might be available through the Cable Television System which are both necessary and available at a substantially lower cost than alternative services, and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) termination of a franchise for such breaches and other remedies are, at best, a means of future correction, and not remedies which make the public whole for past breaches;
- b. The fact that the failure of a Franchisee to make timely reports identifying its progress in installing its Cable Television System within Services Areas will

make it difficult in ways which are not measurable for the Commission to administer the construction schedule, delay initiation of enforcement proceedings, and impede compliance with the periods allowed for construction; and

- c. The fact that the failure of a Franchisee to file timely annual reports will deny information necessary to enable the Commission 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 5.50.804, below, the actual damages for which a Franchise would be liable could greatly exceed the specified amount of liquidated damages. Therefore, the provisions of Section 5.50.804, below, are of benefit to a Franchisee.

5.50.804 LIQUIDATED DAMAGES - AMOUNT. In its sole discretion, the Board of Directors of the Cable Television Commission may assess a Franchisee and the Franchisee shall be liable for liquidated damages in the amount of one thousand dollars (\$1,000) for each calendar day on which a Franchisee is in breach and for each breach of any of the provisions of any of the following: Sections 5.50.404 through 5.50.412, 5.50.416, 5.50.422 through 5.50.430, and 5.50.446 in Article 4-b of Sub-Chapter 4, Sections 5.50.544 and 5.50.546 in Article 4-c of Sub-Chapter 4; or time limitations prescribed pursuant to Section 5.50.438 in Article 4-c of SubChapter 4. Said liquidated damage sum shall be separately applicable to each calendar day of delay in complying with the provisions of Sub-Paragraphs "a" through "d" of said Section 5.50.410, and separately applicable for each calendar day of delay in complying with any of the provisions in the last paragraph of said Section 5.50.410. Said liquidated damage amount shall be separately applicable to each instance for each calendar day of delay in extending lines pursuant to the provisions of Sections 5.50.424 or 5.50.426; provided that if more than one dwelling unit is subject to a particular extension from the boundaries of a Service Area, the total liquidated damages shall not exceed one thousand dollars (\$1,000) for each calendar day of delay. Said 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 5.50.446.

In its sole discretion, the Board of Directors of the Cable Television Commission may assess a Franchisee and the Franchisee shall be liable for liquidated damages in the amount of five hundred dollars (\$500) for each calendar day in excess of five (5) calendar days the Franchisee is in breach of any of the

provisions of any of the following: Section 5.50.414 in Article 4-b of Sub-Chapter 4, or Section 5.50.532 in Article 4-c of Sub-Chapter 4,

5.50.806 REDUCTION OF TERM. In addition to the foregoing liquidated damages, in its sole discretion, the Board of Directors of the Cable Television Commission may reduce the term of any franchise one (1) calendar month for each cumulative thirty (30) calendar days in excess of the first thirty (30) calendar days a Franchisee is in breach of any of the provisions of Subparagraph "d" or the last paragraph in Section 5.50.410 in Article 4-b in Sub-Chapter 4. The purpose of this Section is to authorize the Commission, after a Franchisee 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 Franchisee's breach on a month-to-month basis.

5.50.808 COLLECTION OF DAMAGES. The Auditor of the Cable Television Commission shall charge and transfer from the special account established pursuant to Section 5.50.702 in Article 4-e of Sub-Chapter 4, to the credit of the Commission such amounts as are assessed as liquidated damages by determinations of the Board of Directors pursuant to Section 5.50.442 in Article 4-b of Sub-Chapter 4, which are not appealed to arbitration and become final, or which are affirmed by an arbitration panel under the provisions of Section 5.50.444 in Article 4-b of Sub-Chapter 4.

With respect to breaches of any of the provisions of Sections 5.50.532, 5.50.544 or 5.50.546 in Article 4-c of Sub-Chapter 4, the Board of Directors of the Commission shall determine the amount of liquidated damages to be assessed, and mail notice thereof to the Franchisee. Such a notice may provide for assessments for breaches occurring in advance of the notice and for periods of breach subsequent to issuance of the notice pending compliance by the Franchisee. The determinations by the Board of Directors 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 mailing of the notice of the determination the Franchisee files with the Clerk of the Board of Directors of the Commission a written notice appealing the determination to arbitration pursuant to the provisions of Section 5.50.810, below. The notice of appeal shall specifically identify the grounds for the appeal. The Auditor of the Commission shall charge and transfer from the special account established pursuant to Section 5.50.702 in Article 4-e of Sub-Chapter 4, to the credit of the Commission, such amounts as are assessed as liquidated damages by determinations of the Board of Directors pursuant to this paragraph which are not appealed to arbitration and become final or which are affirmed by an arbitration panel under Section 5.50.810, below.

With respect to breaches of any of the provisions of Section 5.50.602 or 5.50.604 in Article 4-d of Sub-Chapter 4, the Auditor of the Commission shall charge and transfer from the special account established pursuant to Section 5.50.702 in Article 4-e of Sub-Chapter 4, to the credit of the Commission such amounts as are assessed as franchise fees, interests and liquidated damages by determinations of the Board of Directors pursuant to Section 5.50.612 in Article 4-d of Sub-Chapter 4, which are not appealed to arbitration and become final or which are affirmed by an arbitration panel under Section 5.50.612 in Article 4-d of Sub-Chapter 4, or such amounts of franchise fees, interests and liquidated damages as are prescribed by a judgment of a court.

The Auditor shall mail notice to the Franchisee of each transfer from the special account. The notice shall identify the amount transferred, the balance of the account after transfer (including accumulated interest), and the total amount, if any, which the Franchisee is required to pay in order to replenish the account in accordance with the requirements of Section 5.50.702 in Article 4-e of Sub-Chapter 4.

Any amounts owing by a Franchisee in excess of the current balance within the special account established pursuant to Section 5.50.702 in Article 4-e of Sub-Chapter 4, may be recovered from the surety on the performance bond filed pursuant to the provisions of Section 5.50.700 in Article 4-e of Sub-Chapter 4, above, or from the Franchisee.

5.50.810 LIQUIDATED DAMAGE ARBITRATION PROCEEDINGS. With respect to arbitration proceedings conducted pursuant to the provisions of the second paragraph in Section 5.50.808, above, the arbitration panel shall be selected, the hearing scheduled within the time prescribed, notice given, the hearing conducted, decision made and costs divided in the manner prescribed by Sections 5.50.830 through 5.50.840, inclusive, below. The questions which may be submitted to the arbitration panel and jurisdiction of the arbitration panel shall be limited to the following:

- a. The interpretation of the provisions of the Franchise Documents solely in relation to the decision required by Subparagraph "b", below; and
- b. The amount, if any, owing by the Franchisee.

The Franchisee 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 grounds set forth in Section 1286.2 of the Code of Civil Procedure.

5.50.812 ALTERNATIVE REMEDIES. Neither 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 5.50.804, above. Neither the right to assess liquidated damages nor the assessment of liquidated damages nor the right to reduce nor reduction of the term of the franchise shall be deemed to bar or otherwise limit the right of the Cable Television Commission to obtain judicial enforcement of the Franchisee's obligations by means of specific performance, injunctive relief, mandate or other remedies at law or in equity, other than monetary damages.

5.50.814 UNCOMMITTED CHANNELS. Twenty (20%) percent (rounded to the next higher whole number) of all video channels on the Subscriber Network which are practically capable of utilization and which at any time during the term of the franchise could be made operable by a Franchisee for the provision of services shall be vested within the jurisdiction and control of the Cable Television Commission, and shall not be used or subject to use by the Franchisee or any third party except pursuant to the provisions of Section 5.50.816, below.

Said channels are herein referred to as the "Uncommitted Channels". A video channel is defined as 6 MHz of bandwidth. The exact number and identification of channels or capacity of the cable or cables to be classified as "Uncommitted Channels" and subject to the restrictions of this Section and Section 5.50.816, below, shall be prescribed by or pursuant to a procedure prescribed by the resolution offering the franchise. If a Franchisee has proposed a System in which a cable for the Subscriber Network is initially inoperable, the Uncommitted Channels for that cable shall be prescribed by the Board of Directors of the Commission when the cable is made operable.

The sole purpose of this Section and Section 5.50.816, below, is to reserve Uncommitted Channels for the purpose of insuring compliance by a Franchisee with the Franchise Documents, establish an incentive to comply with the Franchise Documents, and to provide for release of such channels during the term of a franchise as compliance with the terms and conditions of the Franchise Documents is demonstrated. The Uncommitted Channels are reserved for the sole and exclusive use of the Franchisee, subject only to the terms, conditions and procedures for release to the Franchisee established by this Section and Section 5.50.816, below.

5.50.816 RELEASE OF UNCOMMITTED CHANNELS. If the actual date of completion established pursuant to the provisions of Sections 5.50.418 or 5.50.420 in Article 4-b of Sub-Chapter 4 occurs on or

before the commencement of the fifty-second (52nd) full calendar month following the date of filing of the certificate of acceptance of the franchise pursuant to the provisions of Section 5.50.220 in Sub-Chapter 3, the Board of Directors of the Cable Television Commission, without application or hearing, shall, on the date of issuance of the Final Order of Completion pursuant to the provisions of Sections 5.50.418 or 5.50.420 in Article 4-b of Sub-Chapter 4, release fifty (50%) percent (rounded down to the nearest whole number) of the Uncommitted Channels. If such actual date of completion occurs later than the commencement of the fifty-second (52nd) calendar month following the date of filing of such certificate of acceptance, the Board of Directors, without application or hearing, shall, on the date of issuance of such Final Order of Completion, release twenty-five (25%) percent (rounded down to the next lowest whole number) of such Uncommitted Channels to the Franchisee. None of the Uncommitted Channels shall be subject to release in advance of the date of issuance of the Final Order of Completion.

Upon the expiration of twelve (12) calendar months following the date of issuance of the Final Order of Completion, the Board of Directors of the Commission may, in its sole discretion, release all or any portion of the Uncommitted Channels which were not released on the date of issuance of the Final Order of Completion. The exercise by the Board of its discretion hereunder shall be based upon and limited to an appraisal of the extent to which the Franchisee has complied with the terms and conditions of the Franchise Documents during the period preceding the date of release, and whether other enforcement mechanisms within the Franchise Documents are sufficient to insure future compliance by the Franchisee with the terms and conditions of the Franchise Documents.

Notwithstanding the foregoing, at the conclusion of each of the first five (5) years following the date of issuance of the Final Order of Completion, the Board of Directors of the Commission shall release one (1) of the Uncommitted Channels to the Franchisee unless the Board makes one of the findings described below. At the conclusion of the sixth (6th) year following the date of issuance of the Final Order of Completion, the Board of Directors shall release all remaining Uncommitted Channels unless the Board makes one of the findings described below. Such releases shall be made pursuant to and after written applications verifying that the Franchisee is in compliance with the Franchise Documents and filed by the Franchisee with the Clerk of the Board of Directors of the Commission not later than ninety (90) calendar days prior to the date of requested release, and public hearings, notice of which is given in the manner prescribed by Section 5.50.024 in Sub-Chapter 1, commenced not later than sixty (60) calendar days following the date of filing of the application. The Board of Directors shall release the Uncommitted Channel or Channels as required herein unless,

based upon the evidence presented during the public hearing, the Board makes one (1) of the following findings:

- a. That the Franchisee, at the conclusion of the hearing, is in violation of one or more of the terms, conditions or requirements of the Franchise Documents; or
- b. That the Franchisee, at the conclusion of the hearing, is in violation of one or more rules, regulations or orders enacted or issued by the Board of Directors of the Commission, other than any regulations, which may be enacted pursuant to the provisions of Section 5.50.512 in Article 4-c of Sub-Chapter 4.

The Board of Directors of the Commission shall, under no circumstances, consider content or use intended by a Franchisee in reaching its decision to either approve or disapprove an application by a Franchisee for release of Uncommitted Channels. In the event the Board declines to release an Uncommitted Channel pursuant to a finding described above, the Board shall order the release of such channel at such time as the violation or violations identified in the findings are remedied by the Franchisee.

5.50.818 TERMINATION OF FRANCHISE. The following material breaches of the obligations of a Franchisee under the Franchise Documents shall constitute grounds for termination of a franchise by the Cable Television Commission:

- a. Cumulative delay in excess of: (i) one hundred eighty (180) calendar days in complying with the provisions Subparagraph "b" of Section 5.50.410 or beyond the times prescribed pursuant to Section 5.50.438 in relation to Subparagraph "b" of Section 5.50.410 in Article 4-b of Sub-Chapter 4; or (ii) three hundred sixty five (365) calendar days in complying with the provisions of Subdivision "d" of Section 5.50.410 or beyond the times prescribed pursuant to Section 5.59.438 in relation to Subdivisions "b", "c" or "d" of Section 5.50.410 in Article 4-b of Sub-Chapter 4, or (iii) three hundred sixty-five (365) calendar days in complying with the provisions of the last paragraph in Section 5.50.410 or pursuant to Section 5.50.438 in Article 4-b of Sub-Chapter 4.
- b. The failure of a Franchisee to make any payment to replenish the special account for security established under Section 5.50.702 in Article 4-e of Sub-Chapter 4, above, within the time required by said Section;
- c. Any violation of Section 5.50.750, 5.50.754, 5.50.756 or 5.50.762 in Article 5-a;

- 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 payments required by Sections 5.50.602 or 5.50.604 in Article 4-d of Sub-Chapter 4; or
- f. Any other act or omission by the Franchisee which materially violates the terms, conditions or requirements of the Franchise Documents 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 Franchisee of written notice of the violation or within such period beyond the thirty (30) calendar days as is reasonable.

5.50.820 COMMENCEMENT OF TERMINATION PROCEEDINGS. The Board of Directors of the Cable Television Commission shall not determine that a franchise shall be terminated either upon grounds identified by Section 5.50.818, above, or pursuant to Section 5.50.050 in Sub-Chapter 1, 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 Franchisee and to the Franchisee's surety on the performance bond filed pursuant to Section 5.50.700 in Article 4-e in Sub-Chapter 4, below, 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, if breach is the basis for termination.

The hearing may be conducted either by the Board of Directors of the Commission 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 Cable Television Commission. The cost of preparing a transcript and record of the hearing shall be borne by the Franchisee. 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.

5.50.822 CONDUCT OF HEARING. 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 California Government Code or any successor legislative enactment, shall not be applicable to any such hearing. The hearing may be continued from time to time.

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 Directors of the Commission 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 Directors may, without a hearing except as otherwise required below, either:

- a. Adopt the recommended decision, including findings of fact and conclusions submitted by the hearing officer;
- b. Adopt the findings of fact and conclusions contained in the recommended decision, modify the decision, and adopt the recommended decision as so revised;
- c. Based upon the record of the hearing, modify the findings of fact, conclusions or decision, and adopt the recommended decision as so revised; or
- d. Reject the recommended decision and conduct a new hearing.

If the hearing is conducted by the Board of Directors of the Commission, upon conclusion of the hearing, the Board of Directors shall adopt a decision which includes findings of facts and conclusions.

If the decision by the Board of Directors is that there are grounds for 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 termination shall be such date as is prescribed by the Board of Directors, 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 5.50.824, below.

5.50.824 APPEAL TO ARBITRATION. Not later than thirty (30) calendar days following the date of mailing to the Franchisee of the resolution of termination by the Board of Directors, the Franchisee 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 of Directors. The notice of appeal shall state the specific reasons for appeal and shall be accompanied by a fee equal to the estimate by the Clerk of the cost of preparing the transcript and record of the hearing. In the event the Franchisee fails to file the notice of appeal with accompanying fee within thirty (30) calendar days following the date on which a copy of the resolution of termination was mailed to the Franchisee, the termination of the franchise shall become final, binding, conclusive and not subject to review or reversal by any authority. Judicial enforcement of the decision may be sought.

Except as otherwise provided herein, the arbitration panel shall be selected, the hearing scheduled within the time prescribed, notice given, the hearing conducted, decision made and costs divided in the manner prescribed by Sections 5.50.830 through 5.50.840, inclusive, below.

The question which may be submitted to the arbitration panel and 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 of Directors 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 or be vested with jurisdiction to review, reverse or otherwise nullify the exercise of discretion by the Board of Directors in terminating the franchise, if the panel determines that there are grounds for termination.

The hearing by the arbitration panel shall not be trial de novo, 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 of Directors 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 of Directors. 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 it 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 Franchisee which were not presented during the hearing preceding the Board's decision shall be deemed to have been waived.

The decision by the Board of Directors as affirmed by an 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 grounds set forth in Section 1286.2 of the Code of Civil Procedure to the extent such grounds are consistent with the express terms of this Chapter.

5.50.826 ACQUISITION OF PROPERTY. Upon a final determination to terminate the franchise pursuant to Sections 5.50.822 or 5.50.824, above, the Board of Directors of the Cable Television Commission, in its sole discretion, shall be authorized to purchase the property associated with the franchise, as defined by Section 5.50.242 in Sub-Chapter 3. Purchase of the property shall be made in accordance with the standards, procedures and provisions set forth in Section 5.50.240 through 5.50.266, inclusive, in Sub-Chapter 3. No compensation shall be payable by the Commission 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 5.50.240 through 5.50.266.

5.50.828 COMMISSION'S RIGHT TO OPERATE SYSTEM. In the event a Franchisee fails to operate its Cable Television System for seven (7) consecutive days without prior approval by the Board of Directors of the Cable Television Commission and for reasons which are not beyond its control, the Commission through its officers, agents, employees or contractors may, at its option, enter upon the premises of the Franchisee, occupy such premises and property constituting the Cable Television System, and operate the System until such time as the Franchisee presents proof satisfactory to the Board of Directors that it is ready, willing and able to renew operation of the System. In operating the System, the Commission or its contractor shall be vested with the powers of a receiver, and shall be authorized to contract in the name of the Franchisee, incur expenses in the name of the Franchisee, and take any and all other actions necessary to enable it to effectuate the purposes of this Section. The costs incurred by the Commission in undertaking such operation shall be a charge against the assets of the Franchisee, and the Commission or its contractor shall be authorized to reimburse itself for the costs incurred from revenues received during the period of operation.

5.50.830 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 California Code of Civil Procedure.

5.50.832 ARBITRATION PANEL. Each arbitration shall be conducted by a panel of three (3) arbitrators. One arbitrator shall be appointed by the Franchisee, one arbitrator shall be appointed by the Cable Television Commission, and the third arbitrator shall be the chairperson of the panel, and shall be appointed by the other two arbitrators. If the other two arbitrators are unable to agree upon an appointment, the third arbitrator shall be appointed by the Presiding Judge of the Superior Court in Sacramento County. Each member of the arbitration panel shall be an attorney licensed to practice within the courts of the State of California. No member of the panel shall be an officer, employee or attorney of any Franchisee or any affiliate thereof, the County, Cities or the Commission.

The Franchisee and Commission shall each appoint its arbitrator and mail notice to the other of its selection not later than fifteen (15) calendar day following filing of a notice of appeal to arbitration or mailing of the initiation of arbitration. The third arbitrator shall be appointed not later than thirty (30) calendar days following filing of the notice of appeal to arbitration or mailing of the initiation of arbitration.

5.50.834 ARBITRATION HEARING. 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 filing of the notice of appeal to arbitration or 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 arbitrators, legal counsel to the Cable Television Commission, the Franchisee, and the franchisee's surety on the performance bond filed pursuant to the provisions of Section 5.50.700 in Article 4-e of Sub-Chapter 4, above, not later than twenty (20) calendar days in advance of the hearing.

5.50.836 COSTS OF ARBITRATION. The compensation and expenses of the arbitrator appointed by the Franchisee shall be borne and paid solely by the Franchisee. The compensation and expenses of the arbitrator appointed by the Cable Television Commission shall be borne and paid solely by the Commission. The Franchisee and Commission shall each bear and solely pay their own costs of attorneys' fees, expert and other witness fees and other expenses.

ses incurred in preparing and prosecuting their respective cases. In proceedings where the record of a public hearing of the Board of Directors of the Commission 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 Franchisee.

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 and typing any transcripts of the arbitration hearing, and any other costs of the arbitration proceeding not identified in the first paragraph of this Section shall be divided equally between, borne and paid by the Franchisee and Commission. The arbitration panel shall not be empowered to order a division of costs, fees or expenses different from that prescribed by this Section.

5.50.838 ARBITRATION AWARD. 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, it 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.

5.50.840 LIMITATIONS OF POWERS. The arbitration panel shall have no authority to add to, delete or alter any provisions 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, the Cities, the Cable Television Commission, or their officers, agents or employees, except with respect to proceedings under Section 5.50.258 or 5.50.260 in Sub-Chapter 3 to determine the value of property, and in such instances, any such award shall be limited to a determination of the value of the property according to the expressed terms and standards of the Franchise Documents.

5.50.842 ALTERNATIVE REMEDIES. No provision of this Chapter shall be deemed to bar the right of the County, Cities or Cable Television Commission 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 said Chapter nor the exercise thereof shall be deemed to bar or otherwise limit the right of the County, Cities or Cable Television Commission to recover monetary damages (except where liquidated damages are otherwise prescribed) for such violation by the Franchisee, or judicial enforcement of the Franchisee's

obligations by means of specific performance, injunctive relief or mandate, or any other judicial remedy at law or in equity.

5.50.844 NO RECOURSE AGAINST AGENCIES. No Franchisee shall have any recourse whatsoever against the County, Cities Cable Television Commission, or their officers, agents, or employee for any loss, costs, expense, or damage 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.

5.50.846 NON-ENFORCEMENT. A Franchisee 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, Cities, Cable Television Commission or their officers, agents or employees to enforce prompt compliance.

SECTION 2. This ordinance was introduced and the title thereof read at the regular meeting of the Board of Supervisors on _____ and on _____.

This ordinance shall take effect and be in full force on and after thirty (30) days from the date of its passage hereof, and before the expiration of fifteen (15) days from the date of its passage it shall be published once with the names of the members of the Board of Supervisors voting for and against the same, said publication to be made in a newspaper of general circulation published in the County of Sacramento.

On a motion by Supervisor _____, seconded by Supervisor _____, the foregoing Ordinance was passed and adopted by the Board of Supervisors of the County of Sacramento, State of California, at a regular meeting thereof, this _____ day of _____, 1981, by the following vote, to wit:

AYES: Supervisors,
NOES: Supervisors,
ABSENT: Supervisors,

Chairperson of the Board of Supervisors
Sacramento County, California

(SEAL)

ATTEST: _____
Clerk of the Board of Supervisors

HEARING DRAFT

CABLE TELEVISION REQUEST
FOR PROPOSALS AND FORMS
FOR

THE COUNTY OF SACRAMENTO
AND CITIES OF SACRAMENTO,
FOLSOM, ISLETON, AND GALT.

November 2, 1981

OFFICE OF THE SACRAMENTO CITY ATTORNEY

REQUEST FOR PROPOSALS

General Instructions

The purpose of this Request for Proposals (RFP) is to seek qualified applicants for a nonexclusive franchise to construct and operate a cable communications system in the City of Sacramento and the County of Sacramento (County) and, subject to the limitations expressed in the Ordinance, in the Cities of Folsom and Galt. This RFP contains or refers to information and instructions relating to the preparation and filing of proposals; conditions and provisions regarding the installation, operation and maintenance of a cable communications system; and the procedure to be used in evaluating the applicants' proposals. Appended are forms which must be completed by all applicants. As used in this RFP, the term "Ordinance" shall mean Ordinance No. _____ adopted _____, by the County of Sacramento, Ordinance No. _____ adopted _____ by the City of Sacramento, Ordinance No. _____ adopted _____ by the City of Folsom, and Ordinance No. _____ adopted _____ by the City of Galt. References to Ordinance Section numbers in this RFP shall refer to the Section numbers in the Ordinance adopted by the County. The terms used in this RFP shall have the same meaning as the terms defined in the Ordinance.

While the Cities and County retain their respective legal and legislative prerogatives as independent political jurisdictions, each jurisdiction has declared its intention to act in concert for the purpose of awarding City and County franchises to serve the Sacramento Community.

The applicant awarded a franchise will enter into a binding agreement with the Cable Television Commission for the timely delivery of all elements of the accepted proposal. The submission of the application constitutes an irrevocable proposal by the applicant. All items being offered by applicants are considered to be freely and voluntarily offered and will be incorporated in the agreement and become subject to the enforcement provisions of the Ordinance. By submitting a proposal, the successful applicant acknowledges its willingness to support an application for any waiver required by the Federal Communications Commission for any voluntary offer of service, technical standards that may exceed FCC requirements, or for any other relevant purpose.

Applicants should carefully read the following instructions, since they contain various data and specifications which must be used in the preparation of proposals.

Filing of Proposals - Nonrefundable Deposit

Twenty-five copies of each applicant's proposal, together with all accompanying enclosures, shall be submitted in sealed envelopes or cartons with the caption: "CABLE TELEVISION PROPOSAL"

addressed to: OFFICE OF THE COUNTY EXECUTIVE
 700 H STREET, ROOM 7650
 SACRAMENTO, CA 95814

Proposals may be filed in person or by mail but must be received at this office no later than Monday, March 15, 1982 at 4:00 P.M. The County and City of Sacramento, if they both agree, may extend the deadline.

Each proposal shall be accompanied by a filing fee in the amount of \$ _____ in the form of a certified check made payable to the County of Sacramento. The first \$15,000 of each filing fee shall be retained by the County for the purpose of defraying the costs incurred by the County and Cities in planning and conducting this proceeding and shall not be subject to refund, whether the proposal which it accompanies is rejected, accepted, or all proposals are rejected. The excess over \$15,000 will be refunded to unsuccessful applicants only if a franchise is awarded pursuant to the RFP. The costs incurred by the County and Cities to be defrayed by such filing fees include, but are not limited to, the salaries and fringe benefits of County and Cities personnel who have expended time in planning, coordinating, administering, reviewing, drafting, legally advising, conducting the environmental analysis and preparing the environmental documents in association with this proceeding; the fees and expenses which become owing to Cable Television Information Center (Consultant), which has been retained to provide consultation service and advice in association with this proceeding; the cost of conducting a prevailing wage study and advertising and other miscellaneous direct and indirect costs. In the event a franchise is awarded pursuant to this RFP, the applicant receiving the franchise shall pay by certified

check made payable to County, submitted with its acceptance of the franchise, an additional fee to defray costs, which have not been fully compensated by the retained filing fees, in an amount which shall not exceed \$ _____. The actual amount to be paid shall be equal to the amount set forth in a written demand provided to the franchisee at the time of or after adoption by the Cable Television Commission of its Resolution offering the franchise.

Form of Proposals - Registration

Please Note: All proposals must be on the official forms attached hereto.

Each prospective applicant for the franchise shall register in writing with the County and shall obtain a copy of this RFP and attachments from the County. The purpose of registration is to provide a means of identifying all prospective applicants so that information and documentation may be uniformly submitted to all interested parties during the proposal solicitation period. The registration shall be filed with the office of Mr. William Freeman, Office of the County Executive, 700 H Street, Room 7650, Sacramento, California 95814, from which office prospective applicants may obtain single copies of the Ordinance, RFP, RFP forms and uniform data. The registration shall consist of a written notice signed by an authorized representative of the prospective applicant, which states that the prospective applicant is considering the possibility of presenting a proposal and contains the name, mailing address and telephone number of the prospective applicant, and the

name of an authorized representative who may be contacted in connection with this proceeding. All documents distributed during the solicitation period will be mailed to the address indicated in the notice.

The application forms have been designed to elicit pertinent data that will be used in evaluating the proposals. Instructions for each form are included in the form. Space has been provided for specific and succinct answers to all questions and requests for data. For convenience applicants may use other sheets if the same format is maintained and every item of information requested is included. Limited form space will not excuse omission of required information. Attach additional pages if necessary in good faith to provide complete answers. Alternative proposal forms will not be considered. Any attempt to merely use the official forms as an "index" to voluminous narrative may result in assessment of a negative favor to the application. The official forms have been designed to facilitate an objective comparison of proposals. Evasive, imprecise or incomplete responses can only serve to the disadvantage of the applicant.

Applicants shall prepare a complete set of forms for the Imposed Service Area only. If an applicant makes a proposal regarding the Proposed Service Area, a second set of forms shall be completed for the Proposed Service Area only. Any proposal which contains proposals for any service area other than the Imposed Service Area or the Proposed Service Area shall be rejected.

Alternative proposals for service within a single application which, in effect, constitute a separate application will not be considered. If an applicant desires to submit more than one application, each application must be on a separate set of forms and accompanied by a separate \$_____ filing fee.

The awarding authorities reserve the right to waive informalities, irregularities and/or technicalities in their consideration and award of the franchise.

Contract Documents

The contract documents constituting a part of the franchise shall consist of the following:

This RFP;

The Ordinance, as it may be amended from time to time;

The proposal submitted by the applicant to whom the franchise is awarded, together with any amendments thereof which are authorized pursuant to this RFP or the Ordinance;

The Resolution offering the franchise;

The written certificate of acceptance thereof by the applicant to whom the franchise is awarded.

Clarification of Contract Documents

Conflicts in terms, conditions or provisions of the Franchise Documents shall be resolved in accordance with § _____ of the Ordinance.

In the event that an applicant has questions as to any terms, conditions or provisions of the contract documents or the meaning or interpretation thereof, the applicant may request information or clarification by submitting such request in writing to:

Mr. William R. Freeman
Office of the County Executive
700 H Street, Room 7650
Sacramento, CA 95814

Requests for information must be submitted in writing no later than 21 days prior to the deadline for filing applications. Responses to such requests will be made in writing as promptly as possible. Copies of all requests and the responses thereto shall be sent to all prospective applicants who have registered. No interpretation shall be deemed binding or effective unless it is reduced to writing and signed by Mr. Freeman. No other interpretation issued by any other person, whether oral or in written form, shall be binding.

An applicant, by submitting its application, shall have evidenced the fact that it agrees that it has no unanswered questions with respect to these specifications, and shall have no basis for withdrawal or modification of its proposal on the basis of misunderstanding.

Mandatory versus Optional Disclosures and Bid Items

Applicants are referred to the text of the Ordinance for information as to which disclosures and bid items are mandatory, and which are not. It is expressly stated in the Ordinance and reconfirmed by this RFP that acceptable applications need contain only the mandatory disclosures and bid items. Applications meeting these minimum requirements will receive full consideration during the review process.

Forms calling for additional voluntary disclosures or voluntary bid items are provided only for the purpose of facilitating comparative review of proposals and for the

convenience of applicants. The existence of a form in the package should not be viewed by applicants, and will not be viewed by the Governing Bodies, as an indication that the information or bid items which might be included on the form is required by the Governing Bodies. The following listing of the Forms is intended to identify those forms which call for mandatory disclosures and bid items, and those which are made available for voluntary bid items. However, attention is called once again to the fact that the Ordinance is the document which controls with regard to what is mandatory and what is voluntary.

Introductory Overview and Summary of Proposal - Mandatory.

Identification of Applicant - Mandatory.

Applicant's Affidavit - Mandatory.

Form A: Ownership and Control Information -

Pages 1 - 6 are mandatory. Page 7 is optional.

If page 7 is not completed, the Ownership Disclosure on Page 6 can omit reference to minority and female owners.

Form B: Ownership Qualifications - Pages 1 and 2
are mandatory.

Form C: Character Qualifications - Pages 1 and 2
are mandatory.

Form D: Experience - Current Cable Holdings - Pages 1
and 2 are mandatory.

Form E: Former Franchises or Ownership Interests -
Mandatory.

Form F: Financial Resources, Existing Capital Commitments
and Potential Commitments - Pages 1 - 7 are mandatory.

Form G: Financial Pro Forma - All mandatory, except page
16, question 2.

Form H: Construction Practices - Page 1 is mandatory.
Questions 4 and 5 on page 2 are mandatory. Questions
6 and 7 on page 2 are optional.

Form I: Channel Capacity and System Design - Detailed
plans and specifications for the Cable Television
System which is proposed are mandatory. The minimum
specifications required are detailed in the Ordinance.
The existence or non-existence of any page or individual
question in Form I does not, and is not intended to,
increase or decrease those minimum specifications.
The inclusion of bid items which exceed minimum specifications
is optional and voluntary even if a form exists which
can be used for that purpose.

All services applicant desires to have a right to
provide during the franchise term must be described in
detail on Form I. Therefore, while completion of page 8
is optional, failure to list any particular interactive
service somewhere in Form I may result in no right to provide
that service during the franchise term.

As stated above, the information requested on pages 28 - 34 of Form I is required to facilitate environmental analysis.

Form J: Proposed Signal Carriage and Channel Allocations -
The minimum requirements are detailed in the Ordinance.
The existence or non-existence of any page or individual question in Form J does not, and is not intended to, increase or decrease those minimum specifications.

Form K: All optional, except p. 13, question 3, which is mandatory.

Form L: Proposed Rates and Marketing/Promotional Plans - Page 1 is optional. Page 2 is optional, except question 5 is mandatory.

Form M: Employment Practices - Optional.

Form N: Miscellaneous - Optional.

Presubmission Conference

To allow interested applicants the opportunity to ask questions with respect to franchise requirements, a presubmission conference will be held on Wednesday, January 27, 1982, at 10:00 A.M., at the Office of the County Executive, 700 H Street, Room 7650, Sacramento, California.

Only potential applicants who have registered with the Office of the County Executive may attend the conference.

Attendance at the presubmission conference is not required in order to submit an application.

Amendments to Proposals

Substantive amendments to proposals will not be considered except to acknowledge involuntary changes such as a change in ownership due to death. Corrections of inadvertent errors, if corrections are submitted prior to the filing deadline, will be considered. Corrections submitted after the filing deadline may be considered at the discretion of the County or City of Sacramento or Consultant, only if the applicant submits with any correction sufficient information to prove that the error was inadvertent. Clarifying information or data may be requested by the County, City of Sacramento, or the Consultant if, in their judgment, such clarification will aid in preparing a fair and accurate analysis of a proposal.

Use of Uniform Data Supplied

In order to permit logical comparison of applications, all applicants will be required to utilize certain uniform data supplied in these forms. This information is appended to these instructions, and is a part of this Request for Proposals.

All pro forma statements must be based on the uniform data supplied. These data include street miles, dwelling units, population growth, inflation factors, and a list of all public facilities which the institutional cable must pass.

PROCEDURE FOR PROPOSAL EVALUATION AND FRANCHISE AWARD

The following procedure shall govern the evaluation of proposals and award of franchise or rejection of all proposals.

Environmental Analysis

An environmental analysis is an integral part of the process for awarding or declining to award the franchise.

In order to reduce the time required to complete the environmental analysis, all applicants are requested to provide the information in Form I, especially questions 26 - 35.

The Cities and County reserve the right to request additional and/or clarifying information which is not specified in this RFP, but which may be needed to complete the environmental analysis.

A two-stage environmental analysis will be conducted by the Environmental Impact Section of the County, and the County shall be the lead agency. The first stage environmental analysis will include this RFP, the Ordinance, and the proposals submitted by applicants. If it is determined that an Environmental Impact Report is required, the County will prepare one, and the Board of Supervisors of County may conduct a hearing on the draft Environmental Impact Report.

The first-stage environmental analysis will present an overview of the potential environmental impacts of a cable television system, attempting to identify the total potential magnitude of environmental impacts which would result from a decision to go forward with the franchising process. The analysis may include a variety of recommended conditions and requirements designed to mitigate impacts which the applications, considered collectively rather than individually, might cause.

Consultant's Evaluation

After the deadline for filing proposals, the proposals received will be analyzed by the Consultant. Consultant will present a preliminary report to the County which evaluates the proposals. The preliminary report will be distributed to the Cities and the applicants. Applicants will be given the opportunity to react to the contents of the preliminary report by Consultant and respond to any questions raised therein. Consultant will thereafter file a final report with County and the Cities.

Public Hearings

A meeting of the Board of Supervisors of County will be held. This meeting may be a joint meeting with the City Council of one or more of the Cities. At that time the Board of Supervisors will conduct a public hearing on any environmental document which has been prepared by the lead agency during the first-stage analysis and for the purpose of receiving any presentations desired to be made by applicants and any comments from the public upon the applications. The hearing may be continued from time to time by the Board.

After the close of the public hearings, the Board of Supervisors will decide whether the environmental document is adequate and complete. If it decides that the document is not adequate and complete, further proceedings will be conducted with respect to the environmental issues before any action is taken concerning award of the franchise.

Award Process

The award process shall be as provided in sections _____
to _____ of the Ordinance.

Rejection of Proposals

The Board of Supervisors and the Sacramento City Council each reserves the right to reject all proposals at any time between the date the proposals are received and the date on which the Cable Television Commission shall have enacted a resolution offering the franchise. If either the County or City of Sacramento rejects all proposals, or if all proposals are deemed rejected under the terms of the Ordinance, then no franchise shall be issued under this Request for Proposals.

It is understood that the decision to issue or not issue a franchise should not be made until completion of the first-stage environmental analysis and certification of the environmental documents resulting therefrom. For that reason, because issuance of a franchise is a legislative act which involves broad policy consideration, and for other reasons, neither the County, City of Sacramento, nor any of the other Cities has decided that a franchise will be issued. Such a decision will not be made in favor of issuance of a franchise until the date on which each agency takes final action with respect to the matter. Neither the County, City of Sacramento, the joint powers authority created as a result of the Ordinance, any of the other Cities, nor any of their officers, agents or employees shall be deemed to be liable for costs or expenses incurred or other damages suffered by any prospective applicant as a result of a failure to either enact franchise resolutions, the exclusion of one

then no franchise shall be issued under this Request for Proposals.

It is understood that a franchise should not be issued until completion of the environmental analysis and approval of the environmental documents. For that reason, because issuance of a franchise is a legislative act which involves broad policy consideration, and for other reasons, neither the County, City of Sacramento, nor any of the other Cities has decided that a franchise will be issued. Such a decision will not be made in favor of issuance of a franchise until the date on which each agency takes final action with respect to the matter. Neither the County, City of Sacramento, the joint powers authority created as a result of the Ordinance, any of the other Cities, nor any of their officers, agents or employees shall be deemed to be liable for costs or expenses incurred or other damages suffered by any prospective applicant as a result of a failure to either enact franchise resolutions, the exclusion of one or more Cities from the franchise area, or the rejection of all proposals and failure to issue any franchise whatsoever, whether such rejection is expressed or results from any act or omission by County, any one of the Cities, or the joint powers authority. In other words, the funds expended by applicants in preparation of their applications, or expended in any way related to the proposed franchise, shall be at the applicants' own risk and cost.

the franchise is filed. By submitting an application, an applicant acknowledges and accepts that, if it is selected as franchisee:

(1) it will not be authorized to proceed with installation of any headend or cable associated therewith until completion of the second-stage environmental analysis and issuance by the Board of Directors of the Cable Television Commission of a Notice to Proceed; and (2) time limits for completion of the System shall not be extended by virtue of any time which elapses or delay which occurs as a result of the second-stage environmental analysis or the process of issuing any Notice(s) to Proceed, except as specifically provided in the Ordinance.

Rescission of Tentative Selection

Section 5.50.214 of the Ordinance authorizes the Sacramento City Council or the Sacramento County Board of Supervisors to rescind the tentative selection made by the Governing Bodies prior to enactment of the resolution offering the franchise. Rescission may be based on any grounds that either body determines, within its sound discretion, require or justify rescission.

DESIRED SERVICES AND PROPOSAL REQUIREMENTS

Innovation Desired

The Cities and County encourage innovative proposals.

All items being offered by applicants are considered to be freely and voluntarily offered and will be included in the franchise and become subject to the enforcement provisions stated therein. The successful applicant agrees to support any waiver required by the Federal Communications Commission (FCC) for any voluntary offer of services or technical standards that may exceed FCC requirements.

The Sacramento Community looks to the cable industry not merely for the variety of entertainment it can provide, but for the contributions it can make to a total communications network that opens to Sacramento's citizens and institutions a maximum of opportunities for access to information, the sharing of messages, increased security, the saving of energy and other such economic and social benefits made possible by advancing communications technology.

The Governing Bodies seek a franchisee who believes that the economic future of cable is in the wider field of communications rather than in merely providing entertainment. Thus, applicants are asked not only to provide bare communication paths for the range of non-entertainment communication services now technically feasible for institutions and residences, but also to take the promotional and marketing initiative that will make those services practical realities here.

Franchise Fee

The franchise fee will be as stated in the Ordinance.

Initial Service Area and Line Extension Policy

The franchisee will be required to make cable service available within the time periods, within the areas, and in the manner required by the Ordinance.

System Design and Institutional Services

The Cities and County seek a modern, efficient and cost-effective system which will provide high-quality, state-of-the-art technology, deliver a variety of communications services, and provide the flexibility needed to adjust to new developments. The Cities and County are particularly interested in proposals which will provide an institutional communications capability and two-way capability within the Cities and County. The minimum number of cables and channel requirements are stated in the Ordinance. Applicants are also encouraged to propose high standards of technical performance which may exceed current FCC requirements.

Minimum service and system design requirements are stated in the Ordinance. Applicants are encouraged to propose additional service and system design elements that are economically and technologically feasible. The type of service and design elements which may be proposed are understood by the Cities and County to include bi-directional use and capability; interactive services and capability; home security capability; and special programming and information categories such as national and international news services, advanced news and information via teletext or similar services, financial and stock market information, sports

channels, weather service, FM/stereo programming, children's programming, programming for the elderly, and programming for the handicapped.

The Cities and County are interested in proposals which can accommodate the following types of areawide utilization:

- Upstream transmission for public service programs, coverage of public meetings and events and training seminars;
- Closed-circuit, bi-directional capability for areawide shared training for police, fire and other public service agencies;
- Availability at reasonable rates of leased data and video channels for users other than the franchisee;
- Designation and equipping of community viewing centers at public libraries or community centers at franchisee's sole cost and expense.

In formulating system design and services, applicants are encouraged to plan for cooperation with governmental, commercial, social service, and educational interests, in order to maximize the system's benefit to the Sacramento Community.

Any institutional network or services to be provided shall meet the minimum standards required by the Ordinance and be designed based on information applicants obtain from

governmental and community entities. The Cities and County are interested in a flexible, efficient and cost-effective system design which can best accommodate the present and future needs of institutional users without economically burdening the average subscriber. It is suggested that potential users who can supply useful information for designing the institutional network and services to be provided include medical users (e.g., public and private hospitals, ambulance services, physicians and medical societies, nursing homes); religious institutions; educational users (e.g., public and private schools, school district administrative offices); state, city and county libraries; federal, state, city, county and district government offices and facilities; and nonprofit groups which provide services to the community.

All services, whether offered to meet minimum requirements or offered in excess of any minimum requirements, must be guaranteed and within the financial capability of the system as demonstrated in the financial pro forma statements.

Community Access

Community use programming represents a high priority of the governing boards, and the proposal of a vital community use element will be favored in the review process.

The Governing Bodies believe that commitment of channels or program time to community use in general, or to particular local organizations, is a false measure of community commitment,

because there is no effective means to ensure that community use programming is in fact produced for airing. Furthermore, channel capacity is finite, and any commitment of time or channel to any one or more organizations potentially restricts use or communication by others and does not foster maximal community access. Nor is reliance upon the Franchise Fee to finance community use, in whole or in part, a satisfactory method of assuring community use programming.

The important questions are how much community use programming will be made available and at what times. If an applicant chooses to propose a community use element, it shall include adequate access to: channels, studio facilities and equipment, and production support, as required by § _____ of the Ordinance. Applications may also commit the applicant to sponsor and guarantee specified hours of community use programming throughout the franchise term. Any such proposal shall be consistent with § _____ of the Ordinance.

Resource Commitments To Local Entities

The governing bodies encourage the applicants to propose commitment of resources to local entities. These resources include studios, equipment, staff assistance and financial support.

It is the view of the Governing Bodies that the allocation of channels to local entities, in and of itself, will not enable local entities to make effective use of the cable system. While the franchisee will be required to allocate certain channels to KVIE and the Educational Consortium, it is expected that any voluntary proposals relating to resource commitments will include adequate staff assistance and/or financial support, where needed, to assure that any studio or equipment resources (and allocated channels) can be effectively used.

Recognizing that local entities might be able to use more resources than it is economically feasible for the applicant to offer, the Governing Bodies have adopted guidelines so that applicants can incorporate the priorities of the Governing Bodies into their resource commitment proposal.

The order of priorities for resource commitments to local entities is:

1. Educational Consortium
2. County and Cities
3. KVIE and KXPR
4. Other local governmental entities
5. Other non-governmental entities
6. Other governmental entities

Each of these categories should be included in a resource commitment proposal, if any proposal is made.

Within these guidelines, flexibility, innovation and creativity are encouraged. Isolation of these categories of resource recipients is not intended, for example, to preclude, proposal of joint use facilities to be shared by all local entities. Applicants are encouraged to contact and survey local entities to assess their needs and capabilities, and to design a resource commitment proposal which conforms with these needs and capabilities.

Commitment of channels, access, or resources to local entities which is designed to obtain support for the applicant's application rather than to best implement the priority guidelines set by the Governing Bodies will not be favored in the review process.

Enforcement Mechanisms

The governing bodies are concerned that the franchisees will commit themselves to certain obligations in the franchise documents but may be relieved of some of these obligations in the future by federal or state legislation or court decisions. Therefore, applicants are encouraged to propose additional and creative ideas to guarantee the enforceability and performance of the provisions of the franchise by the franchisee even though legislation or court decisions would otherwise modify the provisions of the franchise. Proposals which contain the best ideas in this area will receive favorable consideration.

Financial Capability

An important feature of the proposal is an adequate demonstration of financial capability to perform in accordance with the Ordinance and the proposal. Failure to provide the detailed pro forma data requested may be interpreted as evidence that an applicant is not properly qualified to become a franchisee.

Adequate documentation of the applicant's assumptions and processes must be provided so that a fair analysis of the projections is possible. Projections should be realistic and not overly optimistic.

Applicants should present evidence of financial resources that assure ability to implement the proposed system throughout the entire initial service area according to the completion schedule specified in the Ordinance.

For purposes of the financial pro forma statements, Year One begins on the date the franchise is awarded.

Rate Schedules

If initial rates are proposed, they must be substantiated in the pro formas by use of realistic levels of penetration. Applicants must assure the Cities and County that the initial rates proposed are realistically calculated to meet their financial goals.

Demonstrated Experience in Cable Television Operations

Information will be solicited from communities in which applicants operate cable television systems, to determine

the quality of applicants' performance in those communities. The Cities and County will evaluate and consider evidence of timely construction and satisfactory delivery of services as promised, as well as management background that evidences excellent construction practices, customer satisfaction and good community relations. Also to be considered are stability of past franchises, rate history in other systems, willingness to upgrade, and relationships with franchise authorities in existing systems.

By submitting a proposal, applicants consent to both the solicitation of such information by the Cities and County and the disclosure of such information by the communities where applicants operate.

Local Ownership

Although the ownership structure of the applicant is a matter to be determined by each applicant, the County and Cities strongly discourage offers of equity interest to, or affiliations with, local citizens, organizations or institutions for the purpose of influencing the issuance of a franchise. It is the intent of the County and Cities to issue a franchise solely on the basis of the merits of proposals and not on the basis of local ownership or affiliation of the applicant with local individuals, institutions and community agencies where not substantively related to the operation of a cable communication system. The County and Cities will evaluate an applicant's overall commitment to the Sacramento community within the context of the total proposal.

If local participation is a component of the ownership structure of an applicant, then the County and Cities expect that such local interests have a bona fide financial investment in the applicant. In reviewing ownership interest, the County and Cities will look with disfavor on proposals containing the following and similar elements:

- * proposals in which any "investor's" percentage of stock is greater than the percentage of total dollars or services actually invested or contributed. Services contributed in lieu of dollars invested may include personal services, materials, equipment or facilities, but such must be quantifiable and clearly delineated in the proposal.
- * proposals where "investors" have received loans from the applicant with which to purchase stock.
- * proposals where an applicant guarantees little or no financial risk to "investors."

Communications with Elected and Appointed Officials

The elected officials and staff reserve the right to refuse to talk to applicants concerning the cable television franchise and to limit or restrict communications with applicants as said officials or staff, in their discretion, determine.

Evaluation Criteria

The Cities and County will award a franchise, if any, to the applicant who demonstrates the best overall capability and willingness to provide a high-quality cable communication service to the greater Sacramento area. All information requested by the RFP will be evaluated during the selection process. 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 various factors upon which award of a franchise will be based.

However, the following will be included among the factors considered, not necessarily in the order listed:

1. Financial capability and obligations of applicant;
2. Realism of subscriber penetration projections, financial goals, financial assumptions, and financial projections;
3. Character of applicant's owners;
4. Applicant's past experience in cable television system operations;
5. Applicant's commitment to the Sacramento community, as revealed in applicant's Community Access proposal, if any;
6. Applicant's commitment to the Sacramento community, as revealed in applicant's proposal re Resource Commitments to Local Entities, if any;
7. Applicant's commitment to the Sacramento community, as revealed in applicant's design of institutional network and institutional services;

8. Minority/female ownership and active minority/female participation in ongoing operations;

9. Availability of Basic Service to subscribers at the lowest realistic rates, and the willingness of applicant to insure low rates for Basic Service throughout the term of the franchise;

10. Applicant's plans, if any, for complying with nondiscrimination and affirmative action provisions contained in § _____ of the Ordinance;

11. Applicant's ability to complete the system in the Service Areas according to the completion schedule contained in the Ordinance;

12. The technological quality and innovation of the proposed system design;

13. The variety and quality of programming and services offered;

14. Applicant's procedures for handling subscriber service and billing problems;

15. The quality and quantity of programming and services available at the lowest-cost tiers.

DRAFT
September 30, 1981

SACRAMENTO COUNTY, CALIFORNIA

OFFICIAL APPLICATION FORMS
FOR PROVIDING CABLE COMMUNICATIONS SERVICES

DUE AT: Office of _____

CLOSING TIME AND DATE: 2:00 p.m., _____, 19__

LIST OF CONTENTS

No. of Pages

OVERVIEW AND SUMMARY OF PROPOSAL
IDENTIFICATION OF APPLICANT
APPLICANT'S AFFIDAVIT

FORM A: Ownership and Control Information

FORM B: Ownership Qualifications

FORM C: Character Qualifications

FORM D: Experience--Current Cable Holdings

FORM E: Experience--Former Franchises or Ownership
Interests

FORM F: Financial Resources, Existing Capital
Commitments, and Potential Building Commitments

FORM G: Financial Pro Forma

FORM H: Construction Practices

FORM I: Channel Capacity and System Design

FORM J: Proposed Signal Carriage and Channel Allocations

FORM K: Community Access and Resource Commitments to
Local Entities

FORM L: Proposed Rates and Marketing/Promotional Plans

FORM M: Employment Practices

FORM N: Miscellaneous

INTRODUCTORY OVERVIEW AND SUMMARY OF PROPOSAL

Each applicant should present a clear and concise narrative description of the cable television system and services it proposes to provide. Please limit responses to approximately 25 pages.

Please cover the following subject areas:

- * Overview of Proposal
- * Ownership and Management of System
- * Financial Commitments
- * System Design and Construction (including bi-directional capability)
- * Signal Carriage and Channel Allocations
- * Local Origination and Access
- * Rates and Rate Guarantees
- * Institutional Services
- * Other

The purpose of this section is simply to provide the reader with an understandable overview of the proposal, not to discuss details which will be covered elsewhere in the application forms.

The applicant must clearly differentiate between those elements of the proposal which it is firmly committed to providing (which will be contractually binding) and those which may be provided.

APPLICATION FOR CABLE COMMUNICATION SYSTEM FRANCHISE
FOR SACRAMENTO COUNTY, CALIFORNIA

IDENTIFICATION OF APPLICANT

Name of Applicant _____

Address of Applicant _____

(Street)

(City, State, Zip Code)

Telephone _____

(Area Code and Number)

Date _____

Please give name and telephone number of principal to whom inquiries
should be made:

Name _____

Telephone _____

(Area Code and Number)

Authorized Signature _____

(Name and Title)

Date _____

APPLICATION FOR CABLE COMMUNICATION FRANCHISE

Applicant's Affidavit

This application is submitted in response to the Request for Proposals of Sacramento County and the City of Sacramento, California, by the undersigned who has been duly authorized to make the representations herein on behalf of the applicant.

Applicant understands that this application will be part of the Franchise Documents, enforceable against applicant, in the event a franchise is granted in consequence of this application.

Applicant recognizes that all representations made in this application are binding upon it and that inaccuracy of or failure to adhere to any such representations may result in revocation of any franchise that may be granted in consequence of this application.

Consent is hereby given to the County and the City of Sacramento to make inquiry into the legal, character, technical, financial and other qualifications of applicant by contacting any persons or organizations named herein as references, or by any other appropriate means.

Under penalty of perjury, the signator hereto declares that the entire contents of this application is true and correct.

Firm Name

Affiant's Signature

Official Position

Date

Attest

FORM A: ORGANIZATION

ORGANIZATION

1. Organization Structure

Sole Proprietorship _____

Joint Venture _____

Partnership _____

Unincorporated Assoc. _____

Corporation _____

Other (explain) _____

Officers (if Corporation):

President _____

Secretary _____

Vice President _____

Treasurer _____

Owner (if Sole Proprietorship) _____

General Partners (if Partnership) _____

If applicant is a corporation, please list all members of the Board of Directors, their principal affiliations and their addresses:

ORGANIZATION (continued)

2. Ownership and Control Information

(Reproduce additional forms if needed.)

To be completed for all principals, officers, directors, participants* and consultants of applicant, and by beneficial owners of any stock or other ownership interest in applicant. Beneficial owners include, but are not limited to, individuals, corporations, partnerships, joint ventures and unincorporated associations. Beneficial owners also include all prospective owners, including those to whom offers to become owners have been made and the offer has not been rejected.

Name (if individual) _____

(if organization) _____

Address _____

(Number)

(Street)

(City)

(State)

(Zip)

Nature of Interest:

☐ Partner☐ Stockholder/Owner☐ Officer☐ Corporate Director

Profession or Occupation _____

Name of Employer _____

Address of Employer _____

Number of shares of each class of stock or ownership interest in applicant (including stock options, stock subscriptions and partnership options): _____

Method of payment for interest (cash, notes, services, etc.)** _____

If shares are used for security to obtain funds to pay for them, disclose full details of the transaction: _____

Percentage of ownership of partnership, voting stock or equity interest: _____

* For purposes of this form, "participant" means any person employed or retained by the applicant either directly or indirectly who has had any communication regarding the award of a cable television franchise with, or who has made any campaign contribution to any of the County Supervisors or the City Council members or their administrative assistants.

** If notes, fully disclose terms thereof, including interest rate and repayment schedule. If services, disclose the method of valuation.

ORGANIZATION (continued)

To be completed by each organization or corporation which filled out Page 2 of Form A (not individuals).

List all principals, officers, corporate directors, and beneficial owners of one percent or more of your own stock or ownership interest.

(For each name below that is the name of an organization or corporation, complete a new page 3 of Form A for the entity until all ownership interests are identified at the level of individual owners of one percent or more.)

Name of Organization

Address

(Street

(State)

(Zip)

Name _____

Address

Capacity

Ownership
(Percent)[illegible]

ORGANIZATION (continued)

3. Stock Information

Please answer the following concerning the corporation:

- a. Is the applicant a publicly held corporation as defined by the rules and regulations of the Securities and Exchange Commission?

☐ Yes ☐ No

- b. Stock of corporation:

Class of Stock	Par Value	Vote Per Share	No. Shares Authorized	No. Shares Issued	No. Shares Subscribed	Total No. Stockholders

- c. Does applicant have any other obligations or securities authorized or outstanding which bear voting rights either absolutely or upon any contingency?

☐ Yes ☐ No

If "yes," submit a statement of (1) the nature of such securities, (2) the face or par value, (3) the number of units authorized, (4) the number of units issued and outstanding, (5) the number of units, if any, proposed to be issued, and (6) the conditions of contingency upon which securities may be voted.

- d. Is applicant corporation directly or indirectly controlled by another corporation or legal entity?

☐ Yes ☐ No

If "yes," please explain. Detail agreements or procedures, if any, which assure that policy and operational control over the proposed cable television system shall remain vested in applicant.

- e. Is applicant or any principal assisting any equity owner in obtaining funds with which to pay for shares? If so disclose full details of the transaction.

ORGANIZATION (continued)

- ☐ f. Are any dividend payments guaranteed or any class of shareholders to be treated differently from any other class, please explain.
- g. Is any owner of any equity interest obligated or expected to be obligated to repay, guarantee or otherwise be responsible for any outstanding debt of applicant? If recourse exists with respect to the assets of some but not all equity owners, disclose details of different treatment.

- ☐ 4. What amounts and forms of compensation have been paid or promised to any officers, directors, shareholders, participants or consultants of applicant? Provide complete details.

5. Partnership Information

If applicant is a limited partnership, please describe structure and interests of general and limited partners.

ORGANIZATION (continued)

6. Ownership Disclosure

Applicants, including all shareholders and parties with any financial interest in the applicant, must fully disclose all agreements and understandings with any person, firm, group, association or corporation with respect to the franchise and the proposed system. This includes agreements between local investors and national companies. Failure to reveal such agreements will be considered withholding of pertinent information and will be considered cause to withhold or revoke award of the franchise.

Please append copies of any written agreements made regarding the ownership or control of the proposed system. Use the space provided to outline any oral agreements or understandings regarding the ownership or control of the proposed system. Indicate the existence and description (including price and time of exercise provisions) of stock options, buy-out agreements, buy-back or exchange of stock (or other interests) agreements, rights of first refusal, whether written or oral, obligatory or optional, that could affect the ownership structure of applicant. Treat specifically the possible effects on the interests of minority owners, female owners and local investors. (A "local investor" shall mean any individual who resides within Sacramento, Placer, El Dorado, San Joaquin, Amador, Sutter, Solano or Yolo Counties or any corporate partnership or business association owned or controlled by any individual(s) who reside in these counties.)

It is assumed by the Governing Bodies that all owners or prospective owners of any equity interest in applicant will share equally in the costs associated with making this application if a franchise is not awarded to applicant. If there is any agreement, understanding or arrangement to the contrary, explain in detail.

7. Minority and Female Ownership and Involvement

If desired, provide information relating to minority and female ownership of applicant and anticipated minority and female involvement in the operation of the Sacramento franchise if the franchise is awarded in consequence of this application. The submission of such information is not mandatory; however, minority and female ownership and the extent of active minority and female involvement in operations will be considered a plus factor in the selection process, as one of numerous factors indicating the probable community responsiveness of the applicant.

FORM B: OWNERSHIP QUALIFICATIONS

OWNERSHIP QUALIFICATIONS

1. Does the applicant, any subsidiary of applicant, or any person or business entity having any interest ^{1/} in applicant, directly or indirectly own, operate, control or have an interest in any of the following:^{2/}
- a. A national broadcast television network (such as ABC, CBS, or NBC); or [] Yes [] No
 - b. A television broadcast station whose predicted Grade B contour, computed in accordance with Section 73.684 of the FCC's rules, overlaps in whole or in part the service area of such system, or an applicant for a license to operate such a station; or [] Yes [] No
 - c. A television translator station licensed to Sacramento County; or [] Yes [] No
 - d. A telephone company whose service area includes Sacramento County. [] Yes [] No
 - e. A newspaper having local circulation within Sacramento County. [] Yes [] No
 - f. A radio station whose potential listening area includes Sacramento County [] Yes [] No
 - g. A theater, or any newspapers, radios or television stations outside Sacramento County [] Yes [] No
 - h. A cable television system [] Yes [] No

2. If "yes" to any of the above, indicate below, with full identifying particulars, the nature and extent of such ownership operation, control or interest.

Name of Applicant, Person or Entity: _____

Nature of Interest: _____

Company in which Interest Held: _____

Name of Applicant, Person or Entity: _____

(continued)

^{1/} For purposes of this form, "interest" includes, in the case of corporations, officers, directors, and shareholders owning 1 percent or more of the company's outstanding voting stock.

^{2/} An affirmative response to Questions 1(a) through 1(d) may constitute disqualification of an applicant if Federal Communications Commission (FCC) cross-ownership rules prohibit such an applicant from investing in cable systems (see 47 CFR §63.45 and §76.501).

OWNERSHIP QUALIFICATIONS (continued)

Nature of Interest: _____

Company in which Interest Held: _____

3. Is the applicant a U.S. citizen? ☐ Yes ☐ No4. Is the applicant a U.S. corporation? ☐ Yes ☐ No
If "no," please describe in detail.

5. If "no," above state any ownership retained by persons or entities which are not U.S. citizens or corporations.

6. Do any appointed or elected officials of County or Cities serving within the last two years or members of their families have any beneficial interest or ownership in the applicant? ☐ Yes ☐ No

If "yes" to the above, indicate the name of the official, the percentage of ownership and the entity owned.

a. Name of the applicant: _____

b. Percentage of ownership: _____

c. Name of applicant or principal: _____

Describe, in detail, any contractual or financial interest--direct or indirect--existing between an officer or employee of the applicant and the County or Cities which may have existed at any time during the application process. Such interest or relationship shall include, but is not limited to, any contract or any financial interest in the sale of land, materials, supplies or services to the County or Cities.

FORM C: CHARACTER QUALIFICATIONS

CHARACTER QUALIFICATIONS

1. Has the applicant (including parent corporation if applicable) or any principal¹ ever been convicted or pleaded no contest in a criminal proceeding (felonies or misdemeanors) in which any of the following offenses was charged?

- | | |
|---|--|
| a. Fraud | <input type="checkbox"/> yes <input type="checkbox"/> no |
| b. Embezzlement | <input type="checkbox"/> yes <input type="checkbox"/> no |
| c. Tax evasion | <input type="checkbox"/> yes <input type="checkbox"/> no |
| d. Bribery | <input type="checkbox"/> yes <input type="checkbox"/> no |
| e. Extortion | <input type="checkbox"/> yes <input type="checkbox"/> no |
| f. Jury tampering | <input type="checkbox"/> yes <input type="checkbox"/> no |
| g. Obstruction of justice (or other misconduct affecting public or judicial officers' performance of their official duties) | <input type="checkbox"/> yes <input type="checkbox"/> no |
| h. False/misleading advertising | <input type="checkbox"/> yes <input type="checkbox"/> no |
| i. Perjury | <input type="checkbox"/> yes <input type="checkbox"/> no |
| j. Anti-trust violations (state and federal) | <input type="checkbox"/> yes <input type="checkbox"/> no |
| k. Violations of FCC regulations | <input type="checkbox"/> yes <input type="checkbox"/> no |
| l. Conspiracy to commit any of the foregoing offenses | <input type="checkbox"/> yes <input type="checkbox"/> no |
| m. Any other felony | <input type="checkbox"/> yes <input type="checkbox"/> no |

2. If "yes", attach separate statement providing specifics such as date, court, sentence or fine, etc.

1

For purposes of this form, "principal" means any officer or director of applicant, and any person, firm, corporation, partnership, joint venture, or other entity, who or which owns or controls one (1) per cent or more of the voting stock (or any equivalent voting interest of a partnership or joint venture) of an applicant.

CHARACTER QUALIFICATIONS (continued)

3. Has the applicant or any principal ever been or is the applicant or any principal now a party to a civil proceeding involving any of the following:

- a. Unfair or anticompetitive business practices ☐ yes ☐ no
- b. Violations of securities laws (state and federal) ☐ yes ☐ no
- c. False/misleading advertising ☐ yes ☐ no
- d. Violations of FCC regulations ☐ yes ☐ no
- e. Unfair labor practices ☐ yes ☐ no
- f. Antitrust violations (state and federal) ☐ yes ☐ no
- g. Any action in which a municipality served by applicant or any principal is a party ☐ yes ☐ no
- h. Bankruptcy ☐ yes ☐ no

4. If "yes", attach statement providing specifics.

5. Has applicant or any principal ever had a business license (defined to include FCC licenses, alcoholic beverage and restaurant licenses, etc.) revoked, suspended or the renewal thereof denied or is applicant or any principal now a party to a proceeding that may result in same? ☐ yes ☐ no

6. If "yes", attach statement providing specifics.

7. Has applicant or any principal ever, as a result of an adjudicated proceeding, been found in violation--other than routine service complaints--of any franchise agreement, contract, or regulation governing their cable communications systems owned or operated by them? ☐ yes ☐ no

8. If "yes", attach statement providing specifics.

9. Has applicant or any principal ever initiated litigation against a franchising authority or had a franchising authority initiate litigation against it? ☐ yes ☐ no

10. If "yes", attach statement providing specifics.

FORM D: EXPERIENCE--CURRENT CABLE HOLDINGS

**CABLE HOLDINGS OWNED BY APPLICANT
AND PRESENT SUBSCRIBER RATES**

Please list all holdings (franchises/licenses and systems) in which applicant or any principal* owns one (1) percent or more of stock other equity interest. (If additional pages are needed, please reproduce this form.)

Location of System			
Date of Franchise/Li- cense Award or Acqui- sition (indicate whether award or purchase)			
Plant Miles of System			
Date First Subscribers Served			
Date Construction Completed			
Percentage of System Ownership Held			
Holder of Controlling Ownership Interest			
Current Subscriber Rate			
Date Rate Approved			
Name and Address of Local Government Officials Responsible for Cable Operations			

*For purposes of this form, "principal" means any officer or director of applicant, and any person, firm, corporation, subsidiary, joint venture or other entity, who or which owns or controls one (1) percent or more of the voting stock (or any equivalent voting interest of a partnership or joint venture) of an applicant.

Complete this form for all, but not more than four, cable systems operated by applicant. Each system so described must be available for inspection as evidence of applicant's special qualification and experience in cable television. If possible, include systems that (a) are under construction; (b) include community involvement; (c) are pre-1972; and (d) have more than 25,000 subscribers.

Community:

Name of Local Company:

Address:

Date of award of franchise:

Date construction commenced:

If turn-key -- name company:

Percentage construction completed:

Strand or route miles of plant presently in place for residential services:

- A. Aerial _____
B. Underground _____

Number of Residential Subscribers:

- A. At present _____
B. In 5 yrs. (projected) _____

Homes passed by cable:

- A. At present _____
B. In 5 yrs. (projected) _____

Number of local origination channels: _____

Programming hours per typical week on local origination channels:

- A. Automated _____
B. Non-automated _____

Number of channels used for entertainment services:

- A. Class I _____
B. Class II _____

List entertainment services:

This system (check all applicable):

- (a) Under construction _____
(b) Includes community involvement _____
(c) Is pre-1972 _____
(d) Has 25,000+ subscribers _____

Include narrative explanations of any special or unique features that demonstrate applicant's capability and experience.

Number community access channels:

- A. Education _____
B. Government _____
C. Public _____
D. Other _____

Average number of hours channels used daily:

- A. Education Channels _____
B. Government Channels _____
C. Public Channels _____
D. Other access channels _____

Interactive services to homes (list services with number of subscribers):

- A. At present _____
B. In 5 yrs. (projected) _____

Miles of cable providing institutional services:

- A. At present _____
B. In 5 yrs. (projected) _____

Number of institutional subscribers:

- A. At present _____
B. In 5 yrs. (projected) _____

Institutional Services (List services with number of subscribers):

- A. At present _____
B. In 5 yrs. (projected) _____

Attach a complete Rate Schedule for all services provided (showing rate change history from inception to present time)

FORM E: FORMER FRANCHISES OR OWNERSHIP INTERESTS

FORMER FRANCHISES

Applicant and any principal* shall list every community where it has received a cable television franchise or constructed or operated a cable system without a franchise and subsequently disposed of all or a majority of its interest. (If additional pages are needed, please reproduce this form.)

Name of System	Community	Date of Franchise Award or Acquisition	Date of Franchise Disposition	Reason and Manner of Disposition

*For purposes of this form, "principal" means any officer or director of applicant, and any person, firm, corporation, subsidiary, joint venture or other entity, who or which owns or controls 3 percent or more of the voting stock (or any equivalent voting interest of a partnership or joint venture) of an applicant.

FORM F: FINANCIAL RESOURCES, EXISTING CAPITAL COMMITMENTS,
AND POTENTIAL BUILDING COMMITMENTS

FINANCIAL RESOURCES

Please describe in detail the financing plan for the construction and operation of the proposed Sacramento County cable communications system. Proof of financial capability shall include the following:

1. Source of financing:

- a. Equity -- What are the source and amount of equity capital? List all committed sources and the amount committed. Provide back-up documentation evidencing commitment.
-
-

- b. Long-term Debt -- What are the source and amount of long-term debt? List all committed sources and the amount committed. Provide back-up documentation evidencing commitment.
-
-

- c. Short-term Debt -- What are the source and amount of short-term debt? List all committed sources and the amount committed. Provide back-up documentation evidencing commitment.
-
-

- d. Provide name, title, address and telephone of appropriate contact person of each lending institution providing financing or other financial services to applicant.
-
-

2. Terms of financing: (Provide information for each source of debt financing.)

- a. Amount -- Long-term \$ _____ Term length _____
Amount -- Short-term \$ _____ Term length _____
- b. Under what conditions is the financing to be made available? Are there restrictions on availability or use of funds?
-
-

FINANCIAL RESOURCES (continued)

c. What interest rates, payback and other terms? _____

d. What collateral is involved? _____

e. Who are guarantors? _____

f. Attach copies of any related agreements made in connection with financing of this project.

g. Describe any interrelationships between any source of debt financing and applicant or any principal.

h. Are there any limitations on the sale of stock by individual holders in this project? Describe.

i. Are there any buy-out or buy-back stock provisions? Describe.

j. Are there any assignments or intended assignments of stock voting rights? If so, describe.

3. If applicant is (or includes) a multiple system operator, will it agree to countersign the franchise agreement if asked to do so.

FINANCIAL RESOURCES (continued)

Is applicant organized as an IRS Subchapter S corporation? If yes, what depreciation rate will be used for tax purposes?

5. Documentation: Supply documentation and evidence that assures applicant's financial viability, such as letters of commitment or credit from financial institutions and equity sources which will demonstrate the availability of sufficient funds to complete the construction of the Sacramento County cable communications system.

If applicant is a multiple system operator, give evidence of the portion of the company's line of credit that is presently uncommitted and will be applied and committed to the construction of the Sacramento County system.

If local investors are involved, list the amount of equity contribution of each plus the method by which the contribution is paid (e.g., cash, cash plus credit, services, etc.). Include financial commitment documentation for each investor.

If applicant is a division or subsidiary of an MSO, provide the proposed debt instrument, describing terms of payment.

If capital is to be raised by a parent company, provide an annual report for the parent company.

If future refinancing is anticipated, describe proposed terms and arrangements.

FINANCIAL RESOURCES (continued)

6. Previous systems financed: Describe in detail the financing arrangements utilized by applicant and/or parent and/or principals to acquire or construct cable systems within the past ten years:

7. For applicant, the parent company, if any, and the principals, provide the name, title, address and telephone number of an appropriate contact person in any outside audit firm utilized within the past ten years.

NATIONAL BUILDING COMMITMENTS--NEW PLANT*

Form F

To be completed for each applicant, parent organization and principal franchised in any other community or communities. If additional space is needed, please reproduce this form.

Miles & Cost of Committed Plant (give name of community)		Committed Total Capital Costs					Completion Date**
		Year 1	Year 2	Year 3	Year 4	Year 5	
Sacramento County	Miles						
	Cost						
Community 1: _____	Miles						
	Cost						
Community 2: _____	Miles						
	Cost						
Community 3: _____	Miles						
	Cost						
Community 4: _____	Miles						
	Cost						
Community 5: _____	Miles						
	Cost						

*New plant includes the miles of committed plant and construction costs for all recently awarded franchises which may not have started construction and also older franchises where building program is not yet complete.
 **Completion date as promised in the application for each franchise.

COMMITMENTS TO REBUILD--EXISTING SYSTEMS

To be completed for each applicant, parent organization and principal franchised in any other community or communities. If additional space is needed, please reproduce this form.

Form 3

Miles of Committed Rebuilding (give name of community)		Committed Total Capital Costs				
		Year 1	Year 2	Year 3	Year 4	Year 5
Community 1: _____	Miles					
	Cost					
Community 2: _____	Miles					
	Cost					
Community 3: _____	Miles					
	Cost					
Community 4: _____	Miles					
	Cost					
Community 5: _____	Miles					
	Cost					
Community 6: _____	Miles					
	Cost					

Summary

New Plant (including Sacramento County)					
Rebuilding Plant					
Total Committed Capital Costs					

POTENTIAL BUILDING COMMITMENTS--CURRENT FRANCHISE APPLICATIONS

To be completed for each applicant, parent organization and principal applying for franchises in other communities. If additional space is needed, please reproduce this form.

Community in which franchise sought	Date of Application	Expected Date of Award	Estimated Plant Mileage	Estimated Cost
Community 1: _____ Miles				
_____ Cost				
Community 2: _____ Miles				
_____ Cost				
Community 3: _____ Miles				
_____ Cost				
Community 4: _____ Miles				
_____ Cost				
Total Estimated Mileage and Cost				

FORM G: FINANCIAL PRO FORMA

ANTICIPATED SYSTEM GROWTH AND REVENUE STATEMENT FOR THE SACRAMENTO COUNTY CABLE SYSTEM

Year	House-	Homes	Average	Average	Average	Percentage of Penetration	
	holds in Fran- chise Area	Passed by Cable	Basic* Subscribers	2nd Set* Subscribers	Pay Cable* Subscribers	Basic Subscribers/ Homes Passed by Cable	Pay Cable Subscribers/ Homes Passed by Cable
Year 1							
Year 2							
Year 3							
Year 4							
Year 5							
Year 6							
Year 7							
Year 8							
Year 9							
Year 10							
Year 11							
Year 12							
Year 13							
Year 14							
Year 15							

(continued)

*If there is more than one tier of service offered, provide information for each tier. Show separately, number of subscribers, average rate, annual revenue for each tier of basic and pay cable and other services. Then show totals for all tiers.

NOTE: Year 1 begins on the date the certification of acceptance is filed.

ANTICIPATED SYSTEM GROWTH AND REVENUE STATEMENT FOR THE SACRAMENTO COUNTY CABLE SYSTEM--Continued

Year	Revenue Per Subscriber						Revenue (Annual Total)					
	Basic* (Yearly)	2nd Set* (Yearly)	Pay* (Yearly)	Instal- lation	FM Ser- vice	Other Des- cribe	Basic* (Yearly)	2nd Set* (Yearly)	Pay* (Yearly)	Instal- lation	FM Ser- vice	Other Des- cribe
Year 1												
Year 2												
Year 3												
Year 4												
Year 5												
Year 6												
Year 7												
Year 8												
Year 9												
Year 10												
Year 11												
Year 12												
Year 13												
Year 14												
Year 15												

(continued)

*If there is more than one tier of service offered, provide information for each tier. Show separately, number of subscribers, average rate, annual revenue for each tier of basic and pay cable and other services. Then show totals for all tiers.

NOTE: Year 1 begins on the date the certification of acceptance is filed.

REVENUE DOCUMENTATION

Using the figures of households given in the "Uniform Data," explain how your subscriber and penetration figures are obtained.

In brief narrative, describe the data utilized, the source of the data, and the method for projection. Describe the method for projection of penetration levels. Were market surveys conducted? If so, describe them. Please furnish copies of market studies.

INCOME STATEMENT (in 000s)

Year	Revenue	Less Op- erating Expenses	Equals Operating Income	Less Interest	Less Depreci- ation	Equals Pre-tax Income	Less Income Taxes	Equals Net Income	Plus Depreci- ation	Equals Cash Flow
Year 1										
Year 2										
Year 3										
Year 4										
Year 5										
Year 6										
Year 7										
Year 8										
Year 9										
Year 10										
Year 11										
Year 12										
Year 13										
Year 14										
Year 15										

NOTE: Year 1 begins on the date the certification of acceptance is filed.

1. Present, in brief narrative form, applicant's financial goals. Specifically, include in your discussion financial targets for operating income, pre-tax income, and rate of return. What is basis for rate of return? Describe the factors you will use to calculate the rate of return on investment, rate base, and assets. If the discounted cash flow method is used, what is the investment base upon which the return is calculated? What are the items considered as cash out-flows, in-flows? What residual value is assumed for the system at the end of the franchise period?

2. Please describe how income taxes are computed. Will federal income taxes be consolidated with a parent company? If not, show treatment of loss carry-forwards and investment tax credits.

SOURCES AND USES OF FUNDS

Year	Sources of Funds					Uses of Funds						
	Beginning Cash Balance	Equity Funds	Loans	Revenue	Total Sources	Capital Expen- ditures	Oper- ating Expenses	Interest Pay- ments	Income Taxes	Loan Repay- ment	Dividends	Total Uses
Year 1												
Year 2												
Year 3												
Year 4												
Year 5												
Year 6												
Year 7												
Year 8												
Year 9												
Year 10												
Year 11												
Year 12												
Year 13												
Year 14												
Year 15												
Total												

NOTE: Year 1 begins on the date the certification of acceptance is filed.

SUMMARY OF SOURCES AND USES OF FUNDS

	Total Sources	Total Uses	Ending Cash Balance	Ending Total Loans Outstanding	Debt/Equity Ratio at end of year	
Year 1						
Year 2						
Year 3						
Year 4						
Year 5						
Year 6						
Year 7						
Year 8						
Year 9						
Year 10						
Year 11						
Year 12						
Year 13						
Year 14						
Year 15						

ANNUAL LOAN INFORMATION

Year	Average Loan Balance for Year	Average Interest Rates for Year*
Year 1		
Year 2		
Year 3		
Year 4		
Year 5		
Year 6		
Year 7		
Year 8		
Year 9		
Year 10		
Year 11		
Year 12		
Year 13		
Year 14		
Year 15		
Total		

NOTE: Year 1 begins on the date the certification of acceptance is filed.

* Describe in detail how average interest rates are calculated and projected.

ANTICIPATED CAPITAL EXPENDITURES (in \$000s)

Year	Antenna(s)	Microwave	Headend	Earth Station	Distribution			Institutional Network	Drops*	Converters*	Buildings	Leasehold
	& Towers				Aerial	Under-ground	Pole Arrangements					Improve-ment Furnishings & Fixtures
Year 1												
Year 2												
Year 3												
Year 4												
Year 5												
Year 6												
Year 7												
Year 8												
Year 9												
Year 10												
Year 11												
Year 12												
Year 13												
Year 14												
Year 15												

(continued)

*Equipment on customer's premises (including capitalized labor).

NOTE: Include projected replacement capitalization where applicable.

NOTE: Year 1 begins on the date the certification of acceptance is filed.

ANTICIPATED CAPITAL EXPENDITURES (in \$000s)--continued

Year	Land	Origination			Test Equipment, Spr. Parts Tools, Inven- tory	Vehicles	Pre-Op- erating	Engineer- ing	Pay Cable Related Equipment	Amortized & Capitalized Overhead & Equipment* Incl. Comput- ers	Capi- talized Interest rest	Other **	Total
		Studios	Mobile Vans	Equip- ment									
Year 1													
Year 2													
Year 3													
Year 4													
Year 5													
Year 6													
Year 7													
Year 8													
Year 9													
Year 10													
Year 11													
Year 12													
Year 13													
Year 14													
Year 15													

*Discuss and describe the method(s) used in determining capitalized overhead and capitalized interest applicable to the system.

**Describe other capital expenditures.

NOTE: Include projected replacement capitalization where applicable. NOTE: Year 1 begins on the date the certification of acceptance is filed.

CONSTRUCTION COSTS
(Capitalized Expenditure Justification)

Item	Aerial	Underground
<u>Distribution Cost</u>		
<u>Per Mile</u>		
Make Ready	\$ _____	\$ _____
Engineering	\$ _____	\$ _____
Labor	\$ _____	\$ _____
Hardware and Strand	\$ _____	\$ _____
Taps	\$ _____	\$ _____
Cable	\$ _____	\$ _____
Electronics	\$ _____	\$ _____
Directional	\$ _____	\$ _____
Other	\$ _____	\$ _____
Total Cost Per Mile	\$ _____	\$ _____
Total Miles	x _____ miles	x _____ miles
Total Cost (miles x cost)	= \$ _____	= \$ _____
<u>Cost Per Drop</u>		
Drop Material	\$ _____	\$ _____
Labor [Capitalized?]	\$ _____	\$ _____
Converter	\$ _____	\$ _____
Total Cost Per Drop	\$ _____	\$ _____
<u>Headend Cost</u>		
Number of headends	_____	_____
<u>Premium Channel Converter</u>		
Drop Material	\$ _____	\$ _____
Labor	\$ _____	\$ _____
Converter	\$ _____	\$ _____
Total Cost Per Drop	\$ _____	\$ _____

Miles of Cable

Provide total number of miles of trunk and feeder cable to be constructed, both aerial and underground, both active and shadow, also indicating miles of multiple cable construction, if any.

Underground Construction

Miles of conduit required =

Miles of direct burial cable =

DEPRECIATION

Year	Antenna(s) & Towers	Microwave	Headend	Earth Station	Distribution			Institu- tional Network	Drops	Conver- ters	Build- ings	Leasehold Improvements & Fixtures
					Aerial	Under- ground	Pole Arrangat.					
Year 1												
Year 2												
Year 3												
Year 4												
Year 5												
Year 6												
Year 7												
Year 8												
Year 9												
Year 10												
Year 11												
Year 12												
Year 13												
Year 14												
Year 15												

(continued)

NOTE: Year 1 begins on the date the certification of acceptance is filed.

DEPRECIATION--continued

Year	Origination			Test	Vehicles	Pre-Op- erating	Engineer- ings	Pay Cable	Capitalized	Other	Total
	Studios	Mobile Vans	Equip- ment	Equipment, Tools, Parts, Inventory				Related Equipment	Overhead & Equipment Incl. Computer		
Year 1											
Year 2											
Year 3											
Year 4											
Year 5											
Year 6											
Year 7											
Year 8											
Year 9											
Year 10											
Year 11											
Year 12											
Year 13											
Year 14											
Year 15											

NOTE: Year 1 begins on the date the certification of acceptance is filed.

DEPRECIATION JUSTIFICATION SHEET

Item	Depreciation Life (years)
1. Antenna(s) & Towers	
2. Microwave	
3. Headend	
4. Earth Station	
5. Distribution:	
a. Aerial	
b. Underground	
c. Pole arrangement	
6. Drops	
7. Converters	
8. Buildings:	
a. Headends	
b. Studio	
c. Offices	
9. Leasehold Improvements, Furniture, Fixtures	
10. Origination Equipment - Studio	
11. Origination Equipment - Remote	
12. Test Equipment, Tools, Spare Parts & Inventory	
13. Vehicles	
14. Preoperating	
15. Engineering	
16. Pay Cable Converters (and related equipment)	
17. Capitalized Payroll	
18. Headend & Hub Computers	
19. Other (detail)	

PAYROLL EXPENSE

1. Under each category below, specify actual titles of anticipated personnel (e.g., system manager under General & Administrative; access coordinator under Origination; etc.). In the parentheses (), indicate the equivalent number of full-time employees for each category for Years 3, 5 and 10 (e.g., an entry might appear as \$97,500 (7)--indicating seven employees receiving a total of \$97,500 in that particular year).

ANNUAL SALARIES AND WAGES
(in \$000s)

Category	Year 1	Year 3	Year 5	Year 10
A. Plant				
1.	()	()	()	()
2.	()	()	()	()
3.	()	()	()	()
4.	()	()	()	()
5.	()	()	()	()
6.	()	()	()	()
7.	()	()	()	()
8.	()	()	()	()
9.	()	()	()	()
10.	()	()	()	()
B. Origination				
1.	()	()	()	()
2.	()	()	()	()
3.	()	()	()	()
4.	()	()	()	()
5.	()	()	()	()
6.	()	()	()	()
7.	()	()	()	()
8.	()	()	()	()
9.	()	()	()	()
10.	()	()	()	()
C. General and Administrative				
1.	()	()	()	()
2.	()	()	()	()
3.	()	()	()	()
4.	()	()	()	()
5.	()	()	()	()
D. Other				
1.	()	()	()	()
2.	()	()	()	()
Total	_____	_____	_____	_____

NOTE: Year 1 begins on the date the certification of acceptance is filed.

2. Describe proposed use of special employee training programs, if any, and relate the proposed programs to the foregoing payroll information.

3. Provide staffing schedule plans, salary increases and methodology used in determining head count, for example: 1 controller per 2,000 new customers; 1 maintenance technician per X miles of plant.

OPERATING EXPENSES 15 YEARS DETAILED PROJECTIONS*

Category	Year 1	Year 2	Year 3	Year 4	Year 5
A. Plant:					
1. Salaries					
a. Overtime					
2. Employee Benefits					
3. Maintenance (Distribution)					
4. Drop Materials Expense					
5. Converter Maintenance					
6. Pole and Site Rentals					
7. Maintenance (Microwave Service & Head end)					
8. System Power					
9. Shop & Warehouse Utilities					
10. Vehicle Expense					
11. Computer Maintenance					
12. Rent					
13. Professional Services					
14. Payroll and Expenses Capitalized					
15. Other **					
TOTAL PLANT					

(Continued)

*Fifteen-year totals to be reflected in Summary on Form G, page 26.

**For all "other" categories of a particular total operating cost, specify the individual components that make up the "other" category and document these expenses.

NOTE: On a separate sheet, please describe all assumptions made to develop operating expenses such as power cost per mile, number of subscribers per general and administrative clerk or technician, leasing cost per vehicle, etc.

OPERATING EXPENSES 15 YEARS DETAILED PROJECTIONS*

Category	Year 6	Year 7	Year 8	Year 9	Year 10
A. Plant:					
1. Salaries					
a. Overtime					
2. Employee Benefits					
3. Maintenance (Distribution)					
4. Drop Materials Expense					
5. Converter Maintenance					
6. Pole and Site Rentals					
7. Maintenance (Microwave Service & Head end)					
8. System Power					
9. Shop & Warehouse Utilities					
10. Vehicle Expense					
11. Computer Maintenance					
12. Rent					
13. Professional Services					
14. Payroll and Expenses Capitalized					
15. Other * *					
TOTAL PLANT					

(Continued)

*Fifteen-year totals to be reflected in Summary on Form G, page 26.

**For all "other" categories of a particular total operating cost, specify the individual components that make up the "other" category and document these expenses.

NOTE: On a separate sheet, please describe all assumptions made to develop operating expenses such as power cost per mile, number of subscribers per general and administrative clerk or technician, leasing cost per vehicle, etc.

OPERATING EXPENSES 15 YEARS DETAILED PROJECTIONS*

Category	Year 11	Year 12	Year 13	Year 14	Year 15
A. Plant:					
1. Salaries					
a. Overtime					
2. Employee Benefits					
3. Maintenance (Distribution)					
4. Drop Materials Expense					
5. Converter Maintenance					
6. Pole and Site Rentals					
7. Maintenance (Microwave Service & Head end)					
8. System Power					
9. Shop & Warehouse Utilities					
10. Vehicle Expense					
11. Computer Maintenance					
12. Rent					
13. Professional Services					
14. Payroll and Expenses Capitalized					
15. Other * *					
TOTAL PLANT					

(continued)

*Fifteen-year totals to be reflected in Summary on Form G, page 26.

**For all "other" categories of a particular total operating cost, specify the individual components that make up the "other" category and document these expenses.

NOTE: On a separate sheet, please describe all assumptions made to develop operating expenses such as power cost per mile, number of subscribers per general and administrative clerk or technician, leasing cost per vehicle, etc.

EXPENSES 15 YEARS DETAILED PROJECTIONS* -- continued

Category	Year 1	Year 2	Year 3	Year 4	Year 5
B. Origination Expenses:					
1. Salaries					
2. Overtime					
3. Benefits					
4. Rent					
5. Maintenance					
6. Vehicle Expenses					
7. Common Carrier (Terrestrial)					
8. Local Program Materials					
a. Tape Stock					
b. Film					
c. Misc. Supplies					
9. Satellite Signals+					
a. Independents					
b. Other					
c. Pay Cable					
10. Stand-alone Program Material					
a. Film Service					
b. Other Nonautomated					
c. Automated Programming					
11. Promotion (LO & Access)					
12. Other Miscellaneous++					
TOTAL ORIGINATION EXPENSE					

*Fifteen-year totals to be reflected in Summary on Form G, p. 26.

(continued)

+List all signals imported and their corresponding annual cost (i.e., WTBS--\$, MSG--\$, UPI--\$).

++List separately.

EXPENSES 15 YEARS DETAILED PROJECTIONS* -- continued

Category	Year 6	Year 7	Year 8	Year 9	Year 10
Origination Expenses:					
1. Salaries					
2. Overtime					
3. Benefits					
4. Rent					
5. Maintenance					
6. Vehicle Expenses					
7. Common Carrier (Terrestrial)					
8. Local Program Materials					
a. Tape Stock					
b. Film					
c. Misc. Supplies					
Satellite Signals+					
a. Independents					
b. Other					
c. Pay Cable					
10. Stand-alone Program Material					
a. Film Service					
b. Other Nonautomated					
c. Automated Programming					
11. Promotion (LO & Access)					
12. Other Miscellaneous++					
TOTAL ORIGINATION EXPENSE					

*Fifteen-year totals to be reflected in Summary on Form G, p. 26.

(continued)

+List all signals imported and their corresponding annual cost (i.e., WBS--\$,
G--\$, UPI--\$).

++List separately.

EXPENSES 15 YEARS DETAILED PROJECTIONS* -- continued

Category	Year 11	Year 12	Year 13	Year 14	Year 15
B. Origination Expenses:					
1. Salaries					
2. Overtime					
3. Benefits					
4. Rent					
5. Maintenance					
6. Vehicle Expenses					
7. Common Carrier (Terrestrial)					
8. Local Program Materials					
a. Tape Stock					
b. Film					
c. Misc. Supplies					
9. Satellite Signals+					
a. Independents					
b. Other					
c. Pay Cable					
10. Stand-alone Program Material					
a. Film Service					
b. Other Nonautomated					
c. Automated Programming					
11. Promotion (LO & Access)					
12. Other Miscellaneous++					
TOTAL ORIGINATION EXPENSE					

*Fifteen-year totals to be reflected in Summary on Form G, p. 26.

(continued)

+List all signals imported and their corresponding annual cost (i.e., WBS--\$ _____, ○

MSG--\$ _____, UPI--\$ _____).

++List separately.

EXPENSES 15 YEARS AND DETAILED PROJECTIONS--continued

Category	Year 1	Year 2	Year 3	Year 4	Year 5
c. General, Selling & Administrative Expenses					
1. Salaries					
a. Overtime					
2. Benefits					
3. Light, Heat & Power					
4. Vehicle Expense					
5. Rent - Office & Other					
6. Travel & Entertainment					
7. Contributions/Dues & Publications					
8. Professional Services					
9. Stationery & Supplies					
10. Billing & Mailing					
11. Postage & Freight					
12. Advertising & Promotion					
13. Telephone & Telegraph					
14. Sundry Office Expenses					
15. Insurance/Bonding					
16. Bad Debt Account					
17. Start-up Expenses					
18. State & Local Taxes (including real & Per. property taxes)					
19. Franchise Fees					
20. License & Permit Fees (Local)					
21. FCC Fees					
22. Copyright Payments					
23. Services Purchased from Parent Company*					
24. Payroll & Expenses (capitalized)					
25. Management Fee					
26. Sales Commissions					
27. Training					
28. Other **					
TOTAL GSA					
TOTAL PLANT + ORIGINATION + GSA					

*If applicable, fill in Form G, p. 27 in complete detail.

**For all other categories of a particular total operating cost, specify the individual components that make up the "other" category and document these expenses.

NOTE: Year 1 begins on the date the certification of acceptance is filed.

Category	Year 6	Year 7	Year 8	Year 9	Year 10
c. General, Selling & Administrative Expenses					
1. Salaries					
a. Overtime					
2. Benefits					
3. Light, Heat & Power					
4. Vehicle Expense					
5. Rent - Office & Other					
6. Travel & Entertainment					
7. Contributions/Dues & Publications					
8. Professional Services					
9. Stationery & Supplies					
10. Billing & Mailing					
11. Postage & Freight					
12. Advertising & Promotion					
13. Telephone & Telegraph					
14. Sundry Office Expenses					
15. Insurance/Bonding					
16. Bad Debt Account					
17. Start-up Expenses					
18. State & Local Taxes (including real & per. property taxes)					
19. Franchise Fees					
20. License & Permit Fees (Local)					
21. FCC Fees					
22. Copyright Payments					
23. Services Purchased from Parent Company*					
24. Payroll & Expenses (capitalized)					
25. Management Fee					
26. Sales Commissions					
27. Training					
28. Other **					
TOTAL GSA					
TOTAL PLANT + ORIGINATION + GSA					

*If applicable, fill in Form G, p. 27 in complete detail.

**For all other categories of a particular total operating cost, specify the individual components that make up the "other" category and document these expenses.

NOTE Year 1 begins on the date the certification of acceptance is filed.

Category	Year 11	Year 12	Year 13	Year 14	Year 15
General, Selling & Administrative Expenses					
1. Salaries					
a. Overtime					
2. Benefits					
3. Light, Heat & Power					
4. Vehicle Expense					
5. Rent - Office & Other					
6. Travel & Entertainment					
7. Contributions/Dues & Publications					
8. Professional Services					
9. Stationery & Supplies					
10. Billing & Mailing					
11. Postage & Freight					
12. Advertising & Promotion					
13. Telephone & Telegraph					
14. Sundry Office Expenses					
15. Insurance/Bonding					
16. Bad Debt Account					
17. Start-up Expenses					
18. State & Local Taxes (including real & Per. property taxes)					
19. Franchise Fees					
20. License & Permit Fees (local)					
21. FCC Fees					
22. Copyright Payments					
23. Services Purchased from Parent Company*					
24. Payroll & Expenses (capitalized)					
25. Management Fee					
26. Sales Commissions					
27. Training					
28. Other **					
TOTAL GSA					
TOTAL PLANT + ORIGINATION + GSA					

*If applicable, fill in Form G, p. 27 in complete detail.

**For all other categories of a particular total operating cost, specify the individual components that make up the "other" category and document these expenses.

NOTE: Year 1 begins on the date the certification of acceptance is filed.

OPERATING EXPENSES--SUMMARY (in 000s)

Year	PLANT			ORIGINATION			CS&A			Total
	Technical Salaries & Benefits	Other	Subtotal	Program Produc. Salaries & Benefits	Other	Subtotal	Salaries & Benefits	Other	Subtotal	
Preoper- ating										
Year 1										
Year 2										
Year 3										
Year 4										
Year 5										
Year 6										
Year 7										
Year 8										
Year 9										
Year 10										
Year 11										
Year 12										
Year 13										
Year 14										
Year 15										

NOTE: Year 1 begins on the date the certification of acceptance is filed.

SERVICES PURCHASED FROM PARENT ORGANIZATION
(if applicable)

[NOTE: If the applicant owns more than one cable system, describe the basis to be used for allocating overhead or organization joint costs among various systems. For example, perhaps all overhead pool costs are allocated to systems on the basis of a ratio of system subscribers to total company subscribers. From current experience, show total amount of corporate overhead to be shared by all systems.] (Use additional sheets if necessary.)

NOTE: Year 1 begins on the date the certification of acceptance is filed.

Year	Management Services	Legal	Accounting	Customer Billing	Programming	Engineering & Technical	Other (Please detail)	Total
Preop- erating								
Year 1								
Year 2								
Year 3								
Year 4								
Year 5								
Year 6								
Year 7								
Year 8								
Year 9								
Year 10								
Year 11								
Year 12								
Year 13								
Year 14								
Year								

SERVICES PURCHASED FROM PARENT ORGANIZATION
(if applicable)

[NOTE: If the applicant owns more than one cable system, describe the basis to be used for allocating overhead or organization joint costs among various systems. For example, perhaps all overhead pool costs are allocated to systems on the basis of a ratio of system subscribers to total company subscribers. From current experience, show total amount of corporate overhead to be shared by all systems.] (Use additional sheets if necessary.)

NOTE: Year 1 begins on the date the certification of acceptance is filed.

Year	Management Services	Legal	Accounting	Customer Billing	Programming	Engineering & Technical	Other (Please detail)	Total
Preop- erating								
Year 1								
Year 2								
Year 3								
Year 4								
Year 5								
Year 6								
Year 7								
Year 8								
Year 9								
Year 10								
Year 11								
Year 12								
Year 13								
Year 14								
Year								

Will any of the costs of submitting this proposal or building the system be charged to or collected from any existing system affiliated with or controlled by the applicant or any of its principals?

FORM H: CONSTRUCTION PRACTICES

CONSTRUCTION PRACTICES

1. System Construction

a. Will construction be undertaken by a turnkey contractor? ☐ Yes ☐ No

b. If "yes":

(1) Has turnkey contractor been selected?* ☐ Yes ☐ No

(2) Who is turnkey contractor? _____

2. Discuss availability of work crews and equipment to ensure compliance with the construction schedule required by the Ordinance. Detail outstanding agreements with construction companies or equipment suppliers. Supply copies of any commitments regarding this particular project.

3. Discuss proposed construction standards dealing with safety and reliability. List construction codes which will be followed.

* It is expected that the franchisee will submit a copy of the turnkey draft contract to the Cable Television Commission prior to execution.

CONSTRUCTION PRACTICES (continued)

4. List or discuss standards to be followed regarding tower construction, marking and lighting.
5. Do you have a manual of construction practices to be followed by construction crews? ☐ Yes ☐ No
- If "yes," attach a copy of the manual as an appendix to this application.
6. Discuss any proposals you wish to make which will ensure that service is extended to each geographical area of the system and to various socioeconomic neighborhoods within the system on a substantially equal basis during each phase of construction.
7. If desired, propose and describe line extensions more liberal than prescribed by Ordinance §5.50.424, as authorized by §5.50.426.

FORM I: CHANNEL CAPACITY AND SYSTEM DESIGN

CHANNEL CAPACITY AND SYSTEM DESIGN

1. Proposed System Design

Plant Miles

a. Mileage

- (1) Subscriber Network--basic subscriber system (dual cable) _____
- (2) Institutional Network--separate institutional cable _____
- (3) Other (explain) _____

b. Design Type

Briefly describe the type of layout that will be used to provide coverage to the franchise area. Examples: Hub system linked by AML, or radial trunk layout using a remote headend interconnected by super trunk.

c. Undergrounding Policy

Describe the policy proposed for undergrounding cable, including cost sharing with other utilities and proposed arrangements with residential developers. Indicate whether any undergrounding will occur in areas where utilities are not undergrounded. Indicate criteria for determining whether underground cable will require conduit, or can be buried directly.

CHANNEL CAPACITY AND SYSTEM DESIGN (continued)

2. Describe distribution system, cable and equipment. Give manufacturer, type and model number for the following.*

Please Note: If any equipment proposed for use (in this or other sections of Form I) is not presently available for purchase, this fact must be indicated (e.g., converters in development but not yet available).

Cable:

Aerial

Buried

Drop

Active Electronics:

Trunk Amplifiers

Bridging Stations

Line Extenders

Power Supplies

Standby Power Supplies

Converters

Addressable Taps

Other

Passive Electronics:

Splitters

Power Inserts

Subscriber Taps

Connectors

Other

*It will be presumed that equipment described or its equivalent will be used in actual construction. As an alternative, applicant may provide detailed specifications for such equipment.

CHANNEL CAPACITY AND SYSTEM DESIGN (continued)

3. In regard to closed captioning or other services for the hearing impaired, what, if any, services will be made available? If any such provisions are made, please indicate type and availability of equipment to be utilized.

CHANNEL CAPACITY AND SYSTEM DESIGN (continued)

4. Describe plans to operate or contract for transmission services using the following bands.

a. Common Carrier

b. Cable Television Relay Service (CARS)

c. Multipoint Distribution Service (MDS)

d. Other

CHANNEL CAPACITY AND SYSTEM DESIGN (continued)

5. Describe plans to operate or contract for any satellite earth station(s) including appropriate technical specifications (e.g., size of antenna; manufacturer of antenna; low-noise amplifier make; model number and noise figure; receiver make and model number; standby power; etc.)*

a. Has frequency coordination been performed? ☐ yes ☐ no

b. Has a link budget analysis been performed? ☐ yes ☐ no

If "yes," to (a) and/or (b), attach copy(s) as an appendix to this application.

c. Will earth station(s) be protected by FCC license? ☐ yes ☐ no

*It will be presumed that equipment described or its equivalent will be used in actual construction. As an alternative, applicant may provide detailed specifications for such equipment.

CHANNEL CAPACITY AND SYSTEM DESIGN (continued)

6. Describe design specifications for the delivery of pay cable television, including methods of security (e.g., negative-option or positive-option traps, sync suppression, addressable converters, etc.).

CHANNEL CAPACITY AND SYSTEM DESIGN (continued)

7. Describe headend design and reception facilities (including make and model numbers of antennas, signal processor, modulators, demodulators and FM processors).* Indicate whether signal studies or measurement programs have been undertaken in selecting the proposed site(s).

*It will be presumed that equipment described or its equivalent will be used in actual construction. As an alternative, applicant may provide detailed specifications for such equipment.

CHANNEL CAPACITY AND SYSTEM DESIGN (continued)

8. Describe all interactive capabilities to be included in the system.* What services are proposed? When will they be available, and to whom will they be available? Will services be offered by franchisee, or by others, or by both? If by others, what will be the criteria for deciding to whom access is provided, and what are the proposed terms of any agreements relating thereto (e.g. leased access contracts)?

Specify for each capability or service the extent to which the technology proposed has been tested and/or operated in other cable systems.

* It will be presumed that equipment system described or its equivalent will be used in actual construction. As an alternative, applicants may provide detailed specifications for such equipment.

CHANNEL CAPACITY AND SYSTEM DESIGN (continued)

9. Describe any other headend electronic equipment to be installed for interactive (two-way) capabilities, including computer hardware and software (list make and model number).*

*It will be presumed that equipment described or its equivalent will be used in actual construction. As an alternative, applicant may provide detailed specifications for such equipment.

CHANNEL CAPACITY AND SYSTEM DESIGN (continued)

10. Is status monitoring of system to be employed? ☐ yes ☐ no

If "yes," describe, in detail, the status-monitoring system you plan to use.*

*It will be presumed that equipment described or its equivalent will be used in actual construction. As an alternative, applicant may provide detailed specifications for such equipment.

CHANNEL CAPACITY AND SYSTEM DESIGN (continued)

11. Describe proposed Emergency Alert System including make and model numbers of equipment. Indicate whether system will override all audio and video channels or only audio of channels.*

*It will be presumed that equipment described or its equivalent will be used in actual construction. As an alternative, applicant may provide detailed specifications for such equipment.

CHANNEL CAPACITY AND SYSTEM DESIGN (continued)

12. Describe plans for standby power at the headend. Give make and model numbers of equipment as well as time and ampere hour per power capacity. Indicate whether environmental systems (i.e., air conditioning and lighting) are to be powered during standby conditions.*

*It will be presumed that equipment described or its equivalent will be used in actual construction. As an alternative, applicant may provide detailed specifications for such equipment.

CHANNEL CAPACITY AND SYSTEM DESIGN (continued)

13. Describe the equipment to be used for programming the automated equipment including make and model numbers.*

*It will be presumed that equipment described or its equivalent will be used in actual construction. As an alternative, applicant may provide detailed specifications for such equipment.

CHANNEL CAPACITY AND SYSTEM DESIGN (continued)

14. Channel capacity to and from subscribers (Subscriber Network).

a. Downstream:

(1) Frequency Spectrum _____ -MHz

(2) Channel Capacity _____

(3) Channel Capacity Initially
Activated _____

b. Upstream:

(1) Frequency Spectrum _____ - MHz

(2) Channel Capacity (per cable) _____

(3) Will upstream be initially activated from all
subscribers? ☐ yes ☐ noc. If "no," indicate when, under what circumstances and how future
capacity will be provided.

(1) When and under what circumstances?

(2) How?

d. Will upstream be initially activated along any portion of Subscriber
Network?☐ Yes ☐ No

If "yes," please explain.

CHANNEL CAPACITY AND SYSTEM DESIGN (continued)

15. Additional channel capacity to and from institutions (Institutional Network—if proposed; see Instructions to Applicants).

a. Downstream:

(1) Frequency Spectrum _____ -MHz

(2) Channel Capacity _____

(3) Number of channels to be
initially activated? _____

b. If full downstream capacity will not be initially activated, indicate when, under what circumstances and how future capacity will be provided.

(1) When and under what circumstances?

(2) How?

CHANNEL CAPACITY AND SYSTEM DESIGN (continued)

15. Additional channel capacity to and from institutions (Institutional Network) (continued).

c. Upstream:

- (1) Frequency Spectrum (per cable) _____ ~ MHz
- (2) Channel Capacity _____
- (3) Channel capacity initially
activated? _____

d. Describe, in detail, when, under what circumstances, and how upstream capacity will be provided to institutions.

(1) When and under what circumstances?

(2) How?

CHANNEL CAPACITY AND SYSTEM DESIGN (continued)

15. Additional channel capacity to and from institutions (Institutional Network) (continued).

e. List institutions proposed to be included in institutional network.

Note that a list of all public facilities which the institutional cable must pass is included in the Uniform Data provided in the Request for Proposal.

CHANNEL CAPACITY AND SYSTEM DESIGN (continued)

15. Additional channel capacity to and from institutions (Institutional Network) (continued).

f. Clearly indicate whether the institutions listed on the previous page [I-15(e)] will be initially connected or simply passed by cable. Also, discuss the provision of terminal equipment to institutions and centralized switching equipment to support use of the proposed network.

CHANNEL CAPACITY AND SYSTEM DESIGN (continued)

15. Additional channel capacity to and from institutions
(Institutional Network) (continued).

g. Describe anticipated uses of the institutional network. Also give details of any agreements with or commitments to any potential institutional network user(s). (Attach any such letters or agreements as appendix to this application.)

h. List specifically resources, including studios, equipment, staff assistance and funds which you propose to commit and make available to institutional network users. If there is any overlap between resources described here and in Form K, please explain.

CHANNEL CAPACITY AND SYSTEM DESIGN (continued)

16. Describe, in narrative form, the concept of the cable system being proposed. Along with all other relevant information, this narrative should include the following: number of cables; whether a dedicated (i.e., separate subscriber and institutional cables) or integrated (cable serves both subscribers and institutions) system will be used.

17. Discuss channel capacity, with regard both to the short-term and the long-term, including specific references to the degree of flexibility for adapting the proposed system to increasing or changing capacity requirements.

18. Discuss the extent to which bi-directional capability will be available initially, and what steps are proposed to provide additional capability as the state-of-the-art and public need develop.

CHANNEL CAPACITY AND SYSTEM DESIGN (continued)

19. System Interconnection

a. Interconnection between headend and hubs:

(1) Microwave

(a) Describe the type of microwave:*

(b) Number of channels:

(i) Downstream: _____ (ii) Upstream: _____

(c) Frequency spectrum: _____ -MHz

(d) Estimated Power: _____

(2) Cable

(a) Describe the size and type of trunk cable (list make and model number):*

*It will be presumed that equipment described or its equivalent will be used in actual construction. As an alternative, applicant may provide detailed specifications for such equipment.

CHANNEL CAPACITY AND SYSTEM DESIGN (continued)

19. System Interconnection (continued)

(2) Cable (continued)

(b) List interconnection equipment (amplifiers, etc.), giving make and model number.*

(c) Frequency Spectrum:

(i) Downstream _____ -MHz

(ii) Upstream _____ -MHz

(d) Initial Activation:

(i) Downstream _____ ☐ yes ☐ no

(ii) Upstream _____ ☐ yes ☐ no

*It will be presumed that equipment described or its equivalent will be used in actual construction. As an alternative, applicant may provide detailed specifications for such equipment.

CHANNEL CAPACITY AND SYSTEM DESIGN (continued)

19. System Interconnection (continued)

b. Describe proposals for interconnection with other broadband telecommunications systems. Include technical plans for interconnection, detailing how the company will ensure compatibility with other systems.

*It will be presumed that equipment described or its equivalent will be used in actual construction. As an alternative, applicant may provide detailed specifications for such equipment.

CHANNEL CAPACITY AND SYSTEM DESIGN (continued)

20. Technical Standards

Describe the proposed technical system performance standards.

The applicant certifies and guarantees that these freely offered technical standards that exceed the minimum requirements of FCC are within the financial capability of the proposed system as demonstrated on the pro forma statements and will be delivered to the Sacramento County, California system.

Signed: _____

Title: _____

21. Amplifier Cascade

What will be the longest amplifier cascade of the proposed system?

Number of amplifiers: _____

Number of miles: _____

CHANNEL CAPACITY AND SYSTEM DESIGN (continued)

22. Please provide system performance specifications for headend to most remote subscriber as well as for most remote institutional organization point to most remote subscriber. Indicate the number of trunk, bridger and line extender amplifiers used in these calculations.

23. Performance Tests

Describe procedures for initial proof of performance tests and ongoing performance tests including number and general location of test points. Describe the test equipment to be used; method and frequency of test equipment calibration; and forms and method of recording field data and permanent recordkeeping. A clear summary of the test procedures is desired, rather than lengthy test manuals.

CHANNEL CAPACITY AND SYSTEM DESIGN (continued)

24. System Maintenance

Describe procedures for routine preventive maintenance, including type and frequency of system inspection and testing, number and qualifications of technical staff and service facilities. A clear summary of the maintenance procedures is desired, rather than lengthy maintenance manuals.

CHANNEL CAPACITY AND SYSTEM DESIGN (continued)

25. Customer Complaint Policies

Discuss procedures for responding to and resolving customer complaints. Give maximum response time for responding to and resolving customer complaints received during normal business hours, after hours, weekends and holidays.

CHANNEL CAPACITY AND SYSTEM DESIGN (continued)

26. System Map

Attach, as appendix to this application, a map indicating proposed locations of headend, tower and antenna, hubs, studio, microwave facilities and earth station(s).

27. Attach, as appendix to this application, a headend block diagram showing all major components.

28. Describe anticipated noise (including humming, buzzing, etc.) if any, from all system sources, including studios and headend (hub) stations, measured in decibels at (a) the noise source, (b) a 100-foot radius from the noise source, and (c) a 200-foot radius from the noise source.

CHANNEL CAPACITY AND SYSTEM DESIGN (continued)

29. Estimate planned daily energy usage of the system, including information concerning peaks and fluctuations in energy consumption. Measure energy usage in watts.

CHANNEL CAPACITY AND SYSTEM DESIGN (continued)

30. Describe anticipated microwave emissions, including sources, magnitude at the source, and magnitude at various distances from source. Explain in as great detail as possible the expected consequences of microwave emissions (e.g., interference with other broadcasting/communication systems, personal health hazards, etc.).

CHANNEL CAPACITY AND SYSTEM DESIGN (continued)

31. With regard to the main office/ studio complex and any other buildings (studios, etc.) to be constructed, provide:

- (a) Proposed location.
- (b) Schematics in three dimensions for typical site designs including structures, parking requirements and landscaping, and description of external appearance of structures.
- (c) Planned number of employees, visitors and operating hours.

CHANNEL CAPACITY AND SYSTEM DESIGN (continued)

32. With regard to the headend (hub) stations, provide:

- (a) The number of stations proposed and their proposed locations.
- (b) Detailed schematics in three dimensions of typical site design, including any antenna(s) and tower(s).
- (c) Description of external appearance of any structures.
- (d) Planned number of employees, if any.

CHANNEL CAPACITY AND SYSTEM DESIGN (continued)

33. With regard to the cable distribution lines, provide:

- a. Detailed construction drawing(s)/specification(s) of typical poles.
- b. Graphically illustrated sections of the cable distribution system which would be installed overhead and which would be installed underground, and indication of the lengths of these sections to the approximate nearest tenth of a mile.
- (c) Identification of areas in which existing utility poles would be used, and areas in which new poles would have to be installed, estimated number of new poles which would be required, and the approximate distances between poles.
- (d) For any underground cable sections which would be installed outside public street rights-of-way, indicate the locations and lengths to the approximate nearest tenth of a mile.
- (e) The width and depth of any underground trenching.
- (f) Identification of any freeways, railroads or waterways (including creeks) to be crossed by the cable distribution system, and locations of crossing.

CHANNEL CAPACITY AND SYSTEM DESIGN (continued)

34. Describe planned safety/security provisions for the cable system.

35. Please designate an individual by name, title, address, and telephone number who can provide additional or clarifying information regarding system design on behalf of applicant.

FORM J: PROPOSED SIGNAL CARRIAGE AND CHANNEL ALLOCATIONS

Tier _____: (complete for Basic Service and each other tier as it is identified in the proposal) (See Ordinance Section 5.50.504)

Channel _____: (complete for each channel in this tier)

- A. Description of all programming from satellite and other sources to be offered (include minimum number of hours per day and week types of programming described will be shown).

Within 23 months:

Within 37 months:

Within 51 months:

- B. Minimum number of hours per day and week this channel will contain home educational and entertainment programming which has not previously been broadcast within the Sacramento Community.

Channel _____: (complete for each channel in this tier)

- A. Description of all programming from satellite and other sources to be offered (include minimum number of hours per day and week types of programming described will be shown).

Within 23 months:

Within 37 months:

Within 51 months:

- B. Minimum number of hours per day and week this channel will contain home educational and entertainment programming which has not previously been broadcast within the Sacramento Community.

Tier _____: (complete for Basic Service and each other tier as it is identified in the proposal)

Channel _____: (complete for each channel in this tier)

- A. Description of all programming from satellite and other sources to be offered (include minimum number of hours per day and week types of programming described will be shown).

Within 23 months:

Within 37 months:

Within 51 months:

- B. Minimum number of hours per day and week this channel will contain home educational and entertainment programming which has not previously been broadcast within the Sacramento Community.

Channel _____: (complete for each channel in this tier)

- A. Description of all programming from satellite and other sources to be offered (include minimum number of hours per day and week types of programming described will be shown).

Within 23 months:

Within 37 months:

Within 51 months:

- B. Minimum number of hours per day and week this channel will contain home educational and entertainment programming which has not previously been broadcast within the Sacramento Community.

Tier _____: (complete for Basic Service and each other tier as it is identified in the proposal)

Channel _____: (complete for each channel in this tier)

- A. Description of all programming from satellite and other sources to be offered (include minimum number of hours per day and week types of programming described will be shown).

Within 23 months:

Within 37 months:

Within 51 months:

- B. Minimum number of hours per day and week this channel will contain home educational and entertainment programming which has not previously been broadcast within the Sacramento Community.

Channel _____: (complete for each channel in this tier)

- A. Description of all programming from satellite and other sources to be offered (include minimum number of hours per day and week types of programming described will be shown).

Within 23 months:

Within 37 months:

Within 51 months:

- B. Minimum number of hours per day and week this channel will contain home educational and entertainment programming which has not previously been broadcast within the Sacramento Community.

Tier _____: (complete for Basic Service and each other tier as it is identified in the proposal)

Channel _____: (complete for each channel in this tier)

- A. Description of all programming from satellite and other sources to be offered (include minimum number of hours per day and week types of programming described will be shown).

Within 23 months:

Within 37 months:

Within 51 months:

- B. Minimum number of hours per day and week this channel will contain home educational and entertainment programming which has not previously been broadcast within the Sacramento Community.

Channel _____: (complete for each channel in this tier)

- A. Description of all programming from satellite and other sources to be offered (include minimum number of hours per day and week types of programming described will be shown).

Within 23 months:

Within 37 months:

Within 51 months:

- B. Minimum number of hours per day and week this channel will contain home educational and entertainment programming which has not previously been broadcast within the Sacramento Community.

Tier _____: (complete for Basic Service and each other tier as it is identified in the proposal)

Channel _____: (complete for each channel in this tier)

- A. Description of all programming from satellite and other sources to be offered (include minimum number of hours per day and week types of programming described will be shown).

Within 23 months:

Within 37 months:

Within 51 months:

- B. Minimum number of hours per day and week this channel will contain home educational and entertainment programming which has not previously been broadcast within the Sacramento Community.

Channel _____: (complete for each channel in this tier)

- A. Description of all programming from satellite and other sources to be offered (include minimum number of hours per day and week types of programming described will be shown).

Within 23 months:

Within 37 months:

Within 51 months:

- B. Minimum number of hours per day and week this channel will contain home educational and entertainment programming which has not previously been broadcast within the Sacramento Community.

Tier _____: (complete for Basic Service and each other tier as it is identified in the proposal)

Channel _____: (complete for each channel in this tier)

- A. Description of all programming from satellite and other sources to be offered (include minimum number of hours per day and week types of programming described will be shown).

Within 23 months:

Within 37 months:

Within 51 months:

- B. Minimum number of hours per day and week this channel will contain home educational and entertainment programming which has not previously been broadcast within the Sacramento Community.

Channel _____: (complete for each channel in this tier)

- A. Description of all programming from satellite and other sources to be offered (include minimum number of hours per day and week types of programming described will be shown).

Within 23 months:

Within 37 months:

Within 51 months:

- B. Minimum number of hours per day and week this channel will contain home educational and entertainment programming which has not previously been broadcast within the Sacramento Community.

For each Tier of Service proposed, state all premium services to be offered with such 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 23 months, within 37 months, and within 51 months.

Attach copies of the contracts under which applicant shall obtain the rights to programming services other than local broadcast television signals stated in its proposal.

SERVICE TIER NO. _____ (If applicable)

NOTE: If proposing multiple tiers of service, complete separate Form J (pages 8 through 17) for each tier.

1. Broadcast Television Channels

a. Local Broadcast Signals (carried full-time):

[illegible]

*For example, ABC, CBS, NBC, PBS, independent, other.

**Specify proposed activation date if other than initial date.

SERVICE TIER NO. _____ (if applicable)

- b.
- Nonautomated Programming

(1) Received Via Satellite

[illegible]

*Specify proposed activation date if other than initial date.

PROPOSED SIGNAL CARRIAGE AND ALLOCATIONS (continued)

SERVICE TIER NO. _____ (if applicable)

3. Pay Cable Service

a. Per channel service

Type*	Source	Cable Channel	Hours Per Day Available	Proposed Activation Date**

*For example, first-run movies, regional sports, classic movies, etc.

**Specify proposed activation date if other than initial date.

PROPOSED SIGNAL CARRIAGE AND ALLOCATIONS (continued)

SERVICE TIER NO. _____ (if applicable)

3. Pay Cable Service

b. Per program service (if applicable)

Type*	Source	Cable Channel	Hours Per Day Available	Proposed Activation Date**

*For example, first-run movies, regional sports, classic movies, etc.

**Specify proposed activation date if other than initial date.

SUMMARY OF CHANNEL ALLOCATIONS

SERVICE TIER NO. _____ (if applicable)

On the chart below, briefly describe the designated allocation of each channel on the proposed system (e.g., KXYZ-TV, Ch. 7, ABC; 24-hr. sports, automated; educational access; Pay TV; etc.). Indicate with an asterisk (*) any channel(s) that will not be activated or available initially.

Channel No.	Description of Channel
1	
2	
3	
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5	
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PROPOSED SIGNAL CARRIAGE AND ALLOCATIONS (continued)

4. Audio Service

b. Nonbroadcast Audio Programming

Format*	Hours Per Day (est.)	Proposed Activation Date**

*For example, country, rock, etc.

**Specify proposed activation date if other than initial date.

K. COMMUNITY ACCESS AND RESOURCE
COMMITMENTS TO LOCAL ENTITIES

In light of Sections _____ through _____ of the Ordinance and pp. 19-22 of the RFP above, describe on this form in detail, if desired, any proposals regarding community access and resource commitments to local entities.

I. Community Access

1. If you propose community use programming as envisioned by Section _____ of the Ordinance (Access Community Use) complete the following:

(a) State the number (one or more) of channels on the subscriber network which will be made available exclusively for the type of access use and programming prescribed by Section _____.

(b) Specify the tier or tiers of service in which each channel will be included.

(c) Describe the location, nature and extent of separate and independent studio facilities, production equipment, personnel resources, and other resources to be provided in connection with such access use and programming, designed in such a manner as to permit operation by users with minimal training and supervision. (Note that no applicant is required to propose community use programming. Note also that by voluntarily proposing community use programming of the type envisioned by Section _____, you make a commitment to keep the studio facilities, production equipment, personnel resources, other resources and channel(s) available for use, program production and broadcasts twenty-four (24) hours per day, seven (7) days per week, during the term of the franchise, at the sole cost of the franchisee without any charge whatever. You also make a commitment to allow use of the studio facilities, production equipment, personnel resources, other resources, and channel(s) for the production and broadcast of community use programming by members of the general public, including individuals and nonprofit community organizations on a first-come, first-serve basis.)

(d) State the nature and extent of all training to be offered by the Franchisee respecting equipment operation and training required as a condition of facility and equipment use and operation by users.

(e) Describe the public or quasi-public body proposed by the applicant to administer community use programming envisioned by Section _____ of the Ordinance. Such a body shall not include any officer or employee of the County, Cities or Commission. Nor shall the body include appointees of officers, employees, governing bodies or boards or committees of the County, Cities or Commission. Any such proposal shall specifically identify the following respecting such a body:

(1) Legal form of existence;

(2) How established and who will be responsible for establishment;

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

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

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

(6) Sources and amounts of funding for support of operation of the body.

(f) Describe any standards or criteria which you intend to utilize in connection with the following issues:

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

(2) Program quality control;

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

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

(5) Determinations relating to the tier of service in which community use programming by local governmental agencies and local non-profit community organizations will be placed.

2. If you propose community use programming as contemplated by Section _____ of the Ordinance (Franchisee Sponsored Community Use Programming), complete the following:

(a) Specify in the Schedule of Franchisee Sponsored Community Use Programming provided herewith the minimum number of hours per week per tier of service new (not previously broadcast within the Sacramento Community) community use programming will be shown on the Cable Television System. Make additional copies of the form, if necessary, to include each tier. (Note that all hours of programming proposed must be provided. Note also that with respect to hours of programming proposed to be provided by local governmental agencies and local community non-profit organizations, the applicant agrees to make available at its sole cost, and without any charge whatsoever, studio facilities, production equipment, staffing resources, materials resources, and all other resources to train and permit such entities to plan, direct and produce such programming for broadcast -- subject to the criteria relating to hours of programming -- i.e., programs need not be permitted to be produced which would be in excess of the broadcast time proposed.)

Form K

SCHEDULE OF FRANCHISEE SPONSORED COMMUNITY USE PROGRAMMING

(The hours shown on this schedule will be provided during Year(s) _____ of the franchise term. Year 1 begins on the date the franchise is awarded.)

Tier: _____ (Describe for Basic Service Tier and for each other tier as it is identified in the proposal.)

- a. Number of hours of community use programming between the hours of 6 a.m. and 5 p.m.

	Audio and Visual	Audio Only
Nonautomated programming provided by:		
Franchisee	_____ hours	_____ hours
Local governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours
Automated programming provided by:		
Franchisee	_____ hours	_____ hours
Local governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours

- b. Number of hours of community use programming between the hours of 5 p.m. and 11 p.m.

	Audio and Visual	Audio Only
Nonautomated programming provided by:		
Franchisee	_____ hours	_____ hours
Local governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours
Automated programming provided by:		
Franchisee	_____ hours	_____ hours
Local governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours

- c. Number of hours of community use programming between the hours of 11 p.m. and 6 a.m.

	Audio and Visual	Audio Only
Nonautomated programming provided by:		
Franchisee	_____ hours	_____ hours
Local governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours
Automated programming provided by:		
Franchisee	_____ hours	_____ hours
Local Governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours

SCHEDULE OF FRANCHISEE SPONSORED COMMUNITY USE PROGRAMMING

The hours shown on this schedule will be provided during Year(s) _____ of the franchise term. Year 1 begins on the date the franchise is awarded.)

Tier: _____ (Describe for Basic Service Tier and for each other tier as it is identified in the proposal.)

- a. Number of hours of community use programming between the hours of 6 a.m. and 5 p.m.

	<u>Audio and Visual</u>	<u>Audio Only</u>
Nonautomated programming provided by:		
Franchisee	_____ hours	_____ hours
Local governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours
Automated programming provided by:		
Franchisee	_____ hours	_____ hours
Local governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours

- b. Number of hours of community use programming between the hours of 5 p.m. and 11 p.m.

	<u>Audio and Visual</u>	<u>Audio Only</u>
Nonautomated programming provided by:		
Franchisee	_____ hours	_____ hours
Local governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours
Automated programming provided by:		
Franchisee	_____ hours	_____ hours
Local governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours

- c. Number of hours of community use programming between the hours of 11 p.m. and 6 a.m.

	<u>Audio and Visual</u>	<u>Audio Only</u>
Nonautomated programming provided by:		
Franchisee	_____ hours	_____ hours
Local governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours
Automated programming provided by:		
Franchisee	_____ hours	_____ hours
Local Governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours

SCHEDULE OF FRANCHISEE SPONSORED COMMUNITY USE PROGRAMMING

(The hours shown on this schedule will be provided during Year(s) _____ of the franchise term. Year 1 begins on the date the franchise is awarded.)

Tier: _____ (Describe for Basic Service Tier and for each other tier as it is identified in the proposal.)

- a. Number of hours of community use programming between the hours of 6 a.m. and 5 p.m.

	Audio and Visual	Audio Only
Nonautomated programming provided by:		
Franchisee	_____ hours	_____ hours
Local governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours
Automated programming provided by:		
Franchisee	_____ hours	_____ hours
Local governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours

- b. Number of hours of community use programming between the hours of 5 p.m. and 11 p.m.

	Audio and Visual	Audio Only
Nonautomated programming provided by:		
Franchisee	_____ hours	_____ hours
Local governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours
Automated programming provided by:		
Franchisee	_____ hours	_____ hours
Local governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours

- c. Number of hours of community use programming between the hours of 11 p.m. and 6 a.m.

	Audio and Visual	Audio Only
Nonautomated programming provided by:		
Franchisee	_____ hours	_____ hours
Local governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours
Automated programming provided by:		
Franchisee	_____ hours	_____ hours
Local Governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours

SCHEDULE OF FRANCHISEE SPONSORED COMMUNITY USE PROGRAMMING

The hours shown on this schedule will be provided during Year(s) _____ of the franchise term. Year 1 begins on the date the franchise is awarded.)

Tier: _____ (Describe for Basic Service Tier and for each other tier as it is identified in the proposal.)

- a. Number of hours of community use programming between the hours of 6 a.m. and 5 p.m.

	Audio and Visual	Audio Only
Nonautomated programming provided by:		
Franchisee	_____ hours	_____ hours
Local governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours
Automated programming provided by:		
Franchisee	_____ hours	_____ hours
Local governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours

- b. Number of hours of community use programming between the hours of 5 p.m. and 11 p.m.

	Audio and Visual	Audio Only
Nonautomated programming provided by:		
Franchisee	_____ hours	_____ hours
Local governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours
Automated programming provided by:		
Franchisee	_____ hours	_____ hours
Local governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours

- c. Number of hours of community use programming between the hours of 11 p.m. and 6 a.m.

	Audio and Visual	Audio Only
Nonautomated programming provided by:		
Franchisee	_____ hours	_____ hours
Local governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours
Automated programming provided by:		
Franchisee	_____ hours	_____ hours
Local Governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours

SCHEDULE OF FRANCHISEE SPONSORED COMMUNITY USE PROGRAMMING

(The hours shown on this schedule will be provided during Year(s) _____ of the franchise term. Year 1 begins on the date the franchise is awarded.)

Tier: _____ (Describe for Basic Service Tier and for each other tier as it is identified in the proposal.)

- a. Number of hours of community use programming between the hours of 6 a.m. and 5 p.m.

	Audio and Visual	Audio Only
Nonautomated programming provided by:		
Franchisee	_____ hours	_____ hours
Local governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours
Automated programming provided by:		
Franchisee	_____ hours	_____ hours
Local governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours

- b. Number of hours of community use programming between the hours of 5 p.m. and 11 p.m.

	Audio and Visual	Audio Only
Nonautomated programming provided by:		
Franchisee	_____ hours	_____ hours
Local governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours
Automated programming provided by:		
Franchisee	_____ hours	_____ hours
Local governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours

- c. Number of hours of community use programming between the hours of 11 p.m. and 6 a.m.

	Audio and Visual	Audio Only
Nonautomated programming provided by:		
Franchisee	_____ hours	_____ hours
Local governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours
Automated programming provided by:		
Franchisee	_____ hours	_____ hours
Local Governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours

SCHEDULE OF FRANCHISEE SPONSORED COMMUNITY USE PROGRAMMING

The hours shown on this schedule will be provided during Year(s) _____ the franchise term. Year 1 begins on the date the franchise is awarded.)

Tier: _____ (Describe for Basic Service Tier and for each other tier as it is identified in the proposal.)

- a. Number of hours of community use programming between the hours of 6 a.m. and 5 p.m.

	<u>Audio and Visual</u>	<u>Audio Only</u>
Nonautomated programming provided by:		
Franchisee	_____ hours	_____ hours
Local governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours
Automated programming provided by:		
Franchisee	_____ hours	_____ hours
Local governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours

- b. Number of hours of community use programming between the hours of 5 p.m. and 11 p.m.

	<u>Audio and Visual</u>	<u>Audio Only</u>
Nonautomated programming provided by:		
Franchisee	_____ hours	_____ hours
Local governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours
Automated programming provided by:		
Franchisee	_____ hours	_____ hours
Local governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours

- c. Number of hours of community use programming between the hours of 11 p.m. and 6 a.m.

	<u>Audio and Visual</u>	<u>Audio Only</u>
Nonautomated programming provided by:		
Franchisee	_____ hours	_____ hours
Local governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours
Automated programming provided by:		
Franchisee	_____ hours	_____ hours
Local Governmental agencies	_____ hours	_____ hours
Local nonprofit community agencies	_____ hours	_____ hours

(b) If you propose different quantities of franchisee sponsored community use programming during different years of the franchise term, prepare a set of Schedule of Franchisee Sponsored Community Use Programming for each such different quantity proposed, and indicate at the top of the schedule in the space provided the year or years during which that quantity of programming is proposed.

(c) Describe the specific and detailed affirmative strategies to be utilized to solicit and encourage interest by local nonprofit community organizations in producing community use programming to fulfill the broadcast time commitment proposed. Such affirmative action might include, for example, continual contact with community organizations for the purpose of offering programming suggestions and assistance in planning, implementation and development, and assistance without charge in the direction and production of programs.

(d) Propose all criteria intended to be utilized to select between and apportion time among local non-profit community organizations if the demand to produce community use programming exceeds the broadcast time proposed in the application.

(e) Describe specifically the location, nature and extent of studio facilities, production equipment and personnel and other resources proposed to be made available at the sole cost of the Franchisee and without any charge whatsoever to produce and assist local governmental agencies and local non-profit community organizations in the presentation of community use programming.

Indicate whether the studio facilities, production equipment, staffing resources and other resources will be exclusively available for community use programming to local governmental agencies and local non-profit community organizations, or whether such resources will be shared with the Franchisee's operation or others. If shared, specific criteria shall be stated showing how time priorities will be allocated among competing interests to insure, for example, that studio space and production resources will not be made available to local organizations only at the least desirable times.

(f) Describe any standards or criteria which you intend to utilize in connection with the following issues. (Refer to and incorporate your answer to Question 1.(f) above, as appropriate.)

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

(2) Program quality control;

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

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

(5) Determinations relating to the tier of service in which community use programming by local governmental agencies and local non-profit community organizations will be placed.

(g) Describe the public or quasi-public body proposed by you to administer community use programming. Such a body shall not include any officer or employee of the County, Cities or Commission. Nor shall the body include appointees of officers, employees, governing bodies or boards or committees of the County, Cities or Commission. (Refer to and incorporate your answer to Question 1.(e) above, as appropriate.) Any such proposal shall specifically identify the following respecting such a body:

(1) Legal form of existence;

(2) How established and who will be responsible for establishment;

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

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

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

(6) Sources and amounts of funding for support of operation of the body.

3. If you proposed community use programming as contemplated by Section _____ (a) of the Ordinance (Franchisee Sponsored Community Use Programming), you may also propose here a specific number of channels to be set aside for the exclusive provision of community use programming on a Leased Basis by individuals and local nonprofit community organizations. Provide:

(a) The number of channels committed exclusively for such purposes.

(b) An itemization of the amounts of fees and charges, if any, to be levied at various times during the franchise term for leased use -- the fees and charges, if any, to include all rights and privileges associated with the lease, use of studio facilities, production equipment and staffing and other resources, and broadcast time; and copies of all contract documents to be utilized in connection with such leases.

(c) A statement as to whether identification of parties to whom channels will be leased and apportionment of leased time thereon will be vested within the sole discretion of the Franchisee, or determined in accordance with standards or criteria and, if so, all criteria, standards and requirements intended to be utilized by the Franchisee in apportioning leased time should the demand therefor exceed the channel supply.

II. Resource Commitments to Local Entities

1. Describe the resources (studios, equipment, staff assistance and financial support), if any, you propose to commit to local entities. Detail the process by which you have ascertained the needs of entities in the community. Demonstrate that the allocation of resources proposed is consistent with the priorities set forth in pages 19 - 22 of the RFP, above.

Include mechanisms to assure that the institutions to whom studio and equipment resources are committed will also receive adequate staff assistance and financial support from the Franchisee to make effective use of the studio and equipment resources throughout the Franchise term.

2. Detail other resources, benefits or specialized services, if any, to be provided to the County, City or Educational Consortium pursuant to Section _____ of the Ordinance.

3. By a separate attachment, fully disclose in detail, all commitments of services, resources, or other benefits (by lease, contract, or otherwise), if any, to specifically identified parties for non-commercial programming other than the County, Cities, or Educational Consortium, as required by Section _____ of the Ordinance. Attach all written agreements relating thereto.

III. Summary Plan

1. If you propose resources for I. Community Access or II. Local Entities as permitted by this form, please submit an overview plan which: summarizes and distinguishes between initial and ongoing resources; and indicates if and how resources committed will be reallocated to meet community use needs over the full term of the franchise.

FORM L: PROPOSED RATES AND
MARKETING/PROMOTIONAL PLANS

PROPOSED RATES

1. Basic Service Rates Proposed

- (a) If desired, describe Basic Service and the rates and charges to be imposed therefor when service is first made available under the Franchise. (See §5.50.618 of the Ordinance: Application Contents.)

- (b) Does applicant propose that the rates and charges described in (a) above shall be maintained during the term of the franchise at levels determined in accordance with Section 5.50.622 of the Ordinance: Basic Service Rates and Charges - Increases? (See §5.50.618 of the Ordinance: Application Contents. A "Yes" constitutes reference to and incorporation of the provisions of 5.50.622.)

☐ Yes

☐ No

- (c) If so, provide all additional information relating the amounts and types of rates, charges and deposits required by §5.50.618 of the Ordinance: Application Contents.

- (d) Does applicant propose to be bound by the provisions of §5.50.624 of the Ordinance: Discriminatory Practices? (Note that an applicant must propose to be bound by both §5.50.622 and §5.50.624 if it intends to be bound by either. A "Yes" constitutes reference to and incorporation of the provisions of §5.50.624.)

☐ Yes

☐ No

PROPOSED RATES - continued.

- (e) If so, set forth distinctions, if any, offered or to be made as permitted by subparagraph (a) of Section 5.50.624.

2. Other Service Rates Proposed

If desired, describe various other services on the Subscriber Network and the rates and charges to be imposed therefor when service is first made available under the franchise. (See §5.50.618 of the Ordinance: Application Contents.)

- 3. Whether or not you make proposals under 1, or 2 above, you may - if desired - provide additional information regarding rates, charges, deposits, studio and equipment usage rates, advertising policy and fees, leased channel policy and fees, etc.
- 4. If desired, describe proposed marketing/promotional plans for entertainment and other services.
- 5. Describe in detail billing practices, payment policies, collection policies and charges, and procedures to be followed in billing disputes.

FORM M: EMPLOYMENT PRACTICES

EMPLOYMENT PRACTICES

1. If desired, describe the policies, practices and procedures you will implement to insure full compliance with the non-discrimination and affirmative action provisions contained in Section _____ of the Ordinance. The submission of such procedures is not mandatory; however, submission of a well-designed, voluntary, non-discrimination and affirmative action employment program will be considered a plus factor in the selection process.

FORM N: MISCELLANEOUS

MISCELLANEOUS

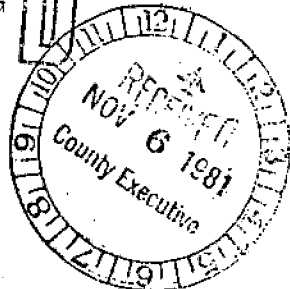
Please briefly summarize any elements of the proposal which have not been adequately covered in other parts of the application forms.

Anticipated future developments may be discussed, but should clearly be identified as such. Please limit responses to approximately 5 pages.



Date: November 3, 1981
To: Members of City Council and
Board of Supervisors
From: John D. Hershberger
Subject: KVIE Cable Channels

CITY MANAGER'S OFFICE
RECEIVED
NOV 5 1981



At the Monday, November 9 hearing on cable TV, a couple of issues regarding KVIE-TV are expected to be on the agenda. We'd like you to know our position on these issues.

NON-PROFIT USE OF KVIE CABLE CHANNELS

1. We agree with inclusion in the ordinance of language which restricts the commercial use of KVIE cable channels.
2. We support language which restricts commercial use of facilities provided to KVIE by a cable operator.

KVIE's RENTAL OF EXISTING FACILITIES

The mission of KVIE remains unchanged. Our purpose is, and will continue to be, to provide a non-commercial program service that enlightens and informs the community.

But federal funding is drying up. Congress and the Federal Communications Commission have encouraged public television stations to find new sources of revenue including, specifically, the rental of production facilities.

Last January, in an effort to become more self-sufficient in fulfilling our central mission (of quality service to the community), we established a new department and began aggressively marketing our facilities under the name of KVIE Video.

Revenue from this venture is now paying off a major equipment loan which allowed KVIE to acquire badly needed production facilities. This equipment is being used for both our own local production and for commercial purposes including satellite teleconferencing.

California state law permits non-profit corporations to engage in profit making activities as long as the profit is used to support the non-profit purposes of the corporation. KVIE pays taxes on any such profits. The Internal Revenue Service and the Corporation for Public Broadcasting requires careful accounting for commercial revenue and an annual audit of our books and fiscal procedures.

We expect profits from KVIE Video to pay for new equipment in the years ahead and to help pay the cost of programming and operating KVIE and KVIE cable channels.

CHANNEL ALLOCATION TO KVIE IN ORDINANCE

KVIE is unique in its request for cable cahnnels in that it is the only organization whose sole purpose is the operation of and delivery of quality public television service. This has been our reason for existence for 20 years.

KVIE is asking for increased access to increase this service, and to insure on the cable system a place for public service programming for the entire community.

It has been our position from the outset that the governing bodies of this community should clearly indicate how they would like the cable system designed, and to insure this public service to the community in the ordinance.

Some of the reasons these joint bodies decided to allocate channels to KVIE and the Educational Consortium in the ordinance are reviewed in the attached letter to Councilman Pope.

We hope the joint bodies will continue to support channel allocations to KVIE since the entire community stands to benefit from such an action.

November 6, 1981

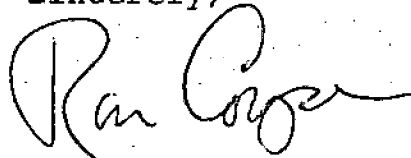
Bill Freeman
County Executive's Office
Sacramento County
Sacramento, California

Dear Bill:

Enclosed you will find important information pertaining to the award of four channels on the Sacramento County Cable System to KVIE. Such an award threatens the survival of the independent television production companies listed herein. Please read the information carefully and consider the ramifications of such an award. Feel free to call us for clarification.

We thank you for your consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ron Cooper". The signature is fluid and cursive, with the first name "Ron" being more prominent than the last name "Cooper".

Ron Cooper

Media Alliance Chairperson

TO WHOM IT MAY CONCERN

FROM: MEDIA ALLIANCE FOR SACRAMENTO CABLE "COMMUNITY USE" CHANNELS

RE: CONFLICTS OF INTEREST INHERENT IN THE PROPOSED PLAN TO AWARD
KVIE, CHANNEL 6 FOUR ADDITIONAL CHANNELS ON THE SACRAMENTO
CITY AND COUNTY CABLE TELEVISION SYSTEM.

We the undersigned hereby express our concern regarding the change in production priorities now being actively pursued by KVIE (PBS) and KVIE VIDEO. Because of recent correspondence with KVIE, we have learned that the station is presently producing commercial productions for profit in competition with private sector production companies. In a letter of October 22, 1981 addressed to Media Services, Director of Operations (KVIE) Howard Lowe interprets the recently passed 1981 Public Broadcast Amendments Act, as supporting "public television station's efforts to develop new local sources of revenue, including commercial enterprises". Judging from this statement and widespread KVIE advertising materials, it is clear that KVIE is actively seeking commercial business in the private sector.

We believe the Federal Government is sanctioning unfair competition by re-defining the commonly understood non-profit, non-commercial status of public broadcasting stations. Stations such as KVIE have been constructed, equipped and staffed through public donations, tax money and grant funding. To simply allow these stations to actively pursue profit generating projects in competition with privately financed companies is grossly unfair competition and violates the spirit of our free enterprise system.

Specifically, KVIE is successfully underbidding other Sacramento television production companies on commercial accounts such as Weinstock's, Wallpapers-to-go, Sears, and Chrysler. Because much of their facility and personnel are considered non-commercial serious potential conflicts of interest questions can be raised.

Is it fair for KVIE to price the use of it's equipment at less than the going rate, even though much of it was purchased through tax monies and donations for non-commercial purposes? By pursuing the use of this equipment and personnel for commercial productions, does this not place community oriented programming and non-profit productions as secondary to "For-Profit" production efforts? For example, would KVIE choose to forgo a "for-profit" production because it conflicted with a "no/low-profit" community information project? Given this conflict, what would be the production priorities for KVIE on the proposed four channels allotted them on the Sacramento cable system?

We also believe the precedent established by the erosion of the non-profit and for-profit distinctions is not in the best interests of the public at large. Non-profit organizations traditionally serve groups underserved by the private sector. Mandating non-profit groups to seek funding in the competitive marketplace to replace monies lost by Federal cutbacks is unjust to the people these organizations serve and short-sighted. The precedent established by the 1981 Public Broadcast Amendments Act is representative of false economic thinking and threatening to the many non-profit organizations lacking the huge capital assets of a public broadcast station.

Given the new orientation of KVIE as a for-profit organization, we believe that KVIE has elected to give up its distinction as a non-profit, non-commercial television production facility. We therefore protest the award of four channels on the proposed Sacramento County cable television system to KVIE for providing "instructional services or programming to the viewing public...". (County of Sacramento; Interdepartmental Correspondance dated 10-28-81. Revised item 5.50.328, "Channel Allocations to KVIE and Consortium") Will KVIE be allowed to earn income by the programming of these channels? Will this increased visibility mean added revenue for their production company? Because they are specifically mentioned in the RFP, will KVIE be awarded millions in new equipment and studio facilities by the competing cable franchise bidders? How does KVIE plan to program the four channels? Do they plan to purchase additional

pre-produced "canned" programs? Given that such purchases will run into the millions of dollars, does KVIE expect to generate this revenue from the Sacramento commercial market? If so, such competition could pose a threat to many smaller production companies. Will such competition force these organizations out of business and result in a significant loss in tax revenues and jobs?

We the undersigned, suggest that the community interest will be better served if the four channels were awarded to a totally non-profit entity and be designated "community use channels". In this way any potential conflicts of interest will be avoided and all Sacramento television production companies will be able to compete more fairly.

Richard W. Adams

VIDEO VISUALS
RICHARD BLACK
Bus. (916) 920-9073
Res. (916) 427-1679

Paul Blaise

PAUL BLAISE MEDIA
PAUL BLAISE
Bus. (916) 446-3126
Res. (916) 454-5855

Jerry Casey

GROUP VIDEO PRODUCTIONS
JERRY CASEY
Bus. (916) 635-5557

William F. Tomsic

E.T.C. PRODUCTIONS
GARY TOMSIC
Bus. (916) 929-7127

Bill Rase

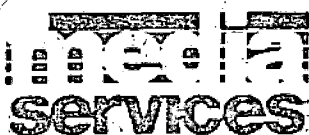
BILL RASE PRODUCTIONS
BILL RASE
Bus. (916) 929-9181

Ron Cooper

MEDIA SERVICES
RON COOPER
Bus. (916) 925-7111- 456-5052

Daniel Alexander

MEDIA SERVICES
DANIEL ALEXANDER
Bus. (916) 925-7111



November 5, 1981

Howard Lowe, Director of Operations
KVIE Channel 6
P.O. Box 6
Sacramento, CA. 95801

Dear Howard:

We thank you for your letter of October 22, 1981 and for your interpretation of the the 1981 Public Broadcasting Admendments Act. It is our position that if KVIE is legally allowed to pursue commercial "for profit" production projects, we consider this effort to be unfair competition and violates the spirit of the free-enterprise system.

Contrary to your stated belief "there is more than enough local production activity to keep Media Services and KVIE busy...", we find the local video production market extremely competitive as it is. Your ability as a Public Broadcast Station with equipment bought and paid for by grant monies, taxes, and public donations, allows KVIE to rent your services and personnel at far below the present market value. Because the local commercial channels profit from the purchase of commercial time, the full force of KVIE's entry into the commercial marketplace will be borne by the small independent production companies such as ours.

In a related issue, you stated in your letter that Media Services suggested "raising the rates KVIE Video charges for the minicam rental and video-cassette editing" We disagree with your interpretation of our position. In previous phone conversations with you we inquired as to your future plans and how KVIE could afford to send out crews and equipment at less than the rates quoted by any other local production group. Given your response of 10/22/81 we still do not understand how this can be done. Lacking any clarification it would appear that your equipment and personnel continue to be subsidized by the public donations and government funding in one form or another.

355 Commerce Circle
Sacramento, CA 95815
6) 925-7111
(24 hours)

Please refrain from referring to these honest inquiries as potential violations of "anti-trust statutes...".

In order for Media Services and other production companies in the Sacramento area, to understand your future plans, we once again request the following information:

Please document all governmental funding you have received (Federal, State, and local) during the past five years, how it was spent, and what your projected revenues will be for the next five years from these same sources. We request this information in order to better understand your present financial condition and what revenues you are anticipating (particularly from State and local governments) in the future.

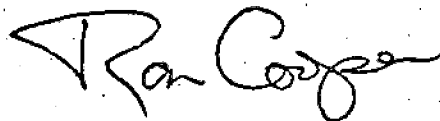
We request an inventory of all equipment you presently own valued at \$500.00 or more, how each item was paid for, and an exact breakout of equipment utilized by KVIE Video for commercial productions. We understand that equipment was purchased recently through a bank loan from Wells Fargo. Exactly what equipment was purchased in this manner and what station assets were used to secure such a large loan?

As a public and tax supported organization, we request access to your books so that we might better understand your methods of keeping track of equipment and personnel used by both your non-profit and for-profit production units.

Finally, we believe the Federal Government is sanctioning unfair competition by their recent modifications of the traditional non-profit, non-commercial status of public broadcast stations. If KVIE chooses to interpret this legislation as mandating "for-profit" productions, we request you refrain from blurring the distinctions between KVIE as a PBS station and KVIE Video as a commercial production facility. Specifically, (1) rename KVIE Video so the public can more readily distinguish it from the KVIE (PBS) station; (2) The "for-profit" organization should be located in a totally separate location and employ its own full time staff so as not to be subsidized by public money; (3) All equipment used by the "for-profit" company shall be identified as such and not be interchangeable with KVIE (PBS) equipment; (4) That KVIE cease and desist from its attempt to obtain four channels for distribution on the proposed Sacramento County Cable system, refrain from further attempts to solicit "free" equipment from the cable companies bidding on the proposed system, and allow a truly non-profit, non-commercial governmental body to organize the community use channels.

Media Services encourages KVIE and other PBS stations to fight the budget cuts and join with us in protesting these short-sighted and anti-free enterprise governmental mandates. The PBS system has long represented minority and special interest audiences. By entering into the 'for-profit' arena, will this not erode this valuable commitment so long attributed to PBS stations? As long time supporters of PBS and KVIE, we hope this is not the case.

Sincerely,

A handwritten signature in cursive script that reads "Ron Cooper".

Ron Cooper
General Manager

A handwritten signature in cursive script that reads "Dan Alexander".

Dan Alexander
Executive Vice-President



October 22, 1981

Dan Alexander
Ron Cooper
Media Services
5738 Marconi Avenue #11
Sacramento, CA 95608

Dear Dan and Ron,

This letter is in response to some of the concerns you have raised recently regarding KVIE's commercial production business.

I have consulted with our attorneys regarding the legal aspects of KVIE Video, specifically the legality of a private, non-profit company competing in the commercial marketplace. I have determined to my satisfaction that such business is totally legal according to state and federal laws.

There was some concern expressed on your part that federal funds were being improperly used in connection with KVIE Video. I would like to make you aware of the fact that our federal income from the Corporation for Public Broadcasting must by statute be used primarily for programming related costs, and KVIE is required to report this use of federal funds to the Corporation for Public Broadcasting each year. The federal government has taken steps this year to support public television stations' efforts to develop new local sources of revenue, including commercial enterprises. The 1981 Public Broadcasting Amendments Act recently passed reflects the philosophy of the House of Representatives report, which states: "Public broadcast stations must be free to generate substantial sums of additional revenue from the pursuit of commercial activities..." (House of Representatives report No. 82, 97th Congress, 1st Session 16 (1981)). Examples of activities sanctioned by the Act include a public broadcast station renting its production facilities to produce teleconferences, training films, programs or advertisements (Section 399B).


The Act also loosens all restrictions on the use of federally funded production equipment. However, as you may know, most of the equipment used by KVIE Video was obtained through a bank loan, not from the federal equipment program. I feel that our commercial production efforts are exactly in line with this congressional encouragement and the new federal law. Of course KVIE must pay taxes on unrelated business income generated by KVIE Video. Moreover, KVIE must also refund to CPB an amount equal to the unrelated business income tax paid.

On the state level, there are no restrictions barring KVIE as a private non-profit company from competing with private for-profit companies.

I also discussed with our attorneys your suggestion that KVIE address your concerns by raising the rates KVIE Video charges for minicam rental and video-cassette editing. Our attorneys have advised me that your proposal would violate federal antitrust statutes. Additionally, I have been advised not to accept your invitation to meet to discuss this matter, as such conversations in and of themselves are illegal.

KVIE believes there is more than enough local production activity to keep Media Services and KVIE Video busy, including the business we have done with one another in the past and hope to do again in the future.

Sincerely,

A handwritten signature in cursive script that reads "Howard Lowe".

Howard Lowe
Director of Operations

HL/ad

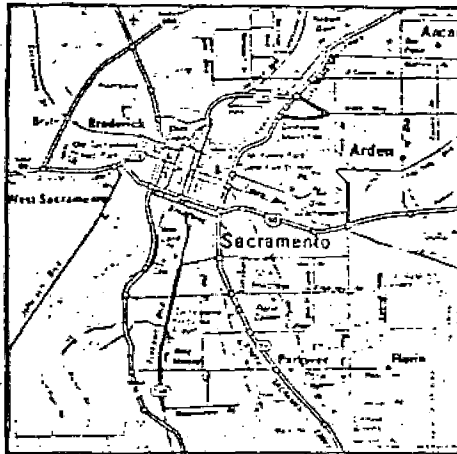
cc: John Hershberger
President & General Manager

Garth Harrington
Manager, KVIE Video

High Stakes in Sacramento

How one PBS affiliate
is upping the ante
in the race to wire California's capitol

by C.J. Hirschfield



What does public-television station KVIE want from cable? And why?

The Sacramento PBS affiliate, which enjoys strong public and private-sector support in its broadcast area, is lobbying hard and fast as a unique "special interest" group vying for a sizable chunk of the cable action in town. Should it extract the concessions it seeks from the franchise authorities in the area, the agreement could set a programming precedent to be followed by other PBS stations, which are facing their most drastic funding cutbacks to date.

John Hershberger is KVIE's general manager, but you wouldn't have found him at this year's national PBS convention. He was, however, present at the recent Los Angeles NCTA gathering. "It does show where my emphasis is at the moment, I guess," admits Hershberger. If things go as he believes they will, his station stands to receive more than \$2 million worth of video equipment, 34,000 square feet of studio space and five cable channels—all supplied gratis by the lucky cable operator who wins the competitive franchise war now being fought in California's capitol city.

Sacramento's interest in cable television began in the early 70s, when a joint city/county committee ended up spending three years and \$50,000 in an attempt to design a workable system. But because of a general lack of interest from all parties, the matter faded into governmental oblivion, and the public was not particularly concerned.

Once satellite-fed services (and the ensuing profits) overtook the cable business, however, cable activity in Sacramento began to heat up again. Today, the roster of companies competing for

underlying guess is that they see this (franchise process) as their salvation," he speculates.

~~_____~~ is a media consultant who chairs a newly formed organization called ~~Group for Community Access~~. Its objective includes educating Sacramentans to the potential of cable TV and to promote community programs. Some of its membership, Dawson points out, believe that KVIE "sees public-access funds as a means of gaining additional revenue in order to transmit more of the same canned pro-

and facilities that the franchise winner would supply. The station could conceivably rent out the equipment and production assistance for a fee. Programming produced with the facilities could be sold to other PBS outlets or even in the cable marketplace. Rates could be charged for leased time or for teleconferencing on one of the five channels.

Have these possibilities been discussed with either the city's elected officials or the competing cable operators? "No, that's far too detailed at the moment," says Hershberger. "So far, we haven't figured out a way to make a lot of money from cable in Sacramento."

Assistant county executive Bill Freeman describes his role in the Sacramento franchise process as similar to that of a traffic cop. While he agrees that many questions having to do with KVIE remain unanswered, whether or not the station will use its cable-supplied facilities to earn income is a moot point. "There ain't nobody going to make money off this free stuff," he asserts.

To protect against this and other problems, Freeman has put an ordinance together that he claims is like no other. He has proposed, for example, that the city form a ~~"cable access commission"~~ responsible for handing out community channels, regulating their programming, providing production assistance and promoting community channel usage.

KVIE, however, argues that its request for equipment and channels should not fall under the jurisdiction of such an authority, labeling such an entity an unnecessary layer of bureaucracy. KVIE's own elected board of directors, the station maintains, is well-suited enough to monitor its own actions.

Supporting this "special status" concept on behalf of KVIE are two politicians: supervisor Ted Sheedy and councilman Tom Hoeber. In a memo to their respective boards, they suggest that "KVIE is a valuable community resource whose very survival depends upon this channel allocation." Driving home their support of KVIE even further, they continue: "KVIE is the

"KVIE sees public access funds as a means of gaining additional revenue in order to transmit more of the same canned programming."

-Leila Dawson



the franchise reads like a *Who's Who* of the cable world. Currently, an extensive and detailed ordinance is being drafted, public hearings are being held and lobbying efforts are beginning in earnest. Out of this process has emerged a new phrase—"public service programming"—which is neither public access nor local-origination in nature.

Apparently, this is where KVIE fits in, or so Hershberger believes. "It's not the cable operator's primary function or business, and they don't see it as their primary function or business, to be an originator of programming," says Hershberger. "It's my feeling that the operator will gladly help us fulfill some of that function in order to get the monkey off his back."

He describes his proposed public service programming as noncommercial and "professional" in quality, serving the narrowcast needs of the community. ~~Bill Freeman, assistant county executive charged with overseeing Sacramento's cable franchise process,~~ is not quite sure what KVIE is up to. "My

programming."

Indeed, another community group leader, Dr. James Moorefield of the Sacramento Health Cable Television Consortium, concurs with Dawson's view. KVIE had approached the ad hoc group of health care professionals and medically oriented organizations to discuss possible joint ventures. While the consortium support KVIE's efforts, it was not interested in sharing channel time. "My impression was that (KVIE) was not trying to sell us on the local aspect. They were talking mainly about additional outlets for PBS-type material that they could not fit into their schedule right now."

Hershberger makes one concession: "You get into large semantic problems with access and public service and so forth." In the same breath, however, he adds: "What we're trying to do is carve out a niche that allows us to do many of the types of things we've been doing for the past 21 years—on cable."

Another sore spot is KVIE's potential to earn income from the equipment

only organization asking for channel allocation which is in the television business...Other groups will not cease to exist without cable channels."

But even if, as Hoeber and Sheedy suggest, KVIE would "cease to exist" without a healthy handout from the franchise winner, does this mean that the station should get it? Should it even get priority over others who are eager to participate in the action? Sacramento lobbyist Kate Knepprath, an active member of the Group for Community Access, thinks not. "I don't think that

effort to gain concessions from operators by threatening to endorse one company over another, however, failed and was quickly dropped due to the negative response it garnered.

An endorsement somewhere down the road, on the other hand, is not an impossibility. "Our endorsement could tip the scales, and we're telling everybody that," boasts Hershberger. Noting the resentment toward KVIE on the part of various community members, he adds: "The fact that we've taken such a high profile—very deliberately—has

owns the powerful local newspaper) diplomatically asserts: "(KVIE) is well-qualified to do a lot of local origination, and we want to work cooperatively with them to the best extent we can."

Sacramento's elected officials had not decided by presstime just how to deal with KVIE's request to be written into the city's cable ordinance. They say they are awaiting more information before a final vote is taken.

Some believe that KVIE's 21-year track record is proof enough of its level of commitment. Others voice concern that should KVIE be granted its requests, additional groups will line up for the same handouts. A third faction seeks a more precise definition of what "public service" television is, and would like additional details concerning exactly how the channels will be programmed. A "use 'em" philosophy of community channel allocation seems to be gaining in popularity, however, with advocates suggesting that KVIE and all other comers be forced to "prove" their programming abilities.

One important point: Hershberger emphasizes that he is not operating under any directive from PBS. Referring to franchise activity, he suggests that "maybe two or three other (PBS) stations have taken a really assertive attitude toward cable and are pushing as hard as they can." It is safe to say, however, that no station has ever pushed as hard, or for so much, as KVIE. And, failure on the part of city and county officials to include KVIE in the ordinance will not end the station's lobbying efforts. There will always be more voluminous requests for proposals, as well as direct negotiations with all interested cable competitors.

Sacramento's franchise process represents a unique situation that is being closely monitored both by public broadcasting and cable operating executives. Like other area officials, county executive Freeman is trying to make sense of it all—flow charts and diagrams cover the walls of his office. He sums up the KVIE scenario well. "I'm not sure they even know what they want to do. But they certainly want to get their foot in the door."

C.J. Hirschfield is a West Coast writer who specializes in communications.

"KVIE is a valuable community resource whose very survival depends upon this channel allocation."

—Ted Sheedy



merely because KVIE has been involved in television broadcasting they should be given more consideration than an unknown—such as community access," she says.

KVIE has quickly become knowledgeable in the franchise process, as evidenced by its interest in getting its demands written into the municipality's ordinance. "We would like to go as far as we can in the ordinance and request for proposals, and then let the operators build on top of that," says Hershberger. "Basically, we want to 'up' the minimums."

To this end, the station has mounted a determined effort that has seen it emerge as the most vocal and visible lobbying group in Sacramento's cable franchising process. KVIE recently created a new position—special assistant to the president for cable television—emphasizing franchise activity in no uncertain terms. Local lawmakers regularly receive brightly colored, handwritten KVIE "memos" advising them courses of action. One unsuccessful

caused people to be afraid. They think we're out here trying to grab all the marbles and run with them."

Despite this resentment, even its critics are admitting that KVIE, and its proposal, have gained support, especially because of the station's 21-year entrenchment in the Sacramento market. "I would suspect," says lobbyist Knepprath, "that if you looked very closely at the boards of directors of almost any nonprofit in town, you would find somebody that's had some working relationship with KVIE."

Hershberger is banking on the belief that the cable companies seeking the Sacramento franchise can't afford to ignore him. He's right. In a lucrative market of this size, any political support from established "locals" is invaluable. One can already see the effects of Hershberger's lobbying efforts in the delicate way franchise bidders discuss KVIE. Jack Diepenbrock, an attorney representing Sacramento Cablevision (a three-way partnership between ATC, local investors and a company that



NEWS RELEASE

KVIE Video operates a full studio and remote television production facility, with complete post production capabilities. Personnel includes: producer/directors, technicians and production personnel available locally or within a 1,000 mile radius.

Studio Facilities: 40'x50' fully equipped. Set construction and art director in house. Control room features Grass Valley switching, Audiotronics board (stereo) and Chyron RGU graphics.

Videotape: Quads (3), 1" (6 VPR-2's), 3/4" (4 Sony 2860's with DPS-I TBC's),

Portable Videotape: Ampex VP-20 1", JVC 4400-LU 3/4".

Cameras: IVC 7000 (3) with 15x1 Angenieux manual zooms (2 1/2 times extenders).

Cameras Portable: Ikegami HL-79a with 14x1 (2 x extenders)
Hitachi SK-80 12x1
Colortran lighting kit, Hydro-ped tri-pod.

Post Production: CMX "EDGE" three 1" VPR editing system.
Sony 2260/2860 3/4" editing system with controller

Remote Truck: 30' fully air conditioned van with CDL switcher, extended effects, chroma key, downstream keyer, five camera capability, (3 multicore, 2 triax) three onboard VPR 2 1" SLO MO with controllers. Audiotronic audio board, four channel IFB with sportscaster headsets, shotgun and parabolic mikes.

Recent Productions: MacNeil/Lehrer Report, Easter Seals and Muscular Dystrophy Telethons, PCAA Football, NCAA Women's Championship Volleyball, Carte Blanche Tennis Tournament, local and regional commercial clients including Sears, Chrysler, Weight Watchers training tapes and Wallpapers To Go!

Microwave: Remote field pickup with full duplex microwave, including inter-city link to San Francisco from Sacramento. Access to Westar one and two. Full teleconferencing facilities in-house and to local points of conference. Earth station receive only.

Equipment Rental: KVIE Video rents all equipment listed either with or without personnel in almost any configuration. Call for estimates.

Contact Garth Harrington, Manager, KVIE Video.

GREATER SACRAMENTO CABLE COMPANY

COMMENTS ON OCTOBER 15, 1981

DRAFT CABLE TELEVISION ORDINANCE

Section 5.50, 240, .244 and .248: These sections delineate the franchising authority's right to purchase the assets of the cable television system in certain circumstances including (1) upon termination of the franchise due to violation of the franchise agreement, (2) upon expiration of the franchise term and (3) if the franchisee wishes to sell the system to another company.

These provisions are grossly unfair to the cable television franchisee that has complied in good faith with all agreement terms during the life of the franchise. Upon franchise expiration, the franchising authority may purchase the entire operating cable television system for the lesser of (1) the fair market value of the tangible assets or (2) the replacement costs of the tangible assets. This excludes reimbursement for the fair market value of the cable television system as a going concern. It also excludes reimbursement for the intangible assets.

Building a cable television system in Sacramento will require a massive outlay of capital expenditures - in excess of \$100 Million. The cable television company that builds the system will also invest a substantial amount of cable television management and technical expertise. The company will also experience the substantial opportunity cost by concentrating its resources and management expertise in developing cable television

in Sacramento rather than another community. Hence, it is patently unfair to impose such a substantial risk of what amounts to forfeiture of the business at the end of the franchise period. It is inherently inequitable that a cable television company that has complied with all franchise agreement terms should face the risk of having its business taken away from it for a small portion of its going concern value.

Greater Sacramento Cable Company, and its affiliated major television company, are presently assessing the advisability of applying for the cable television franchise if these provisions are not amended. The present Ordinance provisions may constitute an imprudent business risk.

Similarly, Section 5.50.244 is inequitable and poses an unreasonable business risk upon a franchisee. This provision permits the franchising authority to supersede a sale of the cable television system by the franchisee to a third party. The franchising authority may require the sale to a third party at Market Value of the tangible assets, which is far below fair market value, resulting in a substantial loss to the initial franchisee (Section 5.50.248c). It should be kept in mind that the franchising authority has the right to deny the proposed sale of the cable television system if the proposed assignee does not meet the requisite character, operating and other qualifications. Thus, there is no public interest rationale for imposing the specter of a substantial risk to the cable television franchisee.

Section 5.50.318: This section provides a prevailing rate standard for compensation of workers engaged in initial construction of the cable television system. It also relates to wages for on-going station construction and maintenance personnel. The prevailing rate is unrealistic. It is keyed to the rates prevailing in the Counties of Los Angeles, San Diego, Orange, San Bernardino, Santa Clara, Sacramento, San Francisco, Riverside, Contra Costa and San Mateo.

Greater Sacramento Cable Company will work diligently to keep down capital and operating costs for the benefit of subscribers. Lower costs ultimately mean lower subscriber rates. The prevailing rate program is unrealistic because it compares Sacramento with a number of other counties where the cost of living is substantially higher (e.g., San Francisco, Los Angeles, etc.). It also imposes additional regulation and red tape upon the franchisee which will ultimately result in increased expenses and higher subscriber fees.

Greater Sacramento Cable Company pledges to pay reasonable rates, but submits that wage rates should be determined by the market place.

Section 5.50.506: This section attempts to define service rights of the franchisee. It comes dangerously close to governmental interference with First Amendment rights of a

mass media outlet such as a cable television company. Furthermore, it is unnecessary. Section 5.50-508 does acknowledge that the franchisee may, due to changing circumstances, find the necessity to change its programming from time to time. However, the final sentence reads: "Any home education or entertainment program which is terminated shall be replaced with a comparable program." This is unduly inflexible. It cast in concrete programming and programming modes proposed by an applicant in its original franchise application. It does not take into account the dynamic nature of cable television's evolution over the past few years. It does not permit flexibility in providing new programming services and genres. It does not take into account continuing changes in the communications industry which may provide such services as videotext and high resolution television in the near future.

Sections 5.50.506 and .508 should be deleted.

Section 5.50.516: This section should be deleted in its entirety. If a cable television company engages in anti-competitive practices, there are adequate legal remedies available under state and federal law.

Greater Sacramento Cable Company also objects to a portion of this section which states that any competing company should have a right to use the cable television system "to provide such services upon the same terms as the Franchisee or its affiliates or subsidiaries." This language is overly broad.

The cable franchisee will invest in excess of \$100 Million to construct its cable television system. The franchise ordinance provides for leased access channels. However, Section 5.50, 516 has far broader implications and could require the cable television franchisee to permit competing applicants to provide any and all services provided by the franchisee. This would prejudice the franchisee, which would have to charge substantially higher rates because of its \$100 Million capital expenditures.

It is fair and equitable to require the franchisee to make video and data leased channels available for users. It is unfair to require the franchisee to permit a third party to provide a complete panoply of cable services and become what is tantamount to another cable franchisee without the burden of \$100 Million in capital expenditures.

Section 5.50.814: The ordinance requires banking of 20% of all video channels of the subscriber Network. These channels will come within the jurisdiction and control of the Cable Television Commission.

These banked channels are unnecessary due to the substantial number of access channels that the ordinance requires of the franchisee.

The banking of channels also raises serious Constitutional issues of governmental control over the means of communication.

Finally, the banking of 20% of all video channels raises a substantial question as to the flexibility of the Sacramento cable television system. As satellite and other services develop, Greater Sacramento Cable Company, as franchisee, may find itself without access to available video channels that are banked by the Cable Television Commission. This may be an adverse impact upon the viability of system operations and development of services over the longer term. Greater Sacramento Cable Company, and its affiliated cable television company, will review the advisability of submitting a cable television franchise application if Section 5.50.814 is retained in the ordinance.

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455 CAPITOL MALL

SACRAMENTO, CALIFORNIA 95814

(916) 444-3610

October 23, 1981

OUR FILE NO. 13598/3A

TO THE JOINT CABLE TV SUBCOMMITTEE, SACRAMENTO CITY COUNCIL
AND SACRAMENTO BOARD OF SUPERVISORS:

Dear Ms. Collin and Gentlemen:

On behalf of Sacramento Cablevision, Inc., we
offer the following comments on Hearing Draft No. 3 of the
Cable Television Ordinance ("Draft"):

PREFACE

As you know, ATC (American Television and Communica-
tions Corporation) and McClatchy Newspapers each has announced
its withdrawal from Sacramento Cablevision, Inc. and neither
is expected to participate further in respect to the Sacra-
mento franchise. Sacramento Cablevision, now consisting of
some 77 individual citizens of the Sacramento community,
presently expects to continue in the franchising effort in
association with one or more national companies. The follow-
ing comments are, therefore, those of Sacramento Cablevision
as presently constituted and are not necessarily binding
upon the Company as it may hereafter be reconstituted.

Additionally, these comments do not include
mention of certain technical changes previously proposed and
accepted by Staff but not yet reflected in the Draft.

Finally and as requested, this letter will also deal with certain legal questions raised by the Draft.

Sub-Chapter 1 General Provisions

1. The last paragraph of Section 5.50.018 starting at page 8 is pure eyewash of a most self-serving sort. While certain changes - usually technical but sometimes substantive - indeed have been made at the request of operators, many other such proposals have been rejected by staff and the subcommittee or made the subject of token modification. Whether or not the franchise documents constitute a contract of adhesion will be determined, if necessary, in court, on the actual facts and not by the disclaimer set forth in this paragraph.

2. Section 5.50.050 (page 15) fails to provide for any compensation to the franchisee if the Commission elects to terminate the franchise by reason of a change in law which is found to be a frustration to the governing bodies. We would prefer complete deletion of Section 5.50.50 but if it must remain, the termination should be conditioned upon payment of the then market value of the System.

Sub-Chapter 2 - Cable Television Commission

3. Paragraph 9 (page 22) of the Agreement of Formation set forth in Section 5.50.112 dissolves the Commission on December 31, 2002. As previously pointed out,

this necessarily limits the renewal term of the initial franchise to five (5) years. Some projections indicate that the franchise may not become profitable for over ten (10) years and, therefore, the possibility of a longer renewal term is important - assuming the initial franchisee makes the satisfactory showing of performance in a request for renewal filed pursuant to Sections 5.50.226 et seq. We would suggest that the Commission life extend to 2012.

Sub-Chapter 3 - Issuance and Renewal of Franchises

4. For the reasons stated above, we believe that the maximum term of the initial franchise set forth in Section 5.50.224 (page 29) should be twenty (20) years rather than fifteen (15) years and that the date December 31, 2002 should be extended to December 31, 2012.

5. As previously set forth in our letter of October 5, 1981, we do not believe the Commission should have the right to acquire the System upon an assignment to a third party assuming the third party otherwise meets the standards set forth in the ordinance and is satisfactory to the Commission. Accordingly, Part c of Section 5.50.240 (pages 32-33) should be deleted together with the last paragraph of Section 5.50.758 (page 126). In this respect, the Commission has the full opportunity to determine whether or not its consent to a proposed assignment is in the public interest taking into account all of the factors which are

set forth in Section 5.50.758 (page 125). Except for the instance where the Commission's refusal to consent is overturned by court intervention, the only conceivable motivation for such purchase would be to seek a profit through the Commission's purchase of the System at one price and its resale at a higher price. Accordingly, we believe that if the Commission is to have a right of purchase as an alternative to an assignment, fairness dictates that the Commission's right of purchase be conditioned upon its payment of an amount equal to that offered by the prospective assignee. Otherwise, a franchisee victimized in the manner permitted by this section should be expected to seek court assistance on the grounds of (i) a taking without just compensation, (ii) an effort by the franchisor to obtain profits in excess of the maximum permitted franchise fee and (iii) other available grounds.

6. The provisions of Section 5.50.248(b) (page 35) for acquisition of the System at franchise end are unsatisfactory in an extreme. The Subcommittee may recall that the original draft called for payment of only "book value" which was properly denounced by the operators as confiscatory in a day of inflation and accelerated depreciation cost accounting. Staff, however, decried the proposed alternative of "fair market value" (see page 7 of our letter of March 9, 1981) stating that fair market value is "an expansive concept,

difficult of ascertainment". While we did not agree with this statement, we did seek to eliminate that concern by suggesting use of replacement cost less depreciation and obsolescence (a formula sometimes called "RCLD" and often used for acquisition of public utility property). Staff now has come back with a formulation calling for the lesser of RCLD or fair market value (the concept it decried as being "difficult of ascertainment"), together with an elaborate procedure for its ascertainment. We do not believe that Staff should have it both ways. If fair market value is (as we contend) ascertainable with reasonable effort, then it should be the specified standard of compensation whether higher or lower than replacement cost. If, however, it is a worrisome concept, then the unqualified RCLD should be specified.

7. The last full paragraph of Section 5.50.248 (pages 35-36) unfairly and, we submit, illegally seeks the transfer of certain property without just compensation. Specifically, this paragraph seeks to confiscate any value which has accrued to leasehold interests and the value of books, accounts and records, including subscriber lists of the franchisee. Staff has been advised that the subscriber list is assembled over time by vigorous and expensive promotional and marketing campaigns and should not be taken without payment of its fair market value. The alternative

is to permit the franchisee to retain the sole and exclusive right to the subscriber list as well as to the right to any compensation which it is able to obtain for that list from any successor franchisee. We would expect a well-advised franchisee to seek legal protection from any attempt to confiscate its property pursuant to these provisions.

8. The second paragraph on page 39 of Section 5.50.258(39) is repugnant to generally accepted concepts of due process of law in its denial of any right to a hearing on the vital issue of the determination of just compensation for an acquisition of the franchisee's property. The ordinance should be rewritten to provide opportunity for a hearing with the same rights to counsel, to produce evidence, to cross-examine witnesses and the other procedural rights which are specified in Section 5.50.822 (page 136) pertaining to arbitration of termination proceedings.

9. Section 5.50.264 (page 41) improperly permits the Commission to decline to purchase the System after putting the franchisee through the elaborate, lengthy and expensive proceedings specified in the Draft for determination of the purchase price without compensating the franchisee for that expense. We do not quarrel with the Commission's right to walk away but it should be required to compensate the franchisee for the wasted expense. Normal condemnation law requires such payment on the condemnor's abandonment of the

taking. That rule should govern here.

Article 4(a) - System Capability, Etc.

10. Section 5.50.328 of the Draft (page 51) should be amended to prevent any assignment or commercial exploitation of the channels allocated to KVIE and the Educational Consortium without the franchisee's consent, including the right of the franchisee, as a condition to such consent, to demand a fair share of any advertising or other revenues derived from the use of those channels.

Article 4-b, Construction and Extension of System,
Use of Streets

11. Article 5.50.434 (page 73) improperly places on the franchisee the risk of delays in issuance of pole use permits from SMUD and the telephone company. We are informed that the latter company is often notoriously slow in issuing such permission and this may, of course, get worse if and to the extent the telephone company gets into competition with cable companies generally and in Sacramento. We believe that Subparagraph f (pole permits) should be rewritten to correspond to Subparagraph d (FCC permits) so that the franchisee is subject to penalty only for delays occasioned by its failure "to diligently apply for and prosecute any request. . ." for a pole permit.

Article 4-c - Services

Section 5.50.506 (pages 89-90) should be reworked to make sure that the last sentence beginning on page 89 is

not claimed to eliminate any right on the part of franchisee to offer services other than "home educational or entertainment programming". We recognize the need to reserve police power to regulate abuses but the unfettered power to deny or terminate the franchisee's right to offer the other services specifically solicited by the RFP (see pages 16-19) of the draft RFP) obviously is wrong.

12. Section 5.50.508 (page 90) should perhaps be reworked to eliminate any question of disguised rate regulation and, in any event, to permit substantial reallocation of tiers upon successful application to the Commission, thus avoiding the retrospective determination provided by Section 5.50.510 (page 91).

13. In line with Paragraph 6 of this letter, Sections 5.50.518 (page 93) and 5.50.538(d) (page 99) also should be reworked to prevent the Commission from seizing the franchisee's subscriber list without payment of just compensation.

Article 4-d, Franchise Fees - Rates

14. Notwithstanding the previously criticised assertion that the ordinance is not a "contract of adhesion", its adhesive nature is well demonstrated by comparing the CPI escalation in Section 5.50.604 (page 104) where the Commission gets a 100% CPI increase in the minimum annual franchise fee with the third paragraph of Section 5.50.622, (page 111) where the franchisee is only allowed 50% of CPI

in adjusting its rates for Basic Service. We suggest that both be 100%.

Sub-Chapter 5 - Assignments-Remedies

15. Section 5.50.750 (page 123) should be expanded to permit a security interest to be given to refinance previously incurred indebtedness and to finance or refinance operation of the System. To this end, the fourth sentence should be rewritten to read as follows:

"A Cable Television System, or parts or elements thereof, may from time to time be leased, mortgaged, pledged or otherwise encumbered for the sole purpose of financing or refinancing the cost of acquisition, construction and operation of the System, or any part or element thereof which is being acquired, constructed or operated."

16. Additionally, it is our suggestion that the next sentence (beginning "Any mortgage...") and the entire second paragraph of Section 5.50.750 should be deleted in order to facilitate financing since neither provision would be acceptable to most lenders.

17. Section 5.50.814 (page 133) is the most recent formulation of the so-called "Channel Bank". Our earlier criticisms of the Bank can be recapped as follows:

The proposed bank confiscates a substantial number of channels up front and thereby punishes the operator before any offense against the franchise has been committed.

or before the severity of any such transgression has been determined. Since the number of channels is not infinite and increasing numbers of satellite services are becoming available on a regular basis, this not only punishes the operator but also the subscribing public. The public suffers from loss of opportunity to view available program material and also from the likely need for higher subscription rates to supply the revenue which would otherwise be gained from the confiscated channels.

As a regulatory measure, the bank is classic overkill since a full arsenal of other weapons is available to redress violations of the franchise documents, including:

- (1) Cancellation of the franchise;
- (2) Shortening the franchise;
- (3) Nonrenewal of the franchise;
- (4) Award of a second (or third) franchise;
- (5) A claim for liquidated damages;
- (6) A call on the performance bond;
- (7) A call on the cash deposit;
- (8) An action for specific performance or

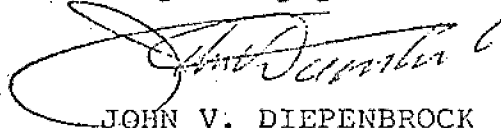
to enjoin violation.

The foregoing, of course, are all in addition to the certain loss of subscriber revenues resulting from failure to complete the system or to keep the franchise commitments.

In our opinion, and when we examine the Bank in the context of the present ordinance provisions for acquisition of the System upon a later assignment or termination of the franchise, we find an unhappy combination of confiscation of property both at the beginning and at the end of the franchise. Neither such instance of confiscation should be permitted and should either or both remain, a prudent franchisee can be expected to seek relief in whatever judicial, legislative or regulatory arena might be available or appropriate.

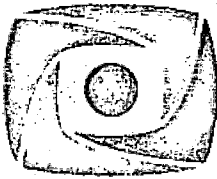
We will be happy to respond to any questions which anyone may have in respect to any of the foregoing.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John V. Diepenbrock", written over a horizontal line.

JOHN V. DIEPENBROCK

Enc.



**united
cable television
of sacramento, inc.**

A Subsidiary of United Cable Television Corporation

October 23, 1981

TO: Subcommittee of Governing Bodies on Cable Television
FROM: United Cable Television
SUBJECT: Cable Television Ordinance--October 15, 1981 draft

POSITION: United Cable Television is of the opinion that the concept of valuation of the cable system as expressed in the proposed ordinance is illegal and, especially when read in conjunction with the termination and transfer provisions, unacceptable.

COMMENT: United Cable welcomes the opportunity to respond to the issue of the legality and enforceability of the proposed ordinance. As disclosures required by the RFP will show, United Cable has a rather unique and longstanding history of successfully avoiding subsequent litigation. It is our hope that the following comments will foster the discussions which will ultimately result in a strong, enforceable contract.

In order for any reputable operator to provide the City and County of Sacramento with a telecommunications system of the quality desired by the community, there must exist a partnership between the operator and the community as represented by the governing bodies. One essential element of that partnership is some level of trust on the part of each side that the other is operating in good faith. Without that trust no enterprise can expect to be very successful.

One method of fostering trust between the governing bodies and the cable operator is an ordinance that achieves a balance between the legal protections required by the governing bodies and the business realities within which the operator must function. This balance is not achieved by the ordinance in its present draft. We believe the valuation provisions to be in violation of existing state and federal law. When considered in context with the acquisition, transfer and termination provisions, these valuation provisions are not only illegal but unconscionable.

AUTHORITY: The County and City derive their authority to legislate from Article XI, Section 7 of the California State Constitution which reads:

1025 19th Street • Suite 10 • Sacramento, California 95814 • (916) 448-8766 • (916) 481-3091 (Home):

A County or city may make and enforce within its limits all local police, sanitary and other ordinances and regulations not in conflict with general laws.

This concept is reiterated in the California Government Code which allows a city or county to legislate so long as the ordinance or regulation is not in conflict with state law, the State Constitution, or the Federal Constitution.

The power to take private property for the good of the general public is inherent in the sovereignty of the state but is limited by Article I, Section 19 of the State Constitution:

Private property may be taken or damaged for public use only when just compensation ascertained by a jury, unless waived, has first been paid to, or into the court for, the owner

This constitutional provision is more fully delineated in the Eminent Domain Law, which is found in the California Code of Civil Procedure, Section 1230.010 et seq. The measure of compensation required when private property is taken is fair market value defined as, "...the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for doing so, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for doing so, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available." In the absence of a relevant market, a just and equitable method of valuation must be used.

The Fifth Amendment and the Fourteenth Amendment of the Federal Constitution require that due process be observed in the taking of private property. The State Constitution requires a jury to determine the issue of compensation. The ordinance as drafted does not even require a hearing .

The ordinance provides three instances in which the Cable Television Commission shall have the right to acquire the property of the cable operator. Section 5.50.248 expressly states that no value shall be assigned to leaseholds held by the operator or to books, records, or subscriber lists. Such a provision is a direct contradiction of case law interpreting the Eminent Domain Law.

Of the three acquisition situations, the first is in the event of a termination for cause--for breach of the franchise documents. It is clearly a penalty provision of substantial magnitude, and we request that its application be restricted to a material breach. In a memo titled, "Purchase or Buy-Back of a Cable System by Sacramento," county counsel, in referring to a termination for breach, states, "In such circumstances we can assume that the

franchisee has substantially and materially breached its contract or violated the terms of the franchise documents....(emphasis added)." Yet, nowhere does the ordinance require such a breach to be material. Section 5.50.240(a) does not specify a material breach. Section 5.50.818 defines five situations as being material breaches, the last of which is "any act or omission by the franchisee" which is not corrected or remedied within 30 days of written notice, regardless of the seriousness of the breach or the circumstances required to remedy it. We can accept a penalty provision of this magnitude but not if any breach subjects the system to confiscation by the Commission.

The second acquisition situation comes at the expiration of the franchise. As leaseholds and subscriber lists are excluded, the valuation method is contrary to existing law. Secondly, if a relevant market for valuing the system exists, the provisions of the Eminent Domain Law require it to be used to determine compensation. The same standard of valuation is used in the event of a termination resulting from a change in law, regardless of the circumstances or the franchisee's position on the change, if the terms of the franchise documents are changed. We believe that the operator should not be penalized for a unilateral act of the Commission.

The third acquisition situation is triggered by any attempted sale, assignment, or transfer of the system (Section 5.50.753) or by a change in control of the franchisee or one of its owners (Section 5.50.754). In at least the former situation, there is by definition, a buyer and a seller--a relevant market. For the Cable Television Commission to acquire the system for a lower price than that which the buyer is willing to pay is clearly confiscatory and illegal; yet, under the terms of the ordinance, that would almost certainly be the result. In the latter situation, while we acknowledge the interest of the governing bodies in the control of the system, it may not be a business reality to allow the Cable Television Commission to dictate policy for a publicly-held, nationally-traded corporation, and we would request that the governing bodies closely examine the particular concern addressed in light of both practicality and probability.

With respect to all these provisions United Cable Television must be mindful of the laws defining the obligations of a corporation to its stockholders. The California Corporations Code, Chapter 8, commencing with Section 800, clearly defines the format and grounds for shareholder derivative actions. Preceding chapters outline the duties of directors and management. Virtually every state in the Union has similar statutes, and certain provisions of federal law pre-empt some areas involving publicly-held corporations.

Essentially, shareholders derivative suits occur when the corporation or corporate officers act in a manner manifesting willful neglect of the corporate assets or participate in illegal or unauthorized activities. A corporation which participates in activities resulting in a diminution of the corporate assets is simply violating the corporate law referred to above and inviting, if not forcing, a suit by its shareholders. With the present ordinance, a corporation would be required to enter into an agreement which not only restricted its right to transfer its assets,

but virtually guaranteed that those assests would be acquired by the Commission for an amount far below fair market value. The operator must be able to meet all its obligations--those to the community and those to its shareholders--otherwise there can be no partnership.

In conclusion, while the City and County may have the authority to acquire the cable system, we believe that within the ordinance itself, they must do so within the constraints of the law with regard to both valuation and due process. An example of language which accomplishes that goal is the language of the Denver and Scottsdale ordinances which employ a valuation based on replacement cost and going-concern value. No value is assigned to the franchise itself, but no assets of the operator are deemed to be without value and business realities are taken into account. We recommend this language be substituted for the present language.

Suzanne M. Wood
Suzanne M. Wood, Attorney at Law

PROPOSED ALTERNATIVE LANGUAGE

5.50.240 **AUTHORITY TO PURCHASE SYSTEM.** The Cable Television Commission shall have the right to purchase all real and personal property situated within the Sacramento Community which is owned or in which an interest is held by the Franchisee, any parent company of the Franchisee, any subsidiary of the Franchisee or any other entity in which the Franchisee, 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 termination of a franchise in advance of the expiration of its term by virtue of a material breach and violation of the Franchise Documents by the Franchisee; or
- b. At the expiration of the term of a franchise, if the franchise is not renewed to the Franchisee by the Commission; or
- c. Pursuant to an election by the Commission to terminate a franchise and purchase the property under Section 5.50.758 in Article 5-a of Sub-Chapter 5.

5.50.242 **SCOPE OF PURCHASE.** The property which is subject to purchase by the Cable Television Commission shall consist of the following:

- a. The Cable Television System;
- b. Land, buildings and other improvements situated within the Sacramento Community and utilized by the Franchisee to provide services under the Franchise;
- c. 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 Sacramento Community to provide services under the franchise; and
- d. Books, accounts and records relating to the Franchisee's business, including subscriber lists.

There shall be excluded from the purchase any parcel of land and improvements or leasehold space which is utilized exclusively for business office purposes and not, for example, jointly for both business office and studio, warehousing or repair purposes associated with operation of the Cable Television System.

Notwithstanding any provision to the contrary, the Board of Directors of the Commission, in its sole discretion, shall have the right to exclude from the purchase any real property (in-

cluding improvements thereon) upon which no component of the Cable Television System is situated and which the Board determines is not essential to the System or the provision of services thereunder.

5.50.244 ASSIGNMENT. The right to purchase as prescribed by Section 5.50.240, above, may be exercised by the Cable Television Commission for public ownership and use by the Commission, in behalf of a third party, or by any party to whom the Commission may assign the right. The Commission shall have the right to 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 Franchisee. Such an assignee shall, subsequent to the date of assignment, be vested with any and all discretion respecting purchase which is vested in the Board of Directors of the Commission.

5.50.246 VALUATION DEFINITIONS. As used in this Section through Section 5.50.260, below, the following terms shall be ascribed the following meanings:

- a. "Book Value" -- shall mean the capital amount at which property is shown on the books of account consisting of original cost, less reserves for depreciation which for purposes of application of this definition shall be calculated on a straight-line basis for a period of fifteen (15) years, plus additions to capital.
- b. "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.
- c. "Replacement Cost" -- shall mean the direct cost of construction at current prices of an improvement having utility and technological capacity and function equivalent to the improvement being appraised but built with modern materials and according to current standards, design and layout; less depreciation and obsolescence from physical, functional and economic causes.
- d. "Going Concern value" shall mean the benefits that attach to the business as a result of its location, the Franchisee's reputation among subscribers or potential subscribers for dependability and quality of service, the Franchisee's reputation for responsiveness and support for the needs of the community, and any other circumstances resulting in the probable retention of old subscribers or acquisition of new

subscribers; except no value shall be assigned to either the permit itself or any right, privilege, or expectancy arising to the Franchisee out of the right to transact business under the permit, and particularly no value shall be allowed for any increase in value arising out of any expectation of CATV revenues beyond the forfeiture and termination date or expiration date, which ever is sooner.

Except to the extent inconsistent with the express provisions of this Section through Section 5.50.260, below, the words in this Section shall be ascribed the meanings and the appraisal and valuation standards, methodology, approaches and processes respecting determination of the amount to be paid for property which the Cable Television Commission or its assignee is entitled to purchase shall comply and be consistent with those set forth in that document entitled Real Estate Appraisal Terminology, issued by the Center for 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 Society of Real Estate Appraisers, dated

5.50.248 VALUATION LIMITS. The property which is purchased shall be valued as follows:

- a. In the event the right of purchase is exercised pursuant to the contingency prescribed by Sub-paragraph "a" in Section 5.50.240, above, the value of the Cable Television System, personal property and improvements attached to land to be acquired shall be solely based on the Book Value of the tangible assets, and the value of land owned by the seller or in which the seller has a leasehold interest with option to purchase shall be based upon the original cost thereof.
- b. In the event the right of purchase is exercised pursuant to the contingency prescribed by sub-paragraph "b" in Section 5.50.240, above, the value of the Cable Television System, personal property and improvements attached to real property to be acquired shall be the Replacement Cost of the tangible assets and the going concern value. The value of land owned by the seller or in which the seller has a leasehold ~~an interest with option to purchase~~ shall be the Market Value thereof.
- c. In the event the right of purchase is exercised pursuant to the contingency prescribed by Sub-paragraph "c" in Section 5.50.240, above, the value of the Cable Television System, personal

property, land (owned-by-the-seller-or in which the seller has a-leasehold an interest with-option to-purchase) and improvements attached to land to be acquired shall be the Market Value of the tangible assets; provided that in determining Market Value it shall be assumed that the property to be purchased is not subject to utilization for the provision of cable television services within the Sacramento Community subsequent to the expiration of the stated term of the franchise to which the property pertains.

~~When-real-or-personal-property-subject-to-the-purchase-is leased, no value shall be assigned to such property.~~

~~No value or benefits shall be assigned to the books, accounts, or records, including subscriber lists, utilized in connection with the Franchisee's business.~~

A Franchisee shall not be entitled to relocation costs, and any right to such costs authorized or prescribed by law shall be deemed to have been waived by filing of the certificate of acceptance of the franchise.

For Public Hearing
11-11-81

HOEBER -- PUBLIC CREATION, CONTROL AND
FUNDING OF A COMMUNITY USE AUTHORITY

COMMUNITY USE AUTHORITY. The Board of Directors of the Cable Television Commission shall establish a non-profit corporation to be known as the "Sacramento Community Use Authority, Inc." The Community Use Authority shall be under the direction and control of a governing board consisting of seven (7) members, each of whom is appointed by the Board of Directors of the Commission. No member of the governing board of the Authority shall be either an officer or employee of a Franchisee, the County, the Cities, or the Commission. The terms of office of members of the governing board of the Authority shall be four (4) years; provided that the terms of four (4) of the first appointed members shall be four (4) years and the terms of three (3) of the first appointed members shall be two (2) years, the apportionment of such terms to be determined by the members of the governing board of the Authority by lot. Members of the governing board of the Authority shall be subject to removal during their term by the Board of Directors of the Commission, for cause, including failure to attend meetings, and according to such rules and procedures as the Board of Directors of the Commission may prescribe.

POWERS OF COMMUNITY USE AUTHORITY. The Articles of Incorporation of the Community Use Authority shall provide for and limit the powers of the corporation to apportionment of Community Use Channels to various uses, regulation of programing thereon, the provision of program production assistance, and promotion of utilization of Community Use Channels. The powers of the Authority shall be limited to, and the Articles of Incorporation shall so provide, the following:

- a. To regulate and adopt rules and regulations regulating priority of use, diversity of use, availability of use, equal time, program balance and other aspects of programing upon Community Use Channels for the purpose of promoting diversity of programing, prohibiting monopolization of such Channels, and for other lawful purposes; provided that the Authority shall not be empowered to regulate program content in relation to matters over which control is vested in the Franchisee by Section _____, below;
- b. To enter into renewable contracts for maximum terms of three (3) years allocating Community Use Channels or time thereon to programing produced by particular entities; any such contracts to be subordinate to the regulatory powers of the Authority conferred by this Section and time utilization standards proscribed by the Cable Television Commission;
- c. To make determinations relating to the allocation of funding received by the Authority from the Cable Television Commission for support and promotion of Community Use Channels, to make expenditures of such funds pursuant to such determinations and to enter into contracts as necessary to fulfill the objectives of this sub-paragraph;
- d. To accept gifts or grants of funds for the financing or promotion of Community Use programing;
- e. To determine which Community Use Channels, if there are more than three (3) Channels which are operable, shall be included in Basic Service; and
- f. To sue and be sued in connection with exercise of the powers conferred by the above sub-paragraphs.

FUNDING OF COMMUNITY USE PROGRAMING. The Board of Directors of the Cable Television Commission shall:

- a. Determine, in its discretion, all staff services required by the Community Use Authority to exercise its lawful powers, and hire and provide to the Authority all staff which the Board of Directors of the Commission determines to be properly required by the Authority; provided that any and all such

staff while performing services for the Authority shall be deemed to be the exclusive agents of the Authority, and not the Commission or the Board of Directors thereof, and shall act solely at the direction of the governing board of the Authority and not the Board of Directors of the Commission;

- b. Purchase liability insurance indemnifying the Authority, the members of the governing board thereof in their individual and official capacities, and the staff performing services therefor in their individual and official capacities against liability resulting from the conduct of official business of the Authority including, but not limited to, liability for defamation, violation of the right of privacy, and infringement of copyright, trademark, trade name, service mark or patent, in the single aggregate limit of not less than five million dollars (\$5,000,000); and
- c. Make available and pay to the Authority from franchise fees such amounts, as the Board of Directors of the Commission in its sole discretion determines are necessary and appropriate for the funding of Community Use programming, the discretion as to how such funds will be expended once the determination of the gross amount thereof is made by the Board of Directors of the Commission, being vested within the exclusive discretion of the governing board of the Authority.

A Franchisee shall provide such financial and other support for Community Use programming as is required by the provisions of this Chapter, and as is specified in a proposal submitted by the Franchisee or in another Franchise Document. Except as otherwise required to be provided without charge pursuant to this Chapter, the proposal or another Franchise Document, the Franchisee shall also provide such staffing as is required by the demand to generate Community Use programming in order to render technical instruction and assistance in program planning, design, production and broadcasting, at charges to persons or entities desiring to sponsor such programs which do not exceed the actual salary and benefit costs incurred by the Franchisee in making such services available. The Board of Directors of the Commission shall be authorized to regulate the charges made by a Franchisee for such staff services for the purpose of insuring that such charges do not exceed the actual salary and benefit costs of making such services available. With the foregoing exception, no fee, charge, rental, deposit or other monetary consideration shall be established by a Franchisee as a condition precedent to the utilization of studio facilities, production equipment or Community Use Channels in connection with such programming.

COMMUNITY USE MANAGEMENT AND CONTROL. Except as otherwise provided by this Chapter, management and control of all studio facilities, production equipment and channels for Community Use shall be vested within the jurisdiction and responsibility of the Franchisee. As owner of the Community Use Channels and other facilities, the Franchisee may from time-to-time adopt rules or exercise discretion governing program content in relation to defamation, obscenity, the right of privacy, and infringement of copyright, trademark, trade name, service mark, or patent, and may exercise program review for the purpose of enforcing such rules or the exercise of such discretion. Such rules or the exercise of such discretion or the enforcement of such rules or discretion shall not be subject to review or approval by either the Community Use Authority or the Cable Television Commission. The Franchisee shall not with respect to the adoption of such rules, exercise of such discretion or enforcement of such rules or discretion or the failure to adopt such rules, to exercise such discretion or to enforce such rules or discretion be deemed to be an agent of either the County, Cities, Authority, Commission, or their officers, agents or employees.

Except in relation to matters specified by the first paragraph of this Section, determination of who is entitled to utilize Community Use Channels and respecting the programing thereon shall be vested within the discretion, jurisdiction, and control of the governing board of the Community Use Authority.

CONNELLY -- ORDINANCE
COMMITMENT OF CHANNELS FOR COMMUNITY USE

5.50.332 COMMUNITY USE PROPOSALS. The purpose of this Section through Section 5.50.340, below, is to ~~permit~~ require applicants for the Initial CATV 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.

~~An applicant who chooses not to make such a proposal shall not be disqualified from bidding or consideration in selection of the Franchisee. 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 award of the Initial CATV Franchise will be based.~~

5.50.334 APPLICATION CONTENTS\ Applicants for the Initial CATV Franchise shall be ~~authorized, alternatively, to propose in their applications: (i) no Community Use Programming, by making no reference to Community Use Programming therein; (ii) to propose~~ (i) Community Use Programming in the form of and in accordance with Alternative No. 1, as described by Section 5.50.336, below; or (iii) to propose and (ii) Community Use Programming in the form of and in accordance with the provisions of Alternative Nos. 1 and 2, as described by Sections 5.50.336 and 5.50.338, below.

~~Each An applicant who proposes Community Use Programming in its application shall include in the application the following: in relation to the Alternative or Alternatives proposed:~~

- a. Any standard or criteria which will be utilized in connection with the following matters:
 - (1) The time made available for and Community Use Programming covering candidates for public elective offices during election campaigns;
 - (2) Program quality control;
 - (3) The legality of program content and violation of the legal rights of others;
 - (4) Any and all pre-conditions of whatever kind or nature relating to use by third parties of studio facilities or production equipment and broadcast of programming presented thereby.

- b. The establishment of an independent body to be known as a Community Use Authority proposed by the applicant to administer Community Use Programming. Such a body shall not include any officer or employee of the County, Cities, or Cable Television Commission. Nor shall the Body Authority include appointees of officers, employees, Governing Bodies or boards or committees of the County, Cities or Commission. Any such proposal shall specifically identify the following respecting such ~~a body~~ an Authority:

- (1) The legal form of existence;
- (2) How the body Authority will be established and who will be responsible for establishment;
- (3) The size, composition and method of selection and appointment of members;
- (4) The terms of members, and grounds and procedures for removal of members, if any;
- (5) The specific powers of the body Authority in relation to administration of Community Use Programming and the means by which such powers will be exercised and enforced; and such powers to include determination of the criteria for use and nature of programing cable cast on channels made available for Community Use Programming under Sections 5.50.336 and 5.50.338; and
- (6) The sources and amounts of funding for support of operation of the body.

5.50.336 ALTERNATIVE NO. 1 - ACCESS USE. The type of Community Use Programming envisioned by this Alternative 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 Franchisee, on a first-come-first-serve basis.

~~Applicants desiring to propose~~ This Alternative shall include the following: ~~within their applications.~~

- a. That one (1) 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;
- b. 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 such channels except the one (1) included in Basic Service will be placed;

- c. A description of the location, nature and extent of 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;
- d. A commitment to make the studio facilities, production equipment, personnel resources, other resources and channel(s) available for use, program production and broadcasts twenty-four (24) hours per day, seven (7) days per week, during the term of the Franchise; the actual number of days per week and hours per day such resources are available for use, program production and broadcasts being subject to regulation from time to time by the independent authority created pursuant to Subparagraph "b" in Section 5.50.334, above;
- e. A commitment to operate and provide the studio facilities, production equipment, personnel resources, other resources, channel(s) broadcast time and programming opportunity at the sole cost of the applicant without any charge whatsoever;
- f. A statement of the nature and extent of all training to be offered by the applicant respecting equipment operation and training required as a condition of facility and equipment use and operation by members of the public; and
- g. A commitment to allow use of the studio facilities, production equipment, personnel resources, other resources, and channel(s) for the production and broadcast of Community Use Programming by members of the general public, including individuals and local non-profit community organizations, on a first-come-first-serve basis during the term of the franchise.

5.50.338 ALTERNATIVE NO. 2 - FRANCHISEE SPONSORED PROGRAMMING. The type of Community Use Programming contemplated by this Alternative is that which is produced as a result of an affirmative effort by the Franchisee to interest community organizations and groups in program ideas, development and production, is presented on the Subscriber Network in minimum quantities prescribed by the application, and is distributed among the various Tiers of Service as prescribed by the application.

Applicants desiring to propose this Alternative shall include the following within their applications:

- a. Schedules showing the number of hours per week new (not previously broadcast within the Sacramento Community) Community Use Programming will be shown on the Subscriber Network within each Tier of Service proposed in the application, categorized according to minimum number of hours per week per Tier of Service between the hours of 6:00 a.m. and 5:00 p.m., 5:00 p.m. and 11:00 p.m., and 11:00 p.m. and 6:00 a.m., with respect to the following variables:
- (1) Differences in volumes of hours of Community Use Programming at various times during the term of the Franchise, if the applicant proposes different volumes of such Programming at various times during the term of the Franchise;
 - (2) Volumes of hours of audio only Community Use Programming, if the applicant proposes both audio only and audio and visual Community Use Programming;
 - (3) The minimum numbers of hours respecting Community Use Programming to be produced by the Franchisee;
 - (4) The minimum numbers of hours respecting Community Use Programming to be produced by the County or Cities;
 - (5) The minimum numbers of hours respecting Community Use Programming to be produced by local non-profit community organizations; and
 - (6) Volumes of hours of automated Community Use Programming, as distinguished from regular non-automated Community Use Programming, if such automated Programming is to be shown.
- b. A commitment by the applicant to provide during the entire term of the Franchise all hours of programming which it has proposed in the schedules identified by subparagraph "a", above;
- c. A description of the location, nature and extent of studio facilities, production equipment and personnel and other resources proposed to be made available at the sole cost of the applicant and without any charge whatsoever to produce and assist the County, Cities and local non-profit community organizations in the presentation of Community Use Programming. The applicant shall indicate whether the studio facilities, production equipment, staffing resources and other resources will be exclusively available for Community Use Programming to the County, Cities and local non-profit community organizations, or whether such

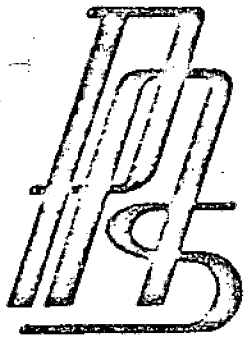
resources will be shared with the applicant's operation or others. If shared, specific criteria shall be stated showing how time priorities will be allocated among competing interests to insure, for example, that studio space and production resources will not be made available to local organizations only at the least desirable times;

- d. Specific and detailed affirmative strategies to be utilized by the applicant to solicit and encourage interest by the County, Cities and local non-profit community organizations in planning, producing and presenting Community Use Programming to fulfill the broadcast time commitments proposed; and
- e. A statement of all criteria intended to be utilized by the applicant to select between and apportioned time among local non-profit community organizations, the County, and the Cities if the demand to produce Community Use Programming exceeds the broadcast time proposed in the schedules identified by subparagraph "a", above.

In addition to the foregoing, and as a part of this Alternative, an applicant shall provide not less than two (2) ~~may, but is not required to, propose in its application a specific number of~~ channels on the Subscriber Network which are ~~it would~~ set aside for the exclusive provision of Community Use Programming on a Leased Access basis by individuals and local non-profit community organizations. Such channels, ~~if proposed,~~ shall be subject to lease, ~~in whole or in part,~~ for Community Use Programming. Programming meeting the definition of "Community Use Programming" shall be included in fulfilling the broadcast time proposal contained in subparagraph "a", above. With respect to any such proposal, the application shall contain the following:

- a. An itemization of the amounts of fees and charges, if any, to be levied by the applicant at various times during the Franchise term for Leased Access use -- the fees and charges, if any, to include all rights and privileges associated with the lease, use of studio facilities, production equipment and personnel and other resources, and broadcast time, provided by the Franchisee, and to exclude any compensation for use of the channels or broadcast time; and
- b. Copies of all contract documents to be utilized in connection with such leases, ~~and~~
- c. ~~A statement as to whether identification of parties to whom channels will be leased and apportionment of leased time thereon 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 require-
ments proposed to be utilized by the applicant in
apportioning leased time should the demand therefor
exceed the channel supply.~~



PUBLIC ACCESS SACRAMENTO

Mailing Address: 1820 J Street, Sacramento, CA 95814

TO: CITY COUNCIL/BOARD OF SUPERVISORS
FROM: PUBLIC ACCESS SACRAMENTO
RE: STRUCTURE OF NON- PROFIT CORPORATION

Public Access Sacramento recommends the following structure for the proposed nonprofit corporation responsible for administering community use programming. This structure reflects the desire expressed by staff and the members of the joint city/county authority that this corporation shall not be composed of elected officials and/or their appointees.

The three entities specifically interested in community use programming are the cable operator, the cable commission and the public. Initially, representatives of these three entities shall act as incorporators of the non-profit body. The commission shall appoint the representatives of the commission and the public; the cable operator shall appoint the third representative. These three incorporators shall then appoint the eight additional members of an eleven member interim board. The Board members shall be representative of the following community groups or interests: business, women, senior citizens, organized religion, culture and the arts, human services, education and minorities.

Membership of the corporation shall be open to individuals and representatives of community organizations who support community use programming and are dues-paying members of the corporation.

Once the cable system is activated, the members of the corporation shall elect nine members of the Board following the guidelines for composition. Both the commission and cable operator representatives shall be appointed by their respective bodies and serve on the Board as ex-officio members.

City Creek

November 10, 1981

MEMO TO CITY COUNCIL & COUNTY BOARD OF SUPERVISORS:

RE: RESTRICTION OF INDECENT MATERIAL ON THE PROPOSED CABLE TV

"THE COLORADO LEGISLATURE PASSED IN JUNE 1981, AND THE GOVERNOR SIGNED INTO LAW, A GENERAL OBSCENITY STATUTE ON THE SAME DAY, COLORADO GOVERNOR LAMM VETOED A HARMFUL-TO-MINORS, PUBLIC DISPLAY STATUTE. HOWEVER, COLORADO CITIZENS WENT TO WORK CONTACTING THEIR LEGISLATORS, AND ON JUNE 29, THE HOUSE OVERRODE THE GOVERNOR'S VETO BY A VOTE OF 47 TO 15 AND THE SENATE BY A VOTE OF 27 TO 8."

"THE TEXAS GENERAL OBSCENITY STATUTE, WAS UPHELD IN JUNE AS CONSTITUTIONAL BY THE U.S. CIRCUIT COURT OF APPEALS FOR THE 5TH CIRCUIT. THE LAW WAS PASSED IN 1979, AND WAS CHALLENGED BEFORE IT WAS TO GO INTO EFFECT IN THAT YEAR, BY 45 'ADULT' BOOKSTORE AND MOVIE HOUSE OWNERS IN A U.S. DISTRICT COURT. TWO DISTRICT COURT JUDGES RULED IT CONSTITUTIONAL; POLICE BEGAN ENFORCING THE LAW AFTER THE LOWER COURT RULING." -- QUOTED FROM "MORALITY IN MEDIA INC. NEWSLETTER" VOL. 20, No. 6, Oct. 1981
475 Riverside Dr., New York, N.Y. 10115

Paul J. McGeedy, General Counsel of Morality in Media, informed me by phone today that the Colorado Law was S.B. #83 on General Obscenity and H.B. #1310 on Public Display to Minors.

The Texas law passed in 1979 is Section 43.21 of the Penal Code, recently upheld by Federal Citation #648, 2nd.-1020, "RED BLUFF DRIVE-IN AGAINST VANCE."

THEREFORE, I WOULD LIKE TO CLARIFY THAT THE FOLLOWING IS A SAMPLE OF THE MODEL STATUTE FOR CABLE TV ORDINANCE. THIS MODEL IS BEING CIRCULATED AROUND THE COUNTRY, AND ONE LIKE IT HAS BEEN ENACTED IN MILWAUKEE. I DO NOT KNOW IF IT HAS BEEN TESTED. I WAS TOLD BY PAUL MCGEADY THAT HOUSTON, TEXAS, AND POSSIBLY PITTSBURGH HAVE SOME CABLE TV ORDINANCE ALSO, AGAIN, I WOULD LIKE TO SUBMIT THIS AS A MODEL FOR YOUR CONSIDERATION FOR PROVIDING LEGISLATION FOR CONSISTENT PROTECTION OF PUBLIC PROPERTY.

Section 1

- (a) No person (including franchisee) shall by means of a cable television system, knowingly distribute by wire or cable to its subscribers any indecent material or knowingly provide such material for distribution.
- (b) "Person" shall include individuals, partnerships, associations and corporations.
- (c) "Distribute" shall mean send, transmit or retransmit or otherwise pass through a cable television system.
- (d) "Material" means any visual material shown on a cable television system, whether or not accompanied by a soundtrack, or any sound recording played on a cable television system.
- (e) "Indecent material" shall mean material which is a representation or verbal description of:
 - 1. a human sexual or excretory organ or function; or
 - 2. nudity; or
 - 3. ultimate sexual acts, normal or perverted, actual or simulated; or
 - 4. masturbation;which under contemporary community standards for cable television is patently offensive.
- (f) "Community Standards" shall mean the standards of the community encompassed within the territorial area covered by the franchise.
- (g) "Provide" means to supply for use.

Section 2

A cable television company may prohibit the cablecasting of obscene or indecent material on its public access, educational and leased channels.

Section 3

Violation of this ordinance shall constitute a misdemeanor and any person convicted of such violation shall be confined in jail for not more than _____ months or fined not more than _____ Dollars, either or both.



CITY OF SACRAMENTO

DEPARTMENT OF LAW

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DIANE B. BALTER

CHRISTINA PRIM
DEPUTY CITY ATTORNEYS

November 10, 1981

MEMORANDUM

TO: Sacramento County Board of Supervisors
Sacramento City Council

FROM: DIANE B. BALTER, Deputy City Attorney

RE: REPORT BACK ON MODEL STATUTE RELATING TO
OBSCENITY ON CABLE TELEVISION

On Monday evening, November 9, Dr. David Rupert presented to the Governing Bodies a sample of a model statute prohibiting distribution of obscene materials on cable television, violation of which is a misdemeanor. Dr. Rupert represented to the Governing Bodies that this statute had been upheld by courts in Colorado and Texas.

Staff was instructed to review Dr. Rupert's submission and to report back upon the possibility of including the model statute or a similar statute as a provision of our cable television ordinance.

This memorandum concludes that:

I. The sample ordinance submitted by Dr. Rupert has not been reviewed by any court decision to which Dr. Rupert could point. The Texas case referred to in Dr. Rupert's submittal* reviewed a statewide general obscenity statute totally unrelated to cable television. Furthermore, several of the limitations on regulation of speech and conduct required by the First Amendment which were included in the Texas statute (which was, by the way, held to be partially constitutional and partially unconstitutional) have been omitted from Dr. Rupert's sample statute. Staff concludes that the sample statute is unconstitutional under the very case referred to

* Dr. Rupert could not refer us to the Colorado case mentioned in his submittal.

by Dr. Rupert, as well as under other applicable cases decided by the United States Supreme Court and the Ninth Circuit Court of Appeals.

II. Even if an ordinance were drafted which comported with required First Amendment standards, the Governing Bodies may not adopt it, because the control of obscene communications has been pre-empted by a state regulation covering the area.

Section I of this memorandum analyzes the Texas decision, the proposed model statute and describes other applicable case law. Section II discusses the subject of state pre-emption.

I. The Texas case, the model statute, and other applicable cases

Staff has determined that the Texas case to which Dr. Rupert refers is Red Bluff Drive-In, Inc. v. Vance (1981) 648 F.2d 1020. That case reviews the following sections of the Texas state-wide obscenity statute

1. Title 9, subchap. B., of the Texas Penal Code as amended, reads:

SUBCHAPTER B. OBSCENITY

§ 43.21. Definitions

(a) In this subchapter:

(1) "Obscene" means material or a performance that:

(A) the average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex;

(B) depicts or describes:

(i) patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or

(ii) patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, covered male genitals in a discernibly turgid state or a device designed and marketed as useful primarily for stimulation of the human genital organs; and

(C) taken as a whole, lacks serious literary, artistic, political, and scientific value.

(2) "Material" means anything tangible that is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound, or in any other manner, but does not include an actual three dimensional obscene device.

(3) "Performance" means a play, motion picture, dance, or other exhibition performed before an audience.

(4) "Patently offensive" means so offensive on its face as to affront current community standards of decency.

(5) "Promote" means to manufacture, issue, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same.

(6) "Wholesale promote" means to manufacture, issue, sell, provide, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, or to offer or agree to do the same for purpose of resale.

(7) "Obscene device" means a device including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs.

(b) If any of the depictions or descriptions of sexual conduct described in this section are declared by a court of competent jurisdiction to be unlawfully included herein this declaration shall not invalidate this section as to other patently offensive sexual conduct included herein.

§ 43.23. Obscenity

(a) A person commits an offense if, knowing its content and character, he wholesale promotes or possesses with intent to wholesale promote any obscene material or obscene device.

(b) An offense under Subsection (a) of this section is a felony of the third degree.

(c) A person commits an offense if, knowing its content and character, he:

(1) promotes or possesses with intent to promote any obscene material or obscene device; or

(2) produces, presents, or directs an obscene performance or participates in a portion thereof that is obscene or that contributes to its obscenity.

(d) An offense under Subsection (c) of this section is a Class A misdemeanor.

(e) A person who promotes or wholesale promotes obscene material or an obscene device or possesses the same with intent to promote or wholesale promote it in the course of his business is presumed to do so with knowledge of its content and character.

(f) A person who possesses six or more obscene devices or identical or similar obscene articles is presumed to possess them with intent to promote the same.

(g) This section does not apply to a person who possesses or distributes obscene material or obscene devices or participates in conduct otherwise prescribed * by this section when the possession, participation, or conduct occurs in the course of law enforcement activities.

* So enrolled in bill; probably should read "proscribed."

*It should be noted that California has an obscenity statute which is even broader in scope than the Texas statute. See Penal Code §§311-313.5, appended to the memorandum and discussed in Part II, below.

As can be seen, there is no reference in this statute to cable television.

The Fifth Circuit Court of Appeals upheld the constitutionality of Sections 43.21(a)(1), (a)(2), (a)(3), (a)(6) and (a)(7), but refused to uphold the constitutionality of §43.21(a)(4) and (a)(5). The court also refused to uphold the constitutionality of §43.23(e) and (f). The court stated that "each of these provisions presents a troublesome question of constitutional law." (648 F.2d at 1020)

The section of the court's opinion which upheld portions of the statute emphasized that they were constitutional because they defined obscenity "with language drawn directly from the Supreme Court's landmark Miller [v. California (1973) 413 U.S. 15] decision":

This section recites, with little variation, the familiar three-part Miller test for determining the boundary between protected expression and regulable obscenity. Under the Miller test, expression goes beyond the limits of First Amendment protection if it (1) taken as a whole, appeals to the prurient interest; (2) depicts or describes specified sexual conduct in a patently offensive way; and (3) taken as a whole, lacks serious literary, artistic, political, or scientific value. (648 F.2d at 1026)

Section (a)(4) was questioned by the court because it defined "patently offensive" as "so offensive on its face as to affront current community decency." Miller, said the court, requires that "the line between protected expression and punishable obscenity must be drawn at the limits of a community's tolerance rather than in accordance with the dangerous standards of propriety and taste." (648 F.2d at 1028)

Section (a)(5) was questioned because the word "promote" could "be read to sweep within its ambit acts the state cannot criminalize" such as conversations between husband and wife conducted in the privacy of the marital bedroom.

Section 43.23(e) and (f) were questioned on grounds not germane to the issues covered by this memorandum.

Turning now to Dr. Rupert's model statute, its constitutionality must be measured by comparison to the three-part test set forth in Miller.

We note, first, that the model statute uses the "indecent" instead of the word "obscene." If the intent of this substitution is to move the line between protected and unprotected speech, it

November 10, 1981

would fail under Miller. We therefore assume that the word "obscene" could be substituted for "indecent."

A proposal of the model statute reveals that two of the three Miller criteria are missing. Communications could be regulated under this statute even if they did not (1) taken as a whole, appeal to the prurient interest, and (2) taken as a whole, lack serious literary, artistic, political or scientific value. Without these limitations, the statute impermissibly regulates protected speech, and would be struck down, on the authority of Red Bluff Drive-In, Inc. v. Vance itself as well as under Miller v. California and other obscenity cases. See, for example, Spokane Arcades, Inc. v. Ray, 449 F. Supp. 1145, 1152 (1978), affirmed 631 F.2d 135 (1980), affirmed without opinion by the United States Supreme Court on November 9, 1981.

II. Pre-emption of Obscenity Regulation by State Law

While staff believes that it would be possible to redraft the model statute to conform to first amendment requirements, it is futile to do so because any enactment in this subject area would be invalid because pre-empted by California state law.

The operative California law is found in Penal Code Section 311 through 313.5 which are attached to this memorandum. Sections 311 through 312.5 regulate distribution and exhibition of obscene matter to adults; Sections 313 through 313.5 regulate distribution and exhibition of "harmful" matter to minors.

The leading case discussing state pre-emption of the obscenity area is Whitney v. Municipal Court (1962) 58 C.2d 907, which invalidated a local ordinance prohibiting exhibition of motion pictures offensive to decency. In Whitney, the Supreme Court held that

"the state had occupied the field with regard to the criminal aspects of obscene exhibitions. Accordingly, a city ordinance prohibiting exhibitions of the type described in the ordinance under consideration here is in conflict with state law and is void." (58 C.2d at 911)

A more recent application of the same legal principle is found in Carl v. City of Los Angeles (1976) 61 Cal.App.3d 265, in an opinion written by current Supreme Court Justice Otto Kaus (at pp. 269-270):

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The Harmful Matter Statute [Penal Code §§313-313.5] purports to regulate the distribution of material which, generally using the California definition of obscenity (citations omitted) is "utterly without redeeming social importance for minors." (§313) (Italics added [by court]) [The statute defines] "matter" in §313 to encompass every conceivable mode of communication... We think it is obvious that section 313.1 of the Penal Code preempts the field of offering and selling harmful matter to minors. The parallel decisions holding that the statutes relating to adult obscenity preempt the field leave no room for argument on this point. [Citing Whitney v. Municipal Court, supra, and other cases.]

Accord: Mier v. Municipal Court (1962) 211 Cal.App.2d 470 and People v. Kukkanen (1967) 248 Cal. App.2d Supp. 899.

In California Water & Telephone Co. v. County of Los Angeles (1967) 253 Cal.App.2d 16 it is said:

Local legislation in conflict with general law is void. Conflicts exist if the ordinance duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication. If the subject matter or field of the legislation has been fully occupied by the state, there is no room for supplementary or complementary local legislation, even if the subject were otherwise one properly characterized as a "municipal affair."

The courts have ruled that the area of criminal obscenity has been fully occupied by the state. There is no room for supplementary or complementary local legislation, and any such regulation would be void.

DBB:mb
Attachments

CHAPTER 7.5

Obscene Matter

- § 311. Definitions.
- § 311.2. Sale or distribution, etc., of obscene matter.
- § 311.4. Employment of minor for sale or distribution of obscene matter or production of pornography.
- § 311.5. Advertisement, promotion of sale, etc., of matter represented to be obscene.
- § 311.6. Participating in, etc., obscene live conduct.
- § 311.7. Requiring purchaser or consignee to receive obscene matter as condition to sale, etc.
- § 311.8. Defense.
- § 311.9. Punishment.
- § 312. Destruction of matter or advertisement upon conviction of accused.
- § 312.1. Evidence in prosecution: Nonrequirement as to expert testimony concerning obscene or harmful character: Admissibility of evidence tending to establish contemporary community standards.
- § 312.5. Statutory severability and partial invalidity.

§ 311. [Definitions.] As used in this chapter:

(a) "Obscene matter" means matter, taken as a whole, the predominant appeal of which to the average person, applying contemporary standards, is to prurient interest, i.e., a shameful or morbid interest in nudity, sex,

or excretion; and is matter which taken as a whole goes substantially beyond customary limits of candor in description or representation of such matters; and is matter which taken as a whole is utterly without redeeming social importance.

(1) The predominant appeal to prurient

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interest of the matter is judged with reference to average adults unless it appears from the nature of the matter or the circumstances of its dissemination, distribution or exhibition, that it is designed for clearly defined deviant sexual groups, in which case the predominant appeal of the matter shall be judged with reference to its intended recipient group.

(2) In prosecutions under this chapter, where circumstances of production, presentation, sale, dissemination, distribution, or publicity indicate that matter is being commercially exploited by the defendant for the sake of its prurient appeal, such evidence is probative with respect to the nature of the matter and can justify the conclusion that the matter is utterly without redeeming social importance.

(3) In determining whether the matter taken as a whole goes substantially beyond customary limits of candor in description or representation of such matters the fact that the defendant knew that the matter depicts persons under the age of 16 years engaged in sexual conduct, as defined in subdivision (c) of Section 311.4, is a factor which can be considered in making such a determination.

(b) "Matter" means any book, magazine, newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction or any other articles, equipment, machines or materials.

(c) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.

(d) "Distribute" means to transfer possession of, whether with or without consideration.

(e) "Knowingly" means being aware of the character of the matter or live conduct.

(f) "Exhibit" means to show.

(g) "Obscene live conduct" means any physical human body activity, whether performed or engaged in alone or with other persons, including but not limited to singing, speaking, dancing, acting, simulating, or pantomiming, where, taken as a whole, the predominant appeal of such conduct to the average person, applying contemporary standards is to prurient interest, i.e., a shameful or morbid interest in nudity, sex, or excretion; and is conduct which taken as a whole goes substantially beyond customary limits of candor in description or representation of

such matters; and is conduct which taken as a whole is utterly without redeeming social importance.

(1) The predominant appeal to prurient interest of the conduct is judged with reference to average adults unless it appears from the nature of the conduct or the circumstances of its production, presentation or exhibition, that it is designed for clearly defined deviant sexual groups, in which case the predominant appeal of the conduct shall be judged with reference to its intended recipient group.

(2) In prosecutions under this chapter, where circumstances of production, presentation advertising, or exhibition indicate that live conduct is being commercially exploited by the defendant for the sake of its prurient appeal, such evidence is probative with respect to the nature of the conduct and can justify the conclusion that the conduct is utterly without redeeming social importance.

(3) In determining whether the live conduct taken as a whole goes substantially beyond customary limits of candor in description or representation of such matters the fact that the defendant knew that the live conduct depicts persons under the age of 16 years engaged in sexual conduct, as defined in subdivision (c) of Section 311.4, is a factor which can be considered in making such a determination. [1961 ch 2147 § 5; 1969 ch 249 § 1; 1970 ch 1072 § 1; 1978 ch 715 § 1.] *Cal Jur 3d Amusements and Exhibitions* §§ 11, 13, *Criminal Law* §§ 2251-2265; *Witkin Crimes* pp 500, 501, 503, 504, 505; *Summary* (8th ed) pp 3460, 3467, 3468.

§ 311.2. [Sale or distribution, etc., of obscene matter.] (a) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, or prints, with intent to distribute or to exhibit to others, or who offers to distribute, distributes, or exhibits to others, any obscene matter is guilty of a misdemeanor.

(b) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, or prints, with intent to distribute or to exhibit to others for commercial consideration, or who offers to distribute, distributes, or exhibits to others for commercial consideration, any obscene matter, knowing that such matter depicts a person under the age of 18 years personally engaging in or

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personally simulating sexual intercourse, masturbation, sodomy, bestiality, or oral copulation is guilty of a felony and shall be punished by imprisonment in state prison for two, three, or four years, or by a fine not exceeding fifty thousand dollars (\$50,000), in the absence of a finding that the defendant would be incapable of paying such a fine, or by both such fine and imprisonment.

(c) The provisions of this section with respect to the exhibition of, or the possession with intent to exhibit, any obscene matter shall not apply to a motion picture operator or projectionist who is employed by a person licensed by any city or county and who is acting within the scope of his employment, provided that such operator or projectionist has no financial interest in the place wherein he is so employed.

(d) Except as otherwise provided in subdivision (c), the provisions of subdivision (a) or (b) with respect to the exhibition of, or the possession with intent to exhibit, any obscene matter shall not apply to any person who is employed by a person licensed by any city or county and who is acting within the scope of his employment, provided that such employed person has no financial interest in the place wherein he is so employed and has no control, directly or indirectly, over the exhibition of the obscene matter. [1961 ch 2147 § 5; 1968 ch 399 § 1; 1969 ch 249 § 2; 1975 ch 793 § 1; 1977 ch 1061 § 1, effective September 24, 1977.] *Cal Jur 3d Amusements and Exhibitions* § 13, *Criminal Law* §§ 2254-2256, 2266, 2268; *Witkin Crimes* pp 503, 504; *Evidence 2d*, 1972 Supp p 118; *Summary* (8th ed) pp 3460, 3469.

§ 311.4. [Employment of minor for sale or distribution of obscene matter or production of pornography.] (a) Every person who, with knowledge that a person is a minor, or who, while in possession of such facts that he should reasonably know that such person is a minor, hires, employs, or uses such minor to do or assist in doing any of the acts described in Section 311.2, is guilty of a misdemeanor.

(b) Every person who, with knowledge that a person is a minor under the age of 16 years, or who, while in possession of such facts that he should reasonably know that such person is a minor under the age of 16 years, knowingly promotes, employs, uses, persuades, induces or coerces a minor under the age of 16 years, or any parent or guardian of a minor under the age of 16 years under his or her control who knowingly

permits such minor, to engage in or assist others to engage in either posing or modeling alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance involving sexual conduct by a minor under the age of 16 years alone or with other persons or animals, for commercial purposes, is guilty of a felony and shall be punished by imprisonment in the state prison for three, four, or five years.

(c) As used in subdivision (b), "sexual conduct" means any of the following, whether actual or simulated: sexual intercourse, oral copulation, anal intercourse, anal oral copulation, masturbation, bestiality, sexual sadism, sexual masochism, any lewd or lascivious sexual activity, or excretory functions performed in a lewd or lascivious manner, whether or not any of the above conduct is performed alone or between members of the same or opposite sex or between humans and animals. An act is simulated when it gives the appearance of being sexual conduct. [1961 ch 2147 § 5; 1977 ch 1148 § 3, effective September 29, 1977.] *20 Cal Jur 3d Criminal Law* § 2256; *Witkin Crimes* pp 504, 537.

§ 311.5. [Advertisement, promotion of sale, etc., of matter represented to be obscene.] Every person who writes, creates, or solicits the publication or distribution of advertising or other promotional material, or who in any manner promotes, the sale; distribution, or exhibition of matter represented or held out by him to be obscene, is guilty of a misdemeanor. [1961 ch 2147 § 5; 1969 ch 249 § 4.] *Cal Jur 3d Advertising* § 2, *Criminal Law* § 2257; *Witkin Crimes* p 503.

§ 311.6. [Participating in, etc., obscene live conduct.] Every person who knowingly engages or participates in, manages, produces, sponsors, presents or exhibits obscene live conduct to or before an assembly or audience consisting of at least one person or spectator in any public place or in any place exposed to public view, or in any place open to the public or to a segment thereof, whether or not an admission fee is charged, or whether or not attendance is conditioned upon the presentation of a membership card or other token, is guilty of a misdemeanor. [1961 ch 2147 § 5; 1970 ch 1072 § 2.] *Cal Jur 3d Criminal Law* § 2258, *Injunction* § 49; *Witkin Crimes* p 505.

§ 311.7. [Requiring purchaser or consignee to receive obscene matter as condition to sale, etc.] Every person who, know-

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ingly, as a condition to a sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, publication or other merchandise, requires that the purchaser or consignee receive any obscene matter or who denies or threatens to deny a franchise, revokes or threatens to revoke, or imposes any penalty, financial or otherwise, by reason of the failure of any person to accept obscene matter, or by reason of the return of such obscene matter, is guilty of a misdemeanor. [1961 ch 2147 § 5.] *20 Cal Jur 3d Criminal Law § 2259; Witkin Crimes p 504.*

§ 311.8. [Defense.] It shall be a defense in any prosecution for a violation of this chapter that the act charged was committed in aid of legitimate scientific or educational purposes. [1961 ch 2147 § 5.] *20 Cal Jur 3d Criminal Law § 2264; Witkin Crimes pp 501, 502.*

§ 311.9. [Punishment.] (a) Every person who violates Section 311.2 or 311.5, except subdivision (b) of Section 311.2, is punishable by fine of not more than one thousand dollars (\$1,000) plus five dollars (\$5) for each additional unit of material coming within the provisions of this chapter, which is involved in the offense, not to exceed ten thousand dollars (\$10,000), or by imprisonment in the county jail for not more than six months plus one day for each additional unit of material coming within the provisions of this chapter, and which is involved in the offense, such basic maximum and additional days not to exceed 360 days in the county jail, or by both such fine and imprisonment. If such person has previously been convicted of any offense in this chapter, or of a violation of Section 313.1, a violation of Section 311.2 or 311.5, except subdivision (b) of Section 311.2, is punishable as a felony.

(b) Every person who violates Section 311.4 is punishable by fine of not more than two thousand dollars (\$2,000) or by imprisonment in the county jail for not more than one year, or by both such fine and such imprisonment. If such person has been previously convicted of a violation of former Section 311.3 or Section 311.4, he is punishable by imprisonment in the state prison.

(c) Every person who violates Section 311.7 is punishable by fine of not more than one thousand dollars (\$1,000) or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. For a second and subsequent offense he shall be punished by a fine of not

more than two thousand dollars (\$2,000), or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. If such person has been twice convicted of a violation of this chapter, a violation of Section 311.7 is punishable as a felony. [1961 ch 2147 § 5; 1967 ch 138 § 2; 1969 ch 249 § 5; 1976 ch 1139 § 180, operative July 1, 1977; 1977 ch 1061 § 2, effective September 24, 1977.] *20 Cal Jur 3d Criminal Law §§ 2254-2257, 2259; Witkin Crimes p 537.*

§ 312. [Destruction of matter or advertisement upon conviction of accused.] Upon the conviction of the accused, the court may, when the conviction becomes final, order any matter or advertisement, in respect whereof the accused stands convicted, and which remains in the possession or under the control of the district attorney or any law enforcement agency, to be destroyed, and the court may cause to be destroyed any such material in its possession or under its control. [1961 ch 2147 § 5.] *20 Cal Jur 3d Criminal Law § 2270; Witkin Crimes p 921.*

§ 312.1. [Evidence in prosecution: Non-requirement as to expert testimony concerning obscene or harmful character: Admissibility of evidence tending to establish contemporary community standards.] In any prosecution for a violation of the provisions of this chapter or of Chapter 7.6 (commencing with Section 313), neither the prosecution nor the defense shall be required to introduce expert witness testimony concerning the obscene or harmful character of the matter or live conduct which is the subject of any such prosecution. Any evidence which tends to establish contemporary community standards of appeal to prurient interest or of customary limits of candor in the description or representation of nudity, sex or excretion, or which bears upon the question of redeeming social importance, shall, subject to the provisions of the Evidence Code, be admissible when offered by either the prosecution or by the defense. [1969 ch 925 § 1; 1970 ch 1072 § 3.] *20 Cal Jur 3d Criminal Law § 2267; Witkin Summary (Sik ed) p 3471.*

§ 312.5. [Statutory severability and partial invalidity.] If any phrase, clause, sentence, section or provision of this chapter or application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other phrase, clause, sentence, section, provision or application of this chapter, which can be given effect without

the invalid phrase, clause, sentence, section, provision or application and to this end the provisions of this chapter are declared to be

severable. [1969 ch 249 § 6.] *Cal Jur 2d Stat* § 36.

CHAPTER 7.6

Harmful Matter

§ 313. Definitions.

§ 313.1. Distribution or exhibition of harmful matter to minor.

§ 313.2. Same: Parent's distribution to child.

§ 313.3. Scientific or educational purposes as defense.

§ 313.4. Punishment.

§ 313.5. Statutory severability and partial validity.

§ 313. [Definitions.] As used in this chapter:

(a) "Harmful matter" means matter, taken as a whole, the predominant appeal of which to the average person, applying contemporary standards, is to prurient interest, i.e., a shameful or morbid interest in nudity, sex, or excretion; and is matter which taken as a whole goes substantially beyond customary limits of candor in description or representation of such matters; and is matter which taken as a whole is utterly without redeeming social importance for minors.

(1) When it appears from the nature of the matter or the circumstances of its dissemination, distribution or exhibition that it is designed for clearly defined deviant sexual groups, the predominant appeal of the matter shall be judged with reference to its intended recipient group.

(2) In prosecutions under this chapter, where circumstances of production, presentation, sale, dissemination, distribution, or publicity indicate that matter is being commercially exploited by the defendant for the sake of its prurient appeal, such evidence is probative with respect to the nature of the matter and can justify the conclusion that the matter is utterly without redeeming social importance for minors.

(b) "Matter" means any book, magazine, newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation or any statue or other figure, or any recording, transcription, or mechanical, chemical, or electrical reproduction or any other articles, equipment, machines, or materials.

(c) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.

(d) "Distribute" means to transfer posses-

sion of, whether with or without consideration.

(e) "Knowingly" means being aware of the character of the matter.

(f) "Exhibit" means to show.

(g) "Minor" means any natural person under 18 years of age. [1969 ch 248 § 1.] *Cal Jur 3d Criminal Law* §§ 2252, 2265, 3076, 3077.

§ 313.1. [Distribution or exhibition of harmful matter to minor.] (a) Every person who, with knowledge that a person is a minor, or who fails to exercise reasonable care in ascertaining the true age of a minor, knowingly distributes, sends, causes to be sent, exhibits, or offers to distribute or exhibit any harmful matter to the minor is guilty of a misdemeanor.

(b) Every person who misrepresents himself to be the parent or guardian of a minor and thereby causes the minor to be admitted to an exhibition of any harmful matter is guilty of a misdemeanor.

(c) Any person who, within 500 meters of any elementary school, junior high school, high school, or public playground, or any part thereof, knowingly sells or offers to sell, in any coin- or slug-operated vending machine or mechanically or electronically controlled vending machine which is located on a public sidewalk, any harmful matter displaying to the public view photographs or pictorial representations of the commission of the following acts, is guilty of a misdemeanor: sodomy, oral copulation, sexual intercourse, masturbation, bestiality, or a photograph of an exposed penis in an erect and turgid state. [1969 ch 248 § 1; 1970 ch 257 § 1; 1976 ch 1121 § 1.] *20 Cal Jur 3d Criminal Law* § 2260.

§ 313.2. [Same: Parent's distribution to child.] (a) Nothing in this chapter shall prohibit any parent or guardian from distrib-

§ 313.2

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uting any harmful matter to his child or ward or permitting his child or ward to attend an exhibition of any harmful matter if the child or ward is accompanied by him.

(b) Nothing in this chapter shall prohibit any person from exhibiting any harmful matter to any of the following:

(1) A minor who is accompanied by his parent or guardian.

(2) A minor who is accompanied by an adult who represents himself to be the parent or guardian of the minor and whom the person, by the exercise of reasonable care, does not have reason to know is not the parent or guardian of the minor. [1969 ch 248 § 1; 1970 ch 257 § 2.] 20 Cal Jur 3d Criminal Law § 2261.

§ 313.3. [Scientific or educational purposes as defense.] It shall be a defense in any prosecution for a violation of this chapter that the act charged was committed in aid of legitimate scientific or educational purposes. [1969 ch 248 § 1.] 20 Cal Jur 3d Criminal Law § 2264.

§ 313.4. [Punishment.] Every person

who violates Section 313.1 is punishable by fine of not more than two thousand dollars (\$2,000) or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. If such person has been previously convicted of a violation of Section 313.1 or any section of Chapter 7.5 (commencing with Section 311) of Title 9 of Part 1 of this code, he is punishable by imprisonment in the state prison. [1969 ch 248 § 2; 1976 ch 1139 § 181, operative July 1, 1977.] 20 Cal Jur 3d Criminal Law § 2260.

§ 313.5. [Statutory severability and partial validity.] If any phrase, clause, sentence, section or provision of this chapter or application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other phrase, clause, sentence, section, provision or application of this chapter, which can be given effect without the invalid phrase, clause, sentence, section, provision or application and to this end the provisions of this chapter are declared to be severable. [1969 ch 248 § 1.] Cal Jur 2d Stat § 36.

SHEEDY AND THOMPSON
ORDINANCE PROHIBITION
AGAINST OBSCENE BROADCASTS

Purpose -- To make the exhibition of obscene material over a Cable Television System grounds for termination of a franchise.

Add -- Subparagraph (f) to Section 5.50.818 in Article 5-b of Sub-chapter 5 to read as follows:

f. The conviction of any person under either Section 311.2 or 311.5 of the Penal Code for the display or exhibition of any obscene matter on any channel of a Cable Television System which has not been allocated either to the Educational Consortium or to KVIE and which is not required by FCC Regulations to be carried on the System, whether such channel is on a Subscriber Network or Institutional Network, and including, but not limited to, channels upon which Community Use Programming is presented;

CONNELLY -- RFP ENCOURAGEMENT
TO RESTRICT INDECENCY
BY SELF-RESTRAINT

Offensive Material

Cable television will penetrate the privacy of households within the Sacramento Community which potentially exceed 200,000. Reasons for voluntary subscription to cable service will cover a vast array of motivations. The interests, mores, behavioral characteristics and sensitivities of subscribers will be roughly equivalent to those predominant within the Sacramento Community as a whole. Viewers will range from infant children to the elderly and infirm. With the exception of programming presented by independent television stations which FCC Regulations require be carried on cable and on channels allocated to KVIE and the Educational Consortium by Ordinance, a Franchisee will be vested with virtually exclusive discretion respecting the type and content of home entertainment programming provided through cable service. Such discretion will be exercised by the inclusion of certain proposals respecting such programming in the application. It will also be exercised in relation to Community Use Programming by the authority to define in the application restraints thereon and jurisdiction thereover which will be exercised by the Franchisee and an independent body.

For the foregoing reasons, a Franchisee is and should be held directly responsible for the type of programming presented, except with respect to that on independent stations which must be carried

and on channels allocated to KVIE and the Educational Consortium.

Each applicant for a franchise may include within its application detailed standards, criteria, procedures and measures which respond to the following questions respecting programming over which it would or could exercise control:

- a. The specific procedures and measures which will be undertaken to insure that programming which is obscene as legally defined, and therefore illegal, will not be shown;
- b. Whether programming which is not obscene as legally defined, but is indecent or profane, will be shown, and if so:
 - (1) A general description of the various types, quantity and origins of such programming intended to be offered or permitted; and
 - (2) A detailed description of the measures, if any, which the Franchisee would undertake and utilize to eliminate or reduce the possibility that such programming would be viewed by children without the consent of their parents or viewed by adults whose sensitivities would be offended thereby.

It is the desire of the Governing Bodies to encourage the larger and more effective use of cable services in the public interest. This objective demands measures designed to prohibit obscene material, and reduce the risk that indecent or profane

material will offend sensibilities of the viewing public, and which particularly shield viewing children from such indecency or profanity, without banning such material. The Ordinance reserves a regulatory authority in the Board of Directors of the Cable Television Commission under Section 5.50.512 to achieve these objectives. It is the view of the Governing Bodies that the objectives may be far more appropriately and effectively achieved by the exercise of self-restraint by a Franchisee. Measures proposed in the application of the Franchisee will become enforceable covenants of the Franchise Documents, subject to paramount regulatory authority reserved by Section 5.50.512 in the Board of Directors of the Commission.

An applicant is not required to respond to the concern expressed in this Section, and will not be disqualified from consideration for failing to do so.

STAFF RECOMMENDED ALTERNATIVE RE
OBSCENE OR INDECENT PROGRAMMING

5.50.512 CABLE TELEVISION SERVICES. No home educational or entertainment service, including, but not limited to, Community Use Programming, provided through a Cable Television System shall be provided or operated in a manner which is detrimental to the public peace, health, safety or welfare, or which permits the broadcasting of obscene, indecent or profane material. The provisions of this section shall not be self-executing, shall not be deemed to authorize the Cable Television Commission or any other public authority to establish bans upon services in advance of the offering thereof, and may be invoked solely pursuant to the following procedure.

If the Board of Directors of the Cable Television Commission determines that there is reason to believe that a particular service provided through a Cable Television System is of a type or is otherwise provided in a manner which is detrimental to the public peace, health, safety or welfare, or which permits the broadcasting of obscene, indecent or profane material, the Board shall schedule a public hearing. Written notice identifying the service or services or method of provision subject to the determination shall be mailed to the Franchisee not later than thirty (30) days in advance of the hearing. Notice of the hearing shall be given in the manner prescribed by Section 5.50.024 in Subchapter 1. 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, or which permits the broadcasting of obscene, indecent or profane material, the Board may enact regulations which prohibit the services or otherwise regulate the manner of the provision thereof, as the case maybe, and may enforce the regulation by appropriate action in the courts of this state.

Sacramento Symphony Association

CARTER NICE
MUSIC DIRECTOR

DAVID M. WAX
GENERAL MANAGER

November 11, 1981

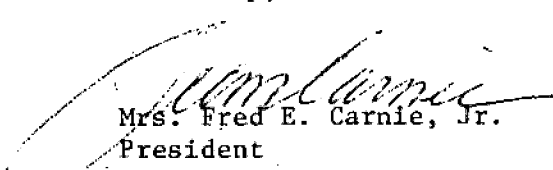
Sacramento City Council
Sacramento County Board of Supervisors

Dear Sirs and Madams:

The Sacramento Symphony Association recognizes the great potential contribution cable television can make to the growth of performing arts organizations in the community and to the services that these performing arts organizations will be able to provide to the people of Greater Sacramento. The Association strongly urges the City Council and the County Board of Supervisors to include provisions in its ordinance to encourage cable television's fulfillment of this potential.

To that end, the Sacramento Symphony Association wishes to encourage the Council and Board to support a role for public and community television when formulating the requirements for the local cable television system, so that in turn the local performing arts groups will stand to achieve the potential that cable television holds for the arts.

Sincerely,



Mrs. Fred E. Carnie, Jr.
President

jc/dw

COUNTY OF SACRAMENTO
CALIFORNIA

November 9, 1981

To: Board and Council Members

From: William R. Freeman

Just a brief note to guide you through this binder. Following are comments on the agenda and the divider tabs:

PROPOSED AGENDA. This has been prepared to identify what staff thinks are the major issues that will generate public testimony. We have organized them into what seems to be logical groupings and divided them between the two meetings. This agenda is subject to modification at the pleasure of the Board and Council.

STAFF. There are a series of memos prepared by Lee Elam. If you review these ~~first~~, the ordinance will be easier to follow, and you will have a better understanding of the major issues. Also included is a memo from Howard Gan listing three concerns: the channel banking concept; the mandatory allocation of channels; and limited rate regulation. Howard will be present at the November 11 meeting.

ORDINANCE. This is draft number four which reflects the decisions of the joint subcommittee. Underlining in this draft indicates changes from draft number three which was previously distributed to you.

R.F.P. This is the latest draft of the Request for Proposals. It has been prepared by the City Attorney.

COMMUNITY. This tab is for your convenience in filing material you may receive from community groups. Included in the binder are copies of material you should have already received from KVIE and a Media Alliance group. I included them to save you the trouble of inserting them.

OPERATORS. Included are comments from three operators which were submitted to the subcommittee during its hearings. United Cable has submitted a new document entitled Proposed Alternative Language. United's proposed changes are shown by underlining additions and ~~striking-out~~ deletions. Unfortunately, the ordinance language is taken from draft number three so United's addition of the word material in section 5.50.240 does not correspond to the wording in draft number four which is in the binder.

Warner-Amex may be distributing comments directly to you some time before the hearings.

If you have any questions, please call. My numbers are:

Office: 440-5883

Home: 422-9252

WILLIAM R. FREEMAN
Assistant County Executive
WRF:emw

or more Cities from the franchise area, or the rejection of all proposals and failure to issue any franchise whatsoever, whether such rejection is expressed or results from any act or omission by County, any one of the Cities, or the joint powers authority. In other words, the funds expended by applicants in preparation of their applications, or expended in any way related to the proposed franchise, shall be at the applicants' own risk and cost.

Second-Stage Environmental Analysis

The second-stage environmental analysis shall be conducted if the Governing Bodies make a tentative selection of a franchisee. During the second-stage environmental analysis, the Environmental Impact Section of the County, the Cable Television Commission, and the tentative franchisee shall work together to identify and design measures necessary and desirable to mitigate the environmental impacts of the application submitted by the tentative franchisee. The issues to be analyzed include, but are not limited to, proposed locations of headends, towers, and earth stations.

The second-stage environmental analysis will begin after selection of a tentative franchisee. Because the second-stage environmental analysis cannot be completed prior to enactment of the resolution offering the franchise and the filing of a certification accepting the franchise, an applicant, by submitting an application, agrees that if it is selected to be the franchisee, it will comply with all mitigation measures declared by the Cable Television Commission to be necessary or desirable, whether such measures are identified before or after the certification accepting

JAMES A. CLEVELAND
Post Office Box 15367
Sacramento, California 95851
Phone: 456-3204

CABLE TELEVISION INITIATIVE

I invite you to help for a "Cable Television Initiative Committee, to draft and circulate throughout the City and County of Sacramento a "Cable Television Initiative" to make this very, very valuable revenue producing source a "PUBLIC UTILITY", rather than giving it away to any "Special Interest."

Cable Television, except for Property Taxes, will produce more revenue urgently needed by both our City and County, to keep vital public and community services operating in this City and County.

A14—The Sacramento Union, Wednesday, October 21, 1981

Wise decision

In announcing his decision to pull The Bee out of the bidding for a cable TV franchise in Sacramento, C.K. McClatchy described his decision as one reached reluctantly. We believe it was also a wise decision, benefitting the community as well as The Bee.

We have, from the beginning, fought hammer and tong against the award of a franchise to any outfit in which the McClatchy newspaper would have a significant place. We did so not because we fear competition — we can, and have and will continue to compete lustily and successfully with The Bee — but because we believe that kind of cross-ownership (newspaper and TV) represents an unhealthy and ominous concentration of power. Nor, by the way, were we alone in voicing that fear: the National League of Cities, in its "Code of Good Cable Television Franchising Conduct" released earlier this year, had this to say to the nation's mayors and other municipal leaders:

"In safeguarding the public interest, cities should consider whether granting a cable franchise to a particular applicant would result in an increased

concentration of media ownership. Cable has become an important medium for the dissemination of information to the public. If one individual or firm controls multiple information sources in a locality, the public interest may be adversely served."

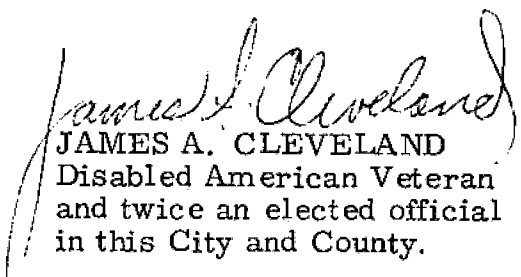
In his withdrawal statement, Bee President McClatchy identified "the credibility of The Bee" as an overriding consideration in his decision. We believe The Bee's credibility has been spared great potential harm by this decision.

More importantly, we believe the community wins, because whichever bidder now carries away the plum of the Sacramento franchise—one of the largest single franchises in the country—it will mean that the citizens of our area will have access to a greater, and not dangerously-lesser, variety of information sources.

It is now up to the select panel of county commissioners and city council members to award the franchise with the greatest care and caution. For our part, we are pleased that The Bee will now be able to join us in monitoring that process, free of the shackles of itself being a party to the process.

Please contact me at either the phone number or address above, or use the space below to write your name, phone number or address in and give it to me, so that I can contact you.

Thank you, your "HELP" is urgently needed.


JAMES A. CLEVELAND
Disabled American Veteran
and twice an elected official
in this City and County.

1120 8th. Avenue
Sacramento, Ca. 95818
November 6, 1981

Board of Supervisors, Sacramento County
700 ---H Street.
Sacramento, Ca. 95814

COUNTY OF SACRAMENTO
BOARD OF SUPERVISORS

Dear Supervisors,

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What does Susanville, California have that Sacramento doesn't have besides clean air and water? CABLE TELEVISION and has had for many years. They can choose from 39 channels from as far away as Atlanta, or as near as Reno or Sacramento.

Cable television can be useful in many ways other than for entertainment. It is an efficient means of getting essential information to residents of a city, in the event of a disaster, or the unscheduled closure of schools. Homes can be tied into police and fire departments thru the cable system. Medical and educational materials can be transmitted promptly to where they are needed.

Sacramento NEEDS cable television.


Alice Monahan Williams

Copies to City Council of Sacramento
United Cable Television of Sacramento