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ORDINANCE NO. 2322-X

AN ORDINANCE TO AMEND ORDINANCE NO. 2198-X, THE 1987-88 BUDGET ORDINANCE, PROVIDING A SUPPLEMENTAL APPROPRIATION FOR INCLUSION OF THE INSURANCE AND RISK MANAGEMENT AGENCY AS A DIVISION OF THE FINANCE DEPARTMENT, AND AMENDING THE TABLE OF ORGANIZATION OF THE FINANCE DEPARTMENT.

BE IT ORDAINED by the City Council of the City of Charlotte, North Carolina;

Section 1. That the sum of \$520,748 is hereby estimated to be available to provide operating support for the Insurance and Risk Management Division of Finance from the following sources:

<u>Source</u>	<u>Amount</u>
General Fund Non-Departmental Account 530.07	\$291,730
Mecklenburg County	89,649
Charlotte-Mecklenburg Board of Education	63,188
Miscellaneous Revenues	76,181
Total	\$520,748

Section 2. That the sum of \$520,748 is hereby appropriated to the General Fund Finance Department-IRMA Division 0101;206.00.

Section 3. That the table of organization of the Finance Department-IRMA Division is hereby amended to reflect the addition of the following positions:

<u>Account</u>	<u>Number</u>	<u>Title</u>	<u>Range No.</u>	<u>Positions</u>
206	0003	Office Assistant III	107	1
206	0005	Office Assistant V	111	1
206	2260	Claims Assistant	111	1
206	2210	Accountant I	318	1
206	2265	Safety and Loss Analyst	318	1
206	2267	Safety Coordinator	320	2
206	2269	Safety Supervisor	325	1
206	2271	Insurance and Risk Specialist	320	1
206	2273	Insurance and Risk Coordinator	325	1
206	2275	Insurance and Risk Manager	870	1
206	2263	Claims Representative	117	1

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Section 4. All ordinances or parts of ordinances in conflict
herewith are hereby repealed.

Section 5. This ordinance shall become effective upon its adoption.

Approved as to form:

Henry W. Chandler Jr.

City Attorney

Read, approved and adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the 23rd day of November, 1987, the reference having been made in Minute Book 89, and is recorded in full in Ordinance Book 36, at page(s) 219-220.

Pat Sharkey
City Clerk

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ORDINANCE 2323

AMENDING CHAPTER 6 ARTICLE V

AN ORDINANCE AMENDING ARTICLE V, ENTITLED "COMMUNITY ANTENNA TELEVISION SYSTEM", OF CHAPTER 6 OF THE CODE OF THE CITY OF CHARLOTTE.

BE IT ORDAINED by the City Council of the City of Charlotte, North Carolina, that:

Section 1. Article V of Chapter 6 of the City Code shall be deleted in its entirety, with the exception of Section 6-83, and the following substituted in lieu thereof:

SEE ATTACHED

Approved as to form:

Henry W. Underhill, Jr.
City Attorney

CERTIFICATION

I, Pat Sharkey, City Clerk of the City of Charlotte, North Carolina, do hereby certify that the foregoing is a true and exact copy of an Ordinance adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the 23rd day of November, 1987, the reference having been made in Minute Book 89, and is recorded in full in Ordinance Book 36, at page(s) 221-262.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the 25th day of November, 1987.

Pat Sharkey, City Clerk

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CHARLOTTE CABLE COMMUNICATIONS REGULATORY ORDINANCE

I. PURPOSE

The City of Charlotte finds that the development of cable television and communications systems has the potential of having great benefit and impact upon the people of Charlotte. Because of the complex and rapidly changing technology associated with cable television, the City further finds that the public convenience, safety and general welfare can best be served by establishing certain regulatory powers which may be vested in the City or such persons as the City shall designate.

Further, it is recognized that cable communications systems have the capacity to provide not only entertainment and information services to the City's residents, but can provide a variety of broadband, interactive communications services to institutions and individuals.

For these purposes, the following goals underlie the regulations contained herein:

- a) Where economically feasible, communications services should be available to the maximum number of City residents as provided for herein.
- b) The cable television systems should be capable of accommodating both the present and reasonably foreseeable future communications needs of the City.
- c) The cable television systems should be maintained as necessary during the franchise term so that the new facilities, if any, may be integrated to the maximum extent possible with existing facilities.
- d) The communications systems authorized by this Ordinance shall be responsive to the needs and interests of the local community.
- e) The public, educational, and governmental needs for reasonable access to the cable system shall be met.

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II. TITLE OF ORDINANCE

This Ordinance shall be known and may be cited as "Charlotte Cable Communications Regulatory Ordinance", and it shall become a part of the ordinances of the City of Charlotte.

This Ordinance shall take effect and be in force from and after the date as established herein.

All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

III. DEFINITIONS

For the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

3.1 ADDITIONAL SERVICES means programming or services for which an additional charge is made beyond the charge for Basic Subscriber Services, including, but not limited to, movies, concerts, variety acts, sporting events, pay-per-view programs, interactive services, and any other service utilizing any facility or equipment of a cable television system operating pursuant to a franchise granted under this Ordinance.

3.2 BASIC SUBSCRIBER RADIO SERVICE means such audio services as the re-transmission of broadcast FM radio signals, shortwave, weather, news, time and other similar audio services and the transmission of cablecast (nonbroadcast) radio signals as permitted by the FCC.

3.3 BASIC SUBSCRIBER TELEVISION SERVICES means all subscriber services provided by the Grantee in one or more service tiers, including the delivery of broadcast signals, public, educational, and government access channels, and local origination channels, covered by the regular monthly charge paid by all subscribers to a particular service tier including subscriber terminal charges and related deposits.

3.4 CABLE COMMUNICATIONS SYSTEM OR CABLE TELEVISION SYSTEM, also referred to as "System", means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include: (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public rights-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provision of Title II of the Cable Act, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or, (D)

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any facilities of any electric utility used solely for operating its electric utility systems.

3.5 COMMUNICATIONS POLICY ACT or CABLE ACT means the Cable Communications Policy Act of 1984 (Pub.L.No. 98-549, 47 USC 521 (Supp.)) as it may be amended or succeeded.

3.6 CHANNEL means a six Megahertz (MHz) frequency band, which is capable of carrying either one standard video signal, a number of audio, digital or other nonvideo signals or some combination of signals.

3.7 CLOSED-CIRCUIT or INSTITUTIONAL SERVICE means such video, audio, data and other services provided to institutional users on an individual application basis. These may include, but are not limited to, one-way video, two-way video, audio or digital signals among institutions to residential subscribers.

3.8 COMMENCE OPERATION means that time and date when operation of the Cable Communications System is considered to have commenced, which shall be when the system is fully constructed.

3.9 COMMERCIAL SUBSCRIBER means a subscriber who receives a service in a place of business where the service may be utilized in connection with a business, trade or profession.

3.10 CONVERTER means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and any channel selector which permits a subscriber to view all signals delivered at designated converter dial locations at the set or by remote control.

3.11 COUNCIL means the City Council of the City of Charlotte.

3.12 DEDICATED INSTITUTIONAL ACCESS CHANNELS means broadband communications channels dedicated to serving city, county, state or federal governmental agencies, educational institutions, health care institutions or other nonprofit and profit making organizations that may be qualified by the Council.

3.13 DISCRETE CHANNEL shall mean a channel which can only be received by the person and/or institution intended to receive signals on such channel.

3.14 DROP shall mean a coaxial connection from feeder cable to the subscriber/user television set, radio or other terminal.

3.15 EDUCATIONAL CHANNEL or EDUCATIONAL ACCESS CHANNEL means any channel where educational programs are the only designated use.

3.16 FAIR MARKET VALUE means the price that a willing buyer would pay to a willing seller for a going concern.

3.17 FCC means the Federal Communications Commission or any legally appointed or elected successor.

3.18 FRANCHISE means the non-exclusive rights granted pursuant to this Ordinance to construct, operate and maintain a cable communications system along the public ways within all or a specified area in the City. Any such authorization, in whatever form granted, shall not mean or include any license or permit required for the privilege of transacting and carrying on a business within the City as required by other ordinances and laws of the City.

3.19 FRANCHISE AGREEMENT means a contract entered into voluntarily by the City and Grantee, containing the specific provisions of the franchise granted, including applicable referenced specifications, franchise proposals, applications, and other related material.

3.20 FRANCHISE AREA means the entire City, or portions thereof, for which a franchise is granted under the authority of this Ordinance. If not otherwise stated in the Franchise Agreement, the franchise area shall be the corporate limits of the City, including all territory thereafter annexed to the City.

3.21 FRANCHISE FEE means an amount, as specified by the City, of the Grantee's gross receipts from the operation of the system pursuant to the Franchise Agreement.

3.22 FRANCHISEE or GRANTEE means the natural person(s), partnership(s), domestic and foreign corporation(s), association(s), joint venture(s), or organization(s) of any kind which has been legally granted a franchise by the City, and its lawful successor, transferee or assignee.

3.23 GOVERNMENT CHANNEL OR GOVERNMENT ACCESS CHANNEL means any channel specifically designated or dedicated for government use.

3.24 GRANTOR means the City of Charlotte as represented by the City Council acting within the scope of its jurisdiction.

3.25 GROSS ANNUAL REVENUES means all revenue received directly or indirectly by the Grantee, its affiliates, subsidiaries, and any person in which the Grantee has a financial interest derived from the operation of the System hereunder; or as further defined in a Franchise Agreement.

3.26 INSTALLATION shall mean the connection of the system from feeder cable to subscribers' terminals.

3.27 LEASED ACCESS CHANNEL, or COMMERCIAL LEASED CHANNEL means any channel designated or dedicated for use by persons unaffiliated with the Grantee in accordance with the Cable Act.

3.28 MONITORING means observing a communications signal, or the absence of a signal, where the observer is not a party to the communications, whether the signal is observed by visual or electronic means, for any purpose whatsoever.

3.29 PERSON means an individual, partnership, association, organization, corporation or any lawful successor, or

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transferee of said individual, partnership, association, organization or corporation.

3.30 PLANT MILE means a linear mile of strand-bearing cable as measured on the street or easement from pole to pole or pedestal to pedestal.

3.31 PROGRAMMER means any person or entity who or which produces or otherwise provides program material or information for transmission by video, audio, digital or other signals, either live or from recorded traces or other storage media, to users or subscribers by means of the cable communications system.

3.32 PUBLIC ACCESS CHANNEL OR COMMUNITY ACCESS CHANNEL means any channel designated or dedicated for use by the general public or noncommercial organizations which is made available for use without charge on a first-come, first-served, nondiscriminatory basis.

3.33 PUBLIC PROPERTY shall mean any real property owned by the City other than a street.

3.34 PUBLIC WAY or PUBLIC RIGHTS-OF-WAY means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkways, waterways, utility easements or other public right-of-way hereafter held by the City which shall entitle the City and the Grantee to the use thereof for the purpose of installing and maintaining a cable television system. No reference herein, or in any franchise, to the "public way" shall be deemed to be a representation or guarantee by the City that its title to any property is sufficient to permit its use for such purpose, and the Grantee shall, by its use of such terms, be deemed to gain only such rights to use property in the City as the City may have the undisputed right and power to give.

3.35 REASONABLE NOTICE shall be written notice addressed to either City or Grantee at its respective principal office within the City or such other office as the party has designated to the other as the address to which notice shall be transmitted to it, which notice shall be certified and postmarked not less than seven (7) days prior to that day in which the party giving such notice shall commence any action which requires the giving of notice. In computing said seven (7) days, holidays recognized by the City shall be excluded.

3.36 RESIDENT means any person residing in the City as otherwise defined by applicable law.

3.37 RESIDENTIAL SUBSCRIBER means a subscriber who receives a service in an individual dwelling unit where the service is not to be utilized in connection with a business, trade or profession.

3.38 SALE shall include any sale, exchange, barter or offer for sale.

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3.39 SCHOOL means any public, private or nonprofit educational institution including primary and secondary schools, colleges and universities.

3.40 SERVICE AREA means the entire geographic area within the franchise territory.

3.41 STATE means the state of North Carolina.

3.42 STREET shall include each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the City limits: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public ways and extensions and additions thereto, together with such other public property and areas that the City shall permit to be included within the definition of street from time to time.

3.43 SUBSCRIBER means any person, firm, corporation or other entity who or which elects to subscribe to, for any purpose, a service provided by the Grantee by means of or in connection with a cable communications system.

3.44 SYSTEM FACILITIES means the cable communications system constructed for use within the City, without limitation, the headend, antenna, cables, wires, lines, towers, amplifiers, converters, health and property security systems, equipment or facilities located within the corporate limits of the City designed, constructed or wired for the purpose of producing, receiving, amplifying and distributing by coaxial cable, fiber optics, microwave or other means, audio and visual radio, television and electronic signals to and from subscribers, in the City and any other equipment or facilities located within the corporate limits of the City intended for the use of the system; provided, however, such system facilities excludes buildings, contracts, facilities, and equipment where primary use is for providing service to other system facilities located outside the city limits.

3.45 TRANSFER means the disposal by the Grantee, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, except, publicly-traded issue, not in control of the Grantee, of five percent (5%) or more at one time of the ownership or controlling interest in the system, or twenty percent (20%) cumulatively over the term of the franchise of such interests to a corporation, partnership, limited partnership, trust or association, or person or group of persons acting in concert.

3.46 TRUNK LINE means the major distribution cable used in cable communications, which divides into feeder lines which are tapped for service to subscribers.

3.47 UPSTREAM SIGNAL means a signal originating from a terminal to another point in the cable television system including video, audio or digital signals for either programs or other uses such as security alert services, etc.

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3.48 USER means a person or organization utilizing channel or equipment and facilities for the purpose of producing and/or transmission of material, as contrasted with receipt thereof in a subscriber capacity.

IV. GRANT OF FRANCHISE

4.1 GRANT.

A. In the event that City shall grant to the Grantee a nonexclusive, revocable for cause as provided herein, franchise to construct, operate, and maintain a cable communications system within the City, said franchise shall constitute both a right and an obligation to provide the services of a cable communications system as regulated by the provisions of this Ordinance and the Franchise Agreement. The Franchise Agreement shall include by reference those provisions of the Grantee's "Application for Franchise" that are finally negotiated and agreed to by the City and Grantee.

B. The franchise shall be granted under the terms and conditions contained herein, consistent with the City Charter and/or other applicable statutory requirements. In the event of conflict between the terms and conditions of this Ordinance, the Franchise Agreement, or the terms and conditions on which the City may grant a franchise, the Charter and/or statutory requirements shall control.

C. Any franchise granted by the City is hereby made subject to the applicable general ordinance provisions of the City now in effect and hereafter made effective. Nothing in the franchise shall be deemed to waive the requirements of the various codes and ordinances of the City regarding permits, fees to be paid, or manner of construction.

4.2 FRANCHISE TERRITORY. The franchise territory shall be the entire City, or portions thereof, for which a franchise is granted under authority of this Ordinance. The service area shall be the entire territory defined in the Franchise Agreement.

4.3 USE OF PUBLIC STREETS AND WAYS. For the purpose of operating and maintaining a cable communications system in the City, the Grantee may erect, install, construct, repair, replace, reconstruct and/or retain in, on, over, under, upon, across and along the public streets and ways within the City such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary to the operation of the cable communications system; provided, however, that Grantee complies with all design, construction, safety, and performance provisions contained in this Ordinance, the Franchise Agreement, and other applicable regulations.

4.4 USE OF CITY FACILITIES. At the City's option, the City may require a Grantee to utilize City-owned conduit or other facilities for any portion of its cable communications system which is being newly constructed or rebuilt. The consideration, if any, for the use of City conduit or other facilities shall be as stated in the Franchise Agreement. A reasonable fee, if any,

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for the use of City facilities established in the Franchise Agreement may be adjusted at the periodic performance evaluations.

4.5 USE OF GRANTEE FACILITIES. No poles shall be erected by the Grantee without prior approval of the City with regard to location, height, type and any other pertinent aspect. However, no location of any pole of the Grantee shall be a vested right and such poles shall be removed or modified by the Grantee at its own expense whenever the City determines that the public convenience would be enhanced thereby. Grantee shall utilize existing poles and conduits, where possible. The City shall have the right, during the life of the franchise, to install and maintain upon the poles owned by the Grantee, at fair market value, any wire and pole fixtures that do not unreasonably interfere with the cable system operations of the Grantee.

4.6 FRANCHISE REQUIRED. No cable communications system shall be allowed to occupy or use the streets of the City or be allowed to operate without a franchise.

4.7 TERM OF FRANCHISE. The term of any franchise granted pursuant to this Ordinance shall be 15 years, unless otherwise stated in the Franchise Agreement.

4.8 ACCEPTANCE OF FRANCHISE.

A. Following approval by the City, any franchise granted pursuant to this Ordinance, and the rights, privileges and authority granted thereunder, shall take effect and be in force from and after the date on which Grantee accepts, signs and affixes its corporate seal to the Franchise Agreement.

B. By accepting the franchise, the Grantee agrees to be bound by all the terms and conditions contained in this Ordinance and said franchise. The Grantee also agrees to provide all services specifically set forth in its application to provide cable television service within the confines of the City, and by its acceptance of the franchise the Grantee specifically acknowledges and agrees that its application is thereby attached and incorporated by reference and made a part of the franchise.

C. By accepting the franchise, the Grantee acknowledges that it does so relying upon its own investigation and understanding of the power and authority of the City in connection with the system and the franchise.

D. By accepting the franchise, the Grantee acknowledges that it has not been induced to enter into the franchise by any understanding, or promise, or other statement not expressed therein, whether oral or written, concerning any term or condition of the franchise regardless of whether such statement was made by or on behalf of the City.

E. By accepting the franchise, the Grantee acknowledges that it has carefully read the terms and conditions of the Franchise Agreement.

4.9 FRANCHISE NONEXCLUSIVE. Any franchise granted hereunder shall be nonexclusive. The City specifically reserves the right to grant, at any time, such additional franchises containing

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substantially equivalent standards, terms and conditions to those previously granted hereunder for a cable communications system as it deems appropriate.

4.10 TIME OF THE ESSENCE. Whenever the Franchise Agreement shall set forth any time for an act to be performed by or on behalf of either party, such time shall be deemed of the essence and any failure of the party to perform within the time allotted shall always be sufficient ground for the other party to invoke an appropriate penalty.

4.11 NORTH CAROLINA LAW GOVERNS. In any controversy or dispute under this Ordinance, the law of the State of North Carolina shall apply to the extent such law has not been superseded or preempted.

4.12 SEVERABILITY. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction or by any federal, state or local statute or regulation, such portion shall be deemed a separate, distinct and independent provision and shall be excised as such; and such holding shall not affect the validity of the remaining portions hereof.

4.13 TRANSFER OF OWNERSHIP OR CONTROL.

A. Any franchise granted hereunder cannot in any event be sold, transferred, leased, assigned or disposed of, including but not limited to, by force or voluntary sale, receivership or other means without the prior consent of the City, and then, under such reasonable conditions as the City may establish.

B. The Grantee shall promptly notify the City of any actual or proposed change in, transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the disposal by the Grantee, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, of five percent (5%) or more at one time of the ownership or controlling interest in the system, or twenty percent (20%) cumulatively over the term of the franchise of such interests to a corporation, partnership, limited partnership, trust or association, or person or group of persons acting in concert.

C. Every change, transfer, or acquisition of control, as defined above, of the Grantee shall make the franchise subject to cancellation unless and until the City shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the City may inquire into the legal, financial, character, technical and other public interest qualifications of the prospective controlling party, and the Grantee shall assist the City in any such inquiry. Failure to provide all information reasonably requested by the City as part of said inquiry shall be grounds for denial of the proposed change, transfer or acquisition of control.

D. The City agrees that any financial institution having a pledge of the franchise or its assets for the advancement of money for the construction and/or operation of the franchise shall have the right to notify the City that it, or its designees satisfactory to the City will take control and operate the cable television system. Further, said financial institution shall also submit a plan for such operation that will insure continued service and compliance with all franchise obligations during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the system for a period exceeding one year, unless extended by the City at its discretion and during said period of time it shall have the right to petition for transfer of the franchise to another Grantee. If the City finds that such transfer, after considering the legal, financial, character, technical and other public interest qualifications of the applicant are satisfactory, the City will transfer and assign the rights and obligations of such franchise as are in the public interest. The consent of the City to such transfer shall not be unreasonably withheld.

E. The consent or approval of the City to any transfer of the Grantee shall not constitute a waiver or release of the rights of the City in and to the streets, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this Ordinance and the Franchise Agreement.

F. In the absence of extraordinary circumstances, the City will not approve any transfer or assignment of the franchise prior to completion of construction of the proposed system.

G. Any approval by the City of transfer of ownership or control shall be contingent upon the prospective controlling party becoming a signatory to the Franchise Agreement, as provided in Section 4.8, herein.

H. The City reserves the right of first purchase in any sale, transfer, lease, assignment or disposal of the system at a cost at least equal to a bona fide offer otherwise acceptable to Grantee.

4.14 FRANCHISE RENEWAL. Upon completion of the term of any franchise granted under this Ordinance, the City may grant or deny renewal of the franchise of the Grantee in accordance with the provisions of the Cable Act. The Grantee shall have no property right in the franchise upon the completion of the franchise term.

4.15 POLICE POWERS.

A. In accepting the franchise, the Grantee acknowledges that its rights hereunder are subject to the police powers of the City to adopt and enforce reasonable general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and ordinances enacted by the City pursuant to such power.

B. Any conflict between the provisions of this Ordinance or the franchise and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the jurisdiction or applies exclusively to Grantee

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or cable communications systems which contains provisions inconsistent with this Ordinance shall prevail only if, upon such exercise, the City finds an emergency exists constituting a danger to health, safety, property or general welfare and such exercise is mandated by law.

4.16 FRANCHISE FEES.

A. A Grantee of any franchise hereunder shall pay to the City an annual fee in an amount as designated in the Franchise Agreement. The quarterly franchise payment shall commence as of the effective date of the franchise. The City shall be furnished a statement of said payment by a certified public accountant, reflecting the total amounts of annual gross revenues and the above charges and computations for the period covered by the payment.

B. This payment shall be in addition to any other tax or payment owed to the City or other taxing jurisdiction by the Grantee.

C. No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee under this Ordinance.

D. In the event that any undisputed franchise payment is not made on or before the dates specified herein, Grantee shall pay an interest charge, computed from such due date, at the annual rate equal to the commercial prime interest rate in effect upon the due date.

E. The franchise fee and any other cost or damages assessed shall be payable quarterly to the City Finance Office, payable to the City of Charlotte. Payment date is the last day of the month, following the date in which payment is due.

F. The City shall have the right upon reasonable notice to inspect the Grantee's income records and the right at City's expense to audit and to recompute any amounts determined to be payable under this Ordinance. Any undisputed additional amount due to the City as a result of the audit shall be paid within thirty (30) days following written notice of the Grantee by the City which notice shall include a copy of the audit report; provided that Grantee shall not be required to pay an interest charge in accordance with subsection 4.16 D. in such an event.

4.17 FORFEITURE OR REVOCATION.

A. The Council reserves the right to revoke any franchise granted hereunder and rescind all rights and privileges associated with the franchise in the following circumstances, each of which shall represent a default and breach under this Ordinance or the Franchise Agreement:

- (1) If the Grantee shall default in the performance of any of the material obligations under this Ordinance or under such documents, contracts and other terms and

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provisions entered into by and between the City and the Grantee.

- (2) If the Grantee shall fail to provide or maintain in full force and effect the liability and indemnification coverage or the performance bond as required herein pursuant to the Franchise Agreement.
- (3) If the Grantee's construction schedule is delayed later than the schedule contained in the Franchise Agreement, if any, or beyond any extended date set by the City Council.
- (4) If the Grantee becomes insolvent or unable to pay its debts or is adjudged bankrupt.
- (5) If the Grantee fails to restore service after ninety-six (96) consecutive hours of interrupted "system wide" service, except when such service interruption is caused by forces beyond Grantee's control (including, but not limited to, subscribers), or when approval of such interruption is obtained from the City Manager or his designee.
- (6) If there has been material misrepresentation of fact in the application for or negotiation of the franchise or any extension or renewal thereof.

B. The Grantee shall not be declared at fault or be subject to any sanction under any provision of this Ordinance in any case in which performance of any such provision is prevented for reasons beyond the Grantee's control. A fault shall not be deemed to be beyond the Grantee's control if committed by a corporation or other business entity in which the Grantee holds a controlling interest, whether held directly or indirectly.

C. Procedure Prior to Revocation.

- (1) The City shall make written demand that the Grantee complies with any such requirement, limitation, term, condition, rule, or regulation or correct any action deemed cause for revocation. If the failure, refusal, or neglect of the Grantee continues for a period of thirty (30) days following such written demand, the City shall place its request for revocation of the franchise upon a regular Council meeting agenda. The City shall cause to be served upon Grantee at least seven (7) days prior to the date of such Council meeting, a written notice of this intent to request such revocation, and the time and place of the meeting, notice of which

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shall be published by the City Clerk at least twice, seven (7) and fourteen (14) days, respectively, before such meeting, in a newspaper of general circulation within the City.

- (2) The Council shall hear any persons interested therein including the Grantee, and shall determine in its discretion, whether or not any failure, refusal or neglect by the Grantee was with just cause.
- (3) If such failure, refusal, or neglect by the Grantee was with just cause, as defined by the City, the Council shall direct the Grantee to comply within such time and manner and upon such terms and conditions as are reasonable.
- (4) If the Council shall determine such failure, refusal, or neglect by the Grantee was without just cause, then the Council shall, by resolution, declare that the franchise of the Grantee shall be revoked and bond shall be forfeited unless there is compliance by the Grantee within ninety (90) days.

E. In the event a franchise is revoked or otherwise terminated, the City may, in its sole discretion, do any of the following:

- (1) Purchase the system under the procedures set forth in section 4.22 of this Ordinance.
- (2) Effect a transfer of ownership of the system to another party for good and sufficient consideration which shall be an amount at least equal to the fair market value of the system under the original Grantee's operation, in accordance with the Cable Act.
- (3) Order the removal of all system facilities from the City within a reasonable period of time.

F. In removing its system facilities, the Grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good a condition, normal wear and tear excepted, as was prevailing prior to the Grantee's removal of system facilities. The City shall inspect and approve the condition of the public ways and public places and cables, wires, attachments, and poles after removal. The liability, indemnity, insurance and performance bond as provided herein shall continue in full force and effect during the period of removal and until full compliance by the Grantee with the terms and conditions of this paragraph, this Ordinance and the Franchise Agreement is reached.

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G. In the event of a failure by the Grantee to complete any work required by sections 4.3, 4.5 and/or 4.17(F) above, or any other work required by City law or ordinance, and upon reasonable notice to Grantee, the City may cause such work to be done and the Grantee shall reimburse the City the reasonable costs thereof within thirty (30) days after verification of an itemized list of such costs. The City shall be permitted to seek legal and equitable relief to enforce the provisions of this section.

H. Upon either the expiration or revocation of a franchise, the City may contract with the Grantee to continue to operate the system for a period of six (6) months from the date of such expiration or revocation, or until such time as is mutually agreed upon. The Grantee shall, as a subcontractor of the City, continue to operate the cable communications system under the applicable terms and conditions of this Ordinance. The City shall be permitted to seek legal and equitable relief to enforce the provisions of this section.

4.18 RECEIVERSHIP AND FORECLOSURE.

A. The franchise shall, at the option of the City, cease and terminate one hundred twenty (120) days after the appointment of a receiver, or receivers, or trustee, or trustees to take over and conduct the business of the Grantee whether in a 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) days, or unless:

- (1) Such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Ordinance and the franchise granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all defaults under the Franchise Agreement; and
- (2) Such receivers, or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction of the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provisions and limitation of the Ordinance and Franchise Agreement.

B. In the case of a foreclosure or other judicial sale of the plant, property and equipment of the Grantee or any part thereof, including or excluding the franchise, the City may serve notice of termination upon the Grantee and the successful bidder at such sale, in which event the franchise and all rights and privileges of the Grantee granted hereunder shall cease and terminate thirty (30) days after service of such notice, unless:

- (1) The City shall have approved the transfer of the franchise in the manner this Ordinance provides, and
- (2) Such successful bidder shall have covenanted and agreed with the City to assume and be bound by all the terms and conditions of the franchise.

4.19 EQUAL OPPORTUNITY. Grantee shall be an equal opportunity/affirmative action employer adhering to all federal, state or municipal laws and regulations related thereto.

A. Grantee shall establish and maintain equal opportunity in employment, and no person shall be discriminated against in employment by Grantee because of race, religion, color, sex, national origin, age, physical disability, or marital status.

B. Grantee's affirmative action plan shall provide that the Grantee shall utilize best efforts to achieve a representative work force so that, within three (3) years from the effective date of the granted franchise and throughout the franchise term, the percentage of each minority/sex group within each level of employment reasonably approximates or is equal to percentage levels reflective of those of the municipality's population. "Each level of employment" as used in the preceding sentence includes the following specific job categories as defined by the Cable Communications Policy Act of 1984:

- Officials and Managers
- Professionals
- Technicians
- Salespersons
- Office and clerical personnel
- Skilled crafts persons
- Semi-skilled operatives
- Unskilled laborers
- Service workers

C. Implementation, administration, and review of all EEO and Affirmative Action policies and programs, shall be the direct responsibility of the chief executive officer of the Cable Communications System. All officers, executives, managers, and administrative and supervisory personnel of the Grantee shall be directed to participate in the Grantee's affirmative action efforts.

D. Any significant subcontractor of the Grantee or a parent, subsidiary or affiliate of the Grantee which does not already have an affirmative action plan which would cover its activities in the City of Charlotte shall submit to the City a plan for its operations on behalf of the Grantee, consistent with the spirit of this section.

E. The Grantee shall prepare and maintain records of promotions, demotions, terminations and transfers.

F. The Grantee agrees that if the City establishes an affirmative action goal for the handicapped, Grantee shall make reasonable and good faith efforts to achieve an appropriate goal.

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G. The Grantee shall make a good faith effort to construct the Charlotte office and studio facilities so that they are accessible to the disabled.

H. The Grantee shall make a good faith effort to utilize Minority/Women Business Enterprises in construction and purchase contracts, and shall prepare an annual report to the City on these efforts.

4.20 LOCAL OFFICE. Grantee shall maintain within the City, a local office and telephone number for the conduct of business related to the franchise during normal business hours. The Grantee shall be required to advise the City of such address and telephone numbers and any changes thereof.

4.21 FAILURE OF CITY TO ENFORCE FRANCHISE, NO WAIVER OF THE TERMS THEREOF. The Grantee shall not be excused from complying with any of the terms and conditions of this Ordinance or the granted franchise by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

4.22 RIGHTS RESERVED TO THE GRANTOR.

A. Right of City to Purchase the System.

- (1) In the event the City revokes the franchise, pursuant to provisions of this Ordinance, or at the normal expiration of the franchise term, the City shall have the right, directly or as an intermediary, to purchase the cable communications system. The purchase price shall be based upon the value of the system determined pursuant to this section. In no event shall City, when acting as an intermediary or effecting the transfer of ownership of the system to another person, be paid any consideration by any party for such activities.
- (2) The date of valuation shall be no earlier than the day following the date of expiration or revocation and no later than the date the City makes an appropriate offer for the system.
- (3) The value of the cable system shall be determined by a qualified appraiser appointed by the City and in accordance with the Cable Act. The appraiser shall determine the worth of the assets as follows:
 - (a) If a franchise held by Grantee is revoked for cause and the City acquires ownership of the system or effects a transfer of ownership of the system to another person,

any such acquisition shall be at an equitable price; or

- (b) If a renewal of a franchise held by Grantee is denied and the City acquires ownership of the system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be at fair market value.
- (4) Upon receipt of reasonable notice of the City's intent to purchase the system at the value established above, the Grantee shall have thirty (30) days within which to accept that valuation as the purchase price of the system. In the event that purchase price is not acceptable, the parties shall have one hundred twenty (120) days in which to negotiate an acceptable purchase price.
 - (5) Upon exercise of this option, and the payment of the agreed upon sum by the City and its service of reasonable notice of such action upon the Grantee, the Grantee shall immediately transfer to the City possession and title to all facilities and property, real and personal, of the cable communications system, free from any and all liens and encumbrances not agreed to be assumed by the City in lieu of some portion of the purchase price set forth above; and, the Grantee shall execute such warranty, deeds, or other instruments of conveyance to the City as shall be necessary for this purpose.
 - (6) In the event the City and Grantee are unable to agree upon the value of the cable communications system within the time limits set forth above, either party may require by reasonable notice to the other that the value of the cable communications, system be submitted to arbitration in the following manner:
 - (a) The City and the Grantee shall each within fifteen (15) days after such notice select an arbitrator who shall be a disinterested person with reasonable knowledge and experience relative to the subject to be arbitrated. The two arbitrators thus selected shall immediately thereafter select a third arbitrator who shall likewise be a disinterested person having reasonable knowledge and experience relative to the subject to be arbitrated.

- (b) Within thirty (30) days after appointment of all arbitrators and upon ten (10) days written notice to the parties, the panel of arbitrators shall commence a hearing on the issue of valuation and shall receive all relevant information from the parties. The value of the system as determined by the arbitration panel shall be in accordance with subsection 4.22 A. (3) hereof.
- (c) The hearing shall be recorded and may be transcribed at the request of either party. All hearing proceedings, debate and deliberations shall be open to the public and at such times and places as contained in the notice or as thereafter publicly stated, except that at the request of either of the parties, debate and deliberations may be held in closed session.
- (d) Within thirty (30) days after the close of the hearing, the panel of arbitrators shall prepare findings and a decision agreed upon by a majority of the panel which shall be filed with the City and served by mail immediately upon the Grantee. Should there be no majority decision, the proceedings shall become null and void and shall be started anew, unless the parties extend, by mutual agreement, the time in which the panel of arbitrators has to make a decision.
- (e) Either party may seek judicial relief in the following circumstances: (i) a party fails to select an arbitrator; (ii) the arbitrators fail to select a third arbitrator; (iii) one or more arbitrators is unqualified in either party's opinion; (iv) designated time limits have been exceeded; (v) the decision was procured by corruption, fraud or undue means; (vi) there was evident partiality on the part of the independent arbitrator who represents neither the Grantee nor the City; (vii) the arbitration panel exceeded the authority granted hereunder; (viii) based upon the record, the panel abused its discretion.
- (f) In the event a court of competent jurisdiction determines that judicial relief is appropriate to the circum-

stances set forth above, the court in its discretion may order the arbitration procedure repeated and issue findings, orders and directions.

- (g) The expenses of the arbitrators selected by each party shall be borne by that party, and the expenses of the third arbitrator and those expenses incurred by the panel as a whole shall be borne equally by the parties.
 - (h) Upon receipt of the decision of the arbitration panel, the City shall have thirty (30) days in which to notify the Grantee of its intent to exercise its option to purchase the system. The purchase price shall be the value of the system as determined by the arbitration panel in accordance with subsection 4.22 A. (3).
- (7) At any time prior to the actual transfer to the City of possession and title of the system hereunder, Grantee may operate the system, using its good faith judgment in all matters, and be compensated therefor in an amount appropriate to be paid to an independent party providing the same management services. Revenues collected by Grantee during such a period shall be considered revenues of the City or other person to whom the City intends to transfer ownership.

B. The City shall have the right, at its expense, to inspect all construction or installation work performed subject to the provisions of the franchise and to make such tests as it shall find necessary to ensure compliance with the terms of this Ordinance, Franchise Agreement, and other pertinent provisions of the law.

C. The City shall have the right of intervention in any suit or proceeding to which the Grantee is party.

V. REGULATION OF FRANCHISE

5.1 REGULATORY AUTHORITY

A. The City may exercise appropriate regulatory authority under the provisions of this Ordinance and applicable law. This authority shall be vested in the Council and administered through the City Manager or his designee in order to provide day-to-day administration of this Ordinance and any franchise granted hereunder.

B. Notwithstanding any other provisions of this Ordinance to the contrary, the Grantee shall at all times comply with all applicable laws and regulations of the local, state and

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federal government. In the event that any actions of the state or federal government or any agency thereof, or any court of competent jurisdiction upon final adjudication, substantially reduce in any way the power or authority of the City under this Ordinance or the franchise, or if in compliance with any local, state or federal law or regulation, the Grantee finds conflict with the terms of this Ordinance, the franchise, or any law or regulation of the City, then as soon as possible following knowledge thereof, the Grantee shall notify the City of the point of conflict believed to exist between such law or regulation and the laws or regulations of the City, this Ordinance and the franchise. The City shall have the right to modify any provisions of this Ordinance to such reasonable extent as may be necessary to carry out the intent and purpose of this Ordinance.

C. The City reserves the right to exercise the maximum plenary authority, as may at any time be lawfully permissible, to regulate the cable communications system, the franchise and the Grantee. Should applicable legislative, judicial or regulatory authorities at any time permit regulation not presently permitted to the City, the City may without the approval of the Grantee legislate any such additional regulation as may then be permissible, whether or not contemplated by this Ordinance.

5.2 REGULATION OF THE FRANCHISE.

A. The City shall have the following regulatory responsibility:

- (1) Administration and enforcement of the provisions of this Ordinance and any franchise granted hereunder.
- (2) Award, renewal, extension or termination of a franchise pursuant to the provisions of this Ordinance, the franchise, and other applicable law.
- (3) Consent prior to sale or transfer of any franchise granted hereunder.
- (4) Performance evaluations pursuant to this Ordinance and the franchise.

B. The City also reserves the right to perform the following functions:

- (1) Develop objectives and coordinate activities related to the operation of government channels.
- (2) Provide technical, programming and operational support to public agency users, such as City departments, schools and health care institutions.
- (3) Coordinate plans for interconnection of cable services.

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- (4) Analyze the possibility of integrating cable communications with other City, State or regional telecommunications networks.
- (5) Formulate and recommend long-range telecommunications policy for the City, and provide for the determination of future cable-related needs and interests of the community.
- (6) Provide the administrative effort necessary for the conduct of performance evaluations pursuant to this Ordinance and the franchise, and any other activities required for the administration of the franchise.
- (7) Monitor Grantee's process for handling citizen complaints and periodically inspect and analyze the records related to such complaints.
- (8) Monitor Grantee's adherence to operational procedures and line extension policies.
- (9) Assure compliance with applicable laws and ordinances.
- (10) Arrange tests and analyses of equipment and performance, pursuant to this Ordinance and the franchise to insure compliance with this Ordinance and the franchise.
- (11) Provide for reasonable continuity in service.
- (12) Receive for examination all data and reports required by this Ordinance.

5.3 RATES AND CHARGES. Grantee shall file with the City schedules which shall describe all services offered, all rates and charges of any kind, and all terms and conditions relating thereto.

5.4 PERFORMANCE EVALUATION.

A. The City and the Grantee shall, at the discretion of the City, hold scheduled performance evaluation sessions every third year during the term of the franchise.

B. Special evaluation sessions may be held at any time during the term of the franchise at the request of the City.

C. All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with public notice, as provided in Section 10.1. Grantee shall notify subscribers of all such evaluation sessions by announcement on the designated local origination channel on the system at such various times and frequencies so as to ensure comprehension between the hours of 11:00 a.m. and 9:00 p.m. for five (5) consecutive days preceding each session.

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D. Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to, system performance, Grantee compliance with this Ordinance and the franchise, customer service and complaint response, subscriber privacy, franchise fees, penalties, applications of new technologies, judicial and FCC filings, and line extensions.

E. During the review and evaluation by the City, the Grantee shall cooperate with the City and shall provide such information and documents as the City may need to reasonably perform its review.

5.5 SCHEDULE OF LIQUIDATED DAMAGES. For the wilful violation of any of the following provisions of this Ordinance, the City shall notify the Grantee in writing of the violation and the Grantee shall be allowed thirty (30) days, or such greater amount of time as the City may specify, to correct such violation. Such undisputed liquidated damages shall be chargeable, to the extent available, to the security fund and performance bond if not tendered by Grantee within the aforesaid period of time. These liquidated damages shall be in addition to and not a limitation upon the other penal provisions of this Ordinance, including penalties or revocation, or other statutorily or judicially imposed penalties. No decision by the City to invoke any remedy under this Ordinance, the Franchise Agreement, or any statute, law or ordinance, shall preclude the availability of any other such remedy.

A. Failure to render payment of the reimbursement of the City's franchise expenses, franchise fee or penalty payments: \$500 per day from time due until paid.

B. Failure to file annual reports: \$100 per day from time due until paid.

C. Failure to complete system construction: \$1,000 per day from time due until paid.

D. Failure to provide access equipment, facilities or services: \$500 per day from time due until paid.

E. City Rights. The City retains the right, as its sole option, to reduce or waive any of the above-listed penalties where extenuating circumstances or conditions beyond the control of the Grantee are deemed to exist. The City Manager or his designee shall determine the City's willingness to reduce or waive any of the above-listed penalties.

VI. BONDS, INSURANCE, AND INDEMNIFICATION.

6.1 PERFORMANCE BOND

A. Performance Bond. Not later than forty-five (45) days after the effective date of the franchise, the Grantee shall obtain and maintain during the entire term of the franchise and any extensions and renewals thereof, at its cost and expense, and file with the City, a corporate surety bond or letter of credit, in an amount specified in the Franchise Agreement to guarantee the faithful performance of the Grantee of all its obligations provided under this Ordinance and the franchise. Failure to timely obtain,

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file and maintain said bond shall constitute a substantial violation of this Ordinance.

B. Conditions. The performance bond shall provide the following conditions:

- (1) There shall be recoverable by the City jointly and severally from the principal and surety, any and all fines and penalties due to the City and any and all damages, losses, costs, and expenses suffered or incurred by the City resulting from the failure of the Grantee to: faithfully comply with the provisions of this Ordinance and the franchise; comply with all applicable orders, permits and directives of any City agency or body having jurisdiction over its acts or defaults; pay any claims, liens or taxes due the City which arise by reason of the construction, operation, maintenance or repair of the cable system.
- (2) The total amount of the bond shall be forfeited in favor of the City in the event:
 - (a) the Grantee abandons the cable system at any time during the term of the franchise or any extension thereto;
 - (b) the Grantee assigns the franchise without the express written consent of the City.

C. Reduction of Bond. Upon written application by the Grantee, the City may, at its sole option, permit the amount of the bond to be reduced or waive the requirements for a performance bond subject to the conditions set forth below. Reductions granted or denied upon application by the Grantee shall be without prejudice to the Grantee's subsequent applications or to the City's right to require the full bond at any time thereafter. However, no application shall be made by the Grantee within ninety (90) days of any prior application.

D. Use of Performance Bond. Prior to drawing upon the performance bond for the purposes described in this section, the City shall notify the Grantee in writing that payment is due and the Grantee shall have ten (10) days from the receipt of such written notice to make a full and complete payment of undisputed amounts. If the Grantee does not make the payment within ten (10) days, the City may withdraw the amount thereof from the performance bond.

E. Notification. Within three (3) days of a withdrawal from the performance bond, the City shall send to the Grantee, by certified mail, return receipt requested, written notification of the amount, date and purpose of such withdrawal.

F. Replenishment of Performance Bond. No later than thirty (30) days after receipt by the Grantee of certified mail notification of a withdrawal pursuant to paragraph E. above, the Grantee shall replenish the performance bond in an amount equal to the amount so withdrawn. Failure to make timely replenishment of

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such amount to the performance bond shall constitute a substantial violation of this Ordinance.

G. Non-Renewal, Alteration, or Cancellation of Performance Bond. The performance bond required herein shall be in a form satisfactory to the City and shall require thirty (30) days written notice of any non-renewal, alteration or cancellation to both the City and the Grantee. The Grantee shall, in the event of any such cancellation notice, obtain, pay all premiums for, and file with the City, written evidence of the issuance of a replacement bond within thirty (30) days following receipt by the City or the Grantee of any notice of cancellation.

6.2 LIABILITY AND INSURANCE.

A. As of the effective date of this Ordinance, the Grantee shall file with the City a certificate of insurance and thereafter maintain in full force and effect at all times for the full term of the franchise, at the expense of the Grantee, a comprehensive general liability insurance policy naming the City as additional insured, written by a company authorized to do business in the State of North Carolina, protecting the City against liability for loss or bodily injury and property damage occasioned by the installation, removal, maintenance or operation of the cable communications system by the Grantee in the following minimum amounts:

1. \$1,000,000 combined single limit, bodily injury and for property damage in any one occurrence;
2. \$1,000,000 aggregate.

B. The Grantee shall also file with the City a certificate of insurance for a comprehensive automobile liability policy written by a company authorized to do business in the State of North Carolina, for all owned, non-owned, hired and leased vehicles operated by the Grantee with limits no less than one million dollars (\$1,000,000) each accident, single limit, bodily injury and property damage combined, or evidence of self insurance.

C. Workers Compensation and Employees Liability Insurance. The Grantee shall maintain and by its acceptance of any franchise granted hereunder specifically agrees that it will maintain throughout the term of the franchise, worker's compensation and employer's liability, valid in the State, in the minimum amount of the statutory limit for worker's compensation, and \$500,000 for employer's liability.

D. All liability insurance required in this section shall be kept in full force and effect by the Grantee during the existence of the franchise and until after the removal of all poles, wires, cables, underground conduits, manholes, and other conductors and fixtures installed by Grantee incident to the maintenance and operation of the cable communications system as defined in this Ordinance. All policies shall be endorsed to give the City of Charlotte thirty (30) days written notice of the intent to amend, cancel or non-renew by either the Grantee or the insuring company.

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E. Liability and Insurance. The Grantee agrees and binds itself to indemnify, keep, and hold free and harmless the City from any and all liability or costs, including attorneys fees and court costs pertaining thereto, arising from and activities herein authorized, in that the Grantee shall pay, and by its acceptance of the franchise the Grantee specifically agrees that it will pay all damages and penalties which the City may be legally required to pay as a result of the franchise. These damages or penalties shall include but shall not be limited to damages arising out of copyright infringements and all other damages arising out of installation, operation or maintenance of the cable communications system authorized herein whether or not any act or omission complained of is authorized, allowed or prohibited by this Ordinance.

VII. DESIGN AND CONSTRUCTION PROVISIONS

7.1 AUTHORITY TO CONSTRUCT.

A. Authorization to Commence New Build Construction and Application Procedures. Within thirty (30) days of the acceptance by the Grantee of a franchise, the Grantee shall register the system with the FCC and apply for contracts for use of poles. Within thirty (30) days after completion of the make-ready survey identifying the routes of the system facilities, the Grantee shall apply for all additional licenses from the State, City, or other necessary parties, such as the railroads, for crossing under or over their property. In any event, all necessary applications for permits, licenses, certificates and authorizations shall be applied for in a timely fashion so that such filing and processing shall not interfere with or cause delay with the construction scheduled as outlined in the franchise. Failure to make such timely application and timely filing shall constitute a substantial violation of this Ordinance.

B. Power to Contract. Upon grant of the franchise and in order to construct, operate and maintain a cable system in the City, the Grantee may enter into contracts with any public utility companies or any other owner or lessee of any poles or underground areas located within or without the City; obtain right-of-way permits from appropriate City, State, County, and Federal officials necessary to cross or otherwise use highways or roads under their respective jurisdiction; obtain permission from the Federal Aviation Administration to erect and maintain antennas; and obtain whatever other permits a City, County, State or Federal agency may require.

7.2 CONSTRUCTION AND TECHNICAL STANDARDS.

A. Compliance with Construction and Technical Standards. Grantee shall construct, reconstruct, install, operate and maintain its system in a manner consistent with all applicable laws, ordinances, construction standards, governmental requirements, FCC technical standards, and detailed technical standards submitted by Grantee as part of its application, which standards are incorporated by reference herein. The system shall be designed, constructed, operated and maintained for twenty four (24) hours-a-day continuous operation.

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B. State of the Art. The Grantee shall construct, install, operate and maintain its system in accordance with, but not limited to, the following:

- (1) The system will be designed to permit a minimum of 330 MHz operation.
- (2) Where economically feasible, the system will utilize home terminals which will make the system adaptable for the development of future services.
- (3) The Grantee shall maintain its system facilities in a manner which will continue to enable it to add new services and associated equipment as they are developed, available, and proved economically feasible and marketable to subscribers.

C. Prior to the erection or installation by the Grantee of any towers, poles, underground conduits, or fixtures for use in connection with the installation, construction, maintenance or operation of the cable communications system under this Ordinance, the Grantee shall first submit to the City and other appropriate parties for approval a concise description of the facilities proposed to be erected or installed, including engineering drawings, if required, together with a map and plans indicating the proposed location of all such facilities.

D. Contractor Qualifications. Any contractor proposed for work of construction, reconstruction, installation, operation, maintenance, and repair of system equipment must be properly licensed under the laws of the State, and all local ordinances.

E. The City does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing sub-structures. In public rights-of-way, where necessary, the location shall be verified by excavation.

F. Construction, reconstruction, installation, operation, and maintenance of the cable communications system shall be performed in an orderly and workmanlike manner, in accordance with then current technological standards. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

G. Grantee shall at all times comply with: (1) Occupational Safety and Health Administration (OSHA) Regulations; (2) National Electric Code; (3) National Electrical Safety Code (NESC); (4) National Cable Television Standard Code; (5) AT&T Manual of Construction Procedures (Blue Book); (6) Bell Telephone Systems Code of Pole Line Construction; (7) all Federal, State, and Municipal Construction Requirements, including FCC Rules and Regulations Utility Construction and Requirements; (8) all building and zoning codes, and all land use restrictions as the same exist or may be amended hereafter.

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H. Any antenna structure used in the cable communications system shall comply with construction, marking, and lighting of antenna structure standards as required by Federal and State laws or regulations.

I. All worker facilities, conditions, and procedures that are used during construction, installation, operation, and maintenance of the cable system shall comply with the standards of the Occupational Safety and Health Administration.

J. RF leakage shall be checked at reception location for emergency radio services to prove measurable interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no measurable interference to airborne navigational reception in the normal flight pattern. FCC Rules and Regulations shall govern. The system shall cause no measurable interference in TV signal reception to any operating receiver not connected to and serviced by the system.

K. The Grantee shall maintain equipment capable of providing standby power for a minimum of either four (4) hours for the headend and two (2) hours for transportation and trunk amplifiers.

7.3 SYSTEM CONSTRUCTION SCHEDULE.

A. Within two years from the date of the award of a franchise, the Grantee must make cable television service available to every dwelling unit within the franchise service area in accordance with the terms of the Franchise Agreement and this Ordinance.

B. It is the intent of the City that dedicated access channels shall be constructed concurrently with any franchised cable communications system, to take advantage of the cost reduction inherent in concurrent construction. The requirements for dedicated institutional access channels shall be stated in the Franchise Agreement.

7.4 EXTENSION OF SERVICE.

A. The Grantee shall provide service to any new residential dwelling units or commercial subscribers within the initial service area and any additional areas annexed to the City where there are at least 30 subscribers per proposed cable plant mile for residentially-zoned areas, and at least 50 subscribers per proposed cable plant mile for commercially-zoned areas, except where served by another cable company.

B. In other areas with less than 30 residential dwelling units or 50 commercial subscribers per proposed cable plant mile, the Grantee shall offer a cost-sharing arrangement with residents. The cost-sharing arrangement shall consist of the following:

- (1) On the request of five or more potential subscribers desiring service, the Grantee

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shall prepare, at its cost, an engineering survey and cost analysis to determine the cost of plant extension required to provide service to each subscriber from the closest point where available quality signals exist.

- (2) The cost of construction shall be allocated based on the following formula: if a request for extension of service into a residential area requires the construction of cable plant which does not pass at least fifty (50) potential subscribers per strand or trench mile, the Grantee and subscribers will each bear their proportionate share of construction costs. For example, if there are twenty-five (25) subscribers per strand mile or trench mile, the Grantee's share will equal 25/50th's or 1/2 of construction cost. The remaining cost will be shared equally by each subscriber. After completion of the project, should additional subscribers request cable television service, the pro-rata shares shall be recalculated. Each new subscriber shall pay the new pro-rata share and all prior subscribers shall receive pro-rata refunds. At such time as there are said 50 potential subscribers per mile, the subscribers shall receive their pro-rata share of construction costs. In any event, at the end of two (2) years from the completion of a project, the subscribers are no longer eligible for refunds, and the amounts paid in construction costs will be credited to the plant account of Grantee.
- (3) The average cost of line extension shall be recalculated annually and based upon then-current costs for labor and materials.
- (4) Subscribers utilizing the cost sharing plan for extensions shall be reimbursed pro-rata for their contribution or a proportional share thereof, if additional subscribers are connected to the respective network extension.

C. In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give Grantee reasonable notice of such construction or development, and of the particular date on which open trenching will be available for Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at Grantee's expense. The Grantee shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer

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or property owner. Except for the notice of the particular date on which trenching will be available to the Grantee, any notice provided to the Grantee by the City of a preliminary plant request shall satisfy the requirement of reasonable notice if sent to the local general manager or system engineer of Grantee prior to approval of the preliminary plant request.

7.5 USE OF STREETS.

A. All installations shall be underground in those areas of the City where public utilities providing telephone and electric service are underground at the time of installation. In areas where either telephone or electric utility facilities are above ground at the time of installation, Grantee may install its service above ground, provided that at such time as those facilities are required to be placed underground by the City or are placed underground, the Grantee shall likewise place its services underground without additional cost to the City or to the individual subscriber so served. Where not otherwise required to be placed underground by this Ordinance or the Franchise Agreement, the Grantee's System shall be located underground at the request of the adjacent property owner, provided that the excess cost over the aerial location shall be borne by the property owner making the request. All new cable passing under the roadway shall be installed in conduit no less than eighteen (18) inches from the top of the conduit to the surface of the ground.

B. Interference with Persons, Improvements, Public and Private Property and Utilities. The Grantee's system and facilities, including poles, lines, equipment and all appurtenances, shall be located, erected and maintained so that such facilities shall:

- (1) Not endanger or interfere with the health, safety or lives of persons;
- (2) Not interfere with any improvements the City, County or State may deem proper to make;
- (3) Not interfere with the free and proper use of public streets, alleys, bridges, easements of other public ways, places or property, except to the minimum extent possible during actual construction or repair;
- (4) Not interfere with the rights and reasonable convenience of private property owners, except to the minimum extent possible during actual construction or repair; and
- (5) Not obstruct, hinder or interfere with any gas, electric, water or telephone facilities or other utilities located within the City.

C. Restoration to Prior Condition. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its own cost and expense and in a manner approved by the City, replace and restore all paving, sidewalk,

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driveway, landscaping, or surface of any street or alley disturbed, in as good a condition as, or better than, before said work was commenced and in a good workmanlike, timely manner in accordance with standards for such work set by the City. Such restoration shall be undertaken within no more than ten (10) days after the disturbance is incurred, and shall be completed as soon as possible thereafter.

D. Relocation of the Facilities. In the event that at any time during the period of this franchise, the City, County or State shall lawfully elect to alter or change the grade of any street, alley or other public ways, the Grantee, upon reasonable notice by the proper authority, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

E. Cooperation with Building Movers. The Grantee shall, on the request of any person holding a building moving permit issued by the Charlotte Department of Transportation, temporarily raise or lower its wire to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than fifteen (15) working days' advance notice to arrange for such temporary wire changes.

F. Tree Trimming. The Grantee shall have the authority, except when in conflict with existing City ordinances, to trim any trees upon and overhanging public rights-of-way so as to prevent the branches of such trees from coming in contact with system facilities, except that at the option of the City, such trimming may be done by it, or under its supervision and direction, at the expense of the Grantee.

G. Easements. All necessary easements over and under private property shall be arranged for by the Grantee.

H. Work Within Right-of-Way. Consistent with the City's Policy For Temporary Street Closings dated October 1, 1985, the closing of any part of a publicly maintained street or right-of-way must be approved by the Department of Transportation and shall be prohibited during peak travel hours, 7-9 a.m. and 4-6 p.m., Monday through Friday. During repairs or improvements, traffic on streets must be maintained. Where full closing of the street is required, the request for approval must be submitted to the Department of Transportation at least ten (10) days in advance. Closings will not be permitted in the central business district during the holiday shopping season. Where emergency closings are necessary, the Department of Transportation is to be notified as soon as possible. All closings are to be protected and signed in accordance with the City's Work Area Traffic Control Handbook (WATCH).

I. Removal of City Property. No City property is to be removed from right-of-way, including signing on utility poles, without prior permission from the Department of Transportation.

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7.6 ERECTION, REMOVAL AND COMMON USE OF POLES.

A. No poles shall be erected by the Grantee without prior approval of the City with regard to location, height, types and any other pertinent aspect. However, no location of any pole or wire-holding structure of the Grantee shall give rise to a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the City determines that the public convenience would be enhanced thereby.

B. Where poles already in existence for use in serving the City are available for use by the Grantee, the City may require the Grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.

C. Where a public utility serving the City desires to make use of the poles or other wire-holding structures of the Grantee, but agreement thereof with the Grantee cannot be reached, the City may require the Grantee to permit such use for such consideration and upon such terms as the City shall determine to be just and reasonable, if the City determines that the use would enhance the public convenience and would not unduly interfere with the Grantee's operation.

7.7 CONSTRUCTION REPORTING REQUIREMENTS

A. Within thirty (30) days of the granting of a franchise pursuant to this Ordinance, the Grantee shall provide the City with a written progress report detailing work completed, if any, to date. Such report shall include a description of the progress in applying for any necessary agreements, licenses, or certifications and any other information the City Manager may deem necessary.

B. Such written progress reports shall be submitted to the City on a monthly basis throughout the entire construction process. The City Manager may require more frequent reporting if he determines it is necessary to better monitor the Grantee's progress.

C. Prior to the commencement of any system construction, the Grantee shall produce an informational document to be distributed to all residents of the area to be under construction, which shall describe the activity that will be taking place.

7.8 TESTS AND PERFORMANCE MONITORING.

A. Not later than ninety (90) days after any new or substantially rebuilt portion of the system is made available for service to subscribers, and thereafter on the third anniversary of the effective date of the franchise, the Grantee shall conduct technical performance tests to demonstrate substantial compliance with all technical standards contained in this Ordinance and the Franchise Agreement, and the applicable technical standards and guidelines of the FCC.

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B. Such tests shall be performed by, or under the supervision of, a qualified registered professional engineer or an engineer with proper training and experience. A copy of said engineer's report shall be submitted to the City, describing test results, instrumentation, calibration, and test procedures, and the qualification of the engineer responsible for the tests.

C. System monitor test points shall be established at or near the output of the last amplifier in the longest feeder line, at or near trunk line extremities. Such periodic tests shall be made at the test points as shall be required by the FCC and/or the Franchise Agreement.

D. In addition to the performance test reports required herein, a copy of any performance test reports required by the FCC shall be submitted to the City within sixty (60) days of completion.

E. Whenever there have been similar complaints from more than 10% of the subscribers to Grantee's system made, or when there exists other substantial evidence which, in the judgement of the City, casts doubt on the reliability or quality of the Grantee's system, the City shall have the right and authority to compel the Grantee to test, analyze, and report on the performance of its system. Reports on such tests shall be delivered to the City no later than fourteen (14) days after the City reasonably notifies the Grantee and shall include the following information: the nature of the complaints which precipitated the special tests; what system component was tested; the equipment used, and procedures employed in said testing; the results of such tests; and methods by which said complaints were resolved. Said tests and analyses shall be supervised by a professional engineer, who shall sign all records of the special tests and forward same to the City with a report interpreting the results of the tests and recommending what actions, if any, should be taken by the Grantee or City.

F. The City shall have the right to employ, at City's expense, qualified consultants if necessary or desirable to assist in the administration of this, or any other section of this Ordinance or the Franchise Agreement.

VIII. SERVICE PROVISIONS.

8.1 SERVICES TO SUBSCRIBERS AND USERS.

A. Concurrently with the activation of the cable communications system in the City, the Grantee shall provide those services to subscribers as described in the Franchise Agreement or services of similar mix, quality and level.

1. The system shall carry the programming and services listed in the Franchise Agreement. Should the Grantee desire to change the selection of programs or services offered on any of its tiers, it shall use its best efforts to maintain the mix, quality and level of services provided over the system. Any such change in programs or services offered shall comply

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- with the conditions and procedures contained in the Franchise Agreement, and shall be reported to the City at least thirty (30) days prior to the proposed implementation when possible. The Grantee shall use its best efforts to ensure diversity of programming.
2. A basic service tier shall be offered to subscribers throughout the term of this franchise.
 3. The Grantee shall provide and maintain, at a minimum, the following access channels whose purposes are outlined below.
 - (a) "Government Access Channel" which shall be a specifically designated channel for local governmental use and shall be staffed and managed by the City. Grantee shall provide necessary microwave and/or cable links from the Charlotte-Mecklenburg Government Center, to enter programming onto the governmental access channel.
 - (b) "Educational Channel" which shall be a specifically designated channel for use by local public and private school authorities.
 - (c) A "Public Access Channel", which shall be a specifically designated channel available on a first-come, first-served, nondiscriminatory basis to qualified users.
 4. The Grantee shall make available "Leased Access Channels" to assure that the widest possible diversity of information sources are made available to subscribers.
 - (a) Such channels shall be especially designated for leased access use by persons unaffiliated with the Grantee, on terms, rates and conditions which are in accordance with the Cable Communications Policy Act of 1984.
 - (b) The number of such channels shall be determined by the provisions of the Cable Communications Policy Act of 1984. Grantee shall advertise periodically the availability of such channels.
 - (c) Grantee shall not exercise any editorial control over any programming provided over such channels, except as permitted in accordance with the provisions of the Cable Communications Policy Act of 1984.

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5. The Grantee shall provide when normal installation, is possible, basic service and one free outlet to each of the following public facilities located within five hundred (500) feet of existing service lines of the Grantee: all courthouses, prisons, libraries, detention centers, police and fire stations, municipal office buildings and public schools. Grantee shall notify City in writing when normal installation is not possible. No monthly service fee shall be charged for any such outlet. The Grantee shall provide service to new construction hereafter for the above public facilities; provided they are within five hundred (500) feet of the existing service lines of the Grantee. The City reserves the right to provide service to public facilities outside of the franchised area at its own expense. The Grantee shall produce and carry on a designated channel, on a daily basis, an alphanumeric program guide describing at a minimum, the programs offered on the access channels described above.

B. Emergency Override. The Grantee shall, without charge, provide service and maintain public emergency transmission capabilities, as described in the Franchise Agreement.

8.2 INSTALLATIONS, CONNECTIONS, AND OTHER GRANTEE SERVICES.

A. Standard Installations. Standard installation shall consist of a subscriber connection not exceeding one hundred fifty (150) feet from a single point or pedestal attachment to the customer's residence. Service in excess of 150 feet and concealed wiring shall be charged not to exceed additional installation costs before installation begins. The desire of the subscriber as to the point of entry into the residence shall be observed whenever possible; subject to Grantee's good faith judgment in regard to, but limited to, safety, efficiency and system performance. The Grantee shall use due care in the process of installation and shall repair any damage to the subscriber's property caused by said installation. Such restoration shall be undertaken within a reasonable time after the damage is incurred and shall be completed as soon as possible thereafter, said time not to exceed fifteen (15) days, weather permitting.

B. Antennas and Antenna Switches. The Grantee shall not, as a condition to providing cable communications service, require any subscriber or potential subscriber, to remove any existing antenna structures for the receipt of over-the-air television signals.

C. Lockout Devices. The Grantee shall provide to the potential subscriber, as part of its promotional literature, information concerning the availability of a lockout device for use by a subscriber. The Grantee reserves the right to require a reasonable deposit for the use of this device. The lockout device described herein shall be made available to all subscribers requesting it beginning on the first day that any cable service is

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provided, or in the case of a renewed or extended franchise, on the effective date of such renewal or extension.

D. Reconnection. Grantee shall restore service to customers wishing restoration of service provided customer shall first satisfy any previous obligations owed. Further, any such reconnection may be on terms and conditions established by Grantee.

E. Free Disconnection. Subscribers shall have the right to have cable service disconnected or deauthorized without charge therefor. Such disconnection or deauthorization shall be made as soon as practicable, and not to exceed fifteen (15) days. A refund of unused service charges shall be paid to the customer within sixty (60) days from the date of termination of service.

F. Delinquent Accounts. Grantee shall use its best efforts to collect delinquent subscriber accounts. Whenever possible, the Grantee shall provide the customer with at least seven (7) working days written notice prior to disconnection.

8.3 SERVICE CALLS AND COMPLAINT PROCEDURES.

A. The Company shall establish, operate and maintain in the City a business office, and maintenance and repair facility for the purpose of receiving inquiries, requests and complaints concerning all aspects of the construction, installation, operation, and maintenance of the System and for the payment of subscribers' service charges.

B. The Grantee shall have a listed, locally-staffed telephone number for service calls and such telephone service shall be available twenty-four (24) hours a day, seven (7) days a week.

C. The Grantee shall respond to and resolve subscribers' complaints or requests for service in connection with repairs and maintenance and malfunctions of system facilities. The Grantee shall respond as quickly as possible to such complaints and requests. Complaints or requests which may pose a potential health and safety hazard will be responded to immediately. In connection with billing complaints, the Grantee shall respond within seven (7) business days.

D. The Grantee shall prepare and file with the City copies of all of its rules and regulations in connection with the handling of inquiries, requests and complaints. The Grantee shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the name, address and local telephone number of the office or agent to whom such inquiries or complaints are to be addressed, and furnish information concerning the City office responsible for the administration of the franchise, including, but not limited to, the address and telephone number of said office.

E. The Grantee shall keep full records in connection with all complaints and requests in the nature of complaints in connection with the System. Such records shall identify the person contacting the Grantee, and the person responding on behalf of the Grantee, the subject matter of the contact, the

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date and time it was received, the resolution of the matter in question or the action taken by the Grantee in connection with the contact, and the date and time thereof, and such other information as may be deemed pertinent by the Grantee. These records shall be made available for periodic inspection by the City after forty eight (48) hours notice to Grantee.

F. The Grantee shall service or replace without charge all equipment provided by it to the subscriber, provided, however, that the Grantee may charge a subscriber for service to or replacement of any equipment damaged directly or indirectly by a subscriber.

G. The City may review and monitor unresolved customer complaints.

H. In the event that any subscriber is interrupted for twenty-four (24) or more consecutive hours due to causes within Grantee's control, the Grantee shall provide a prorated rebate of monthly fees to the affected subscriber upon the subscriber's request.

8.4 CONTINUITY OF SERVICE.

A. Grantee shall use its best efforts to insure that all subscribers receive continuous, uninterrupted service insofar as their financial and other obligations to the Grantee are honored.

B. In the event that the Grantee elects to rebuild, modify or sell the system, or the City gives notice of intent to terminate or fails to renew Grantee's franchise, the Grantee shall cooperate with the City or new Grantee or operator in maintaining continuity of service to all subscribers. During such period, Grantee shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs when it no longer operates the system.

C. In the event the Grantee fails to operate the system for seven (7) consecutive days without prior approval of the City or without just cause, the City may, at its option, operate the system or designate an operator until such time as Grantee restores service under conditions acceptable to the City or a permanent successor is selected. If the City is required to fulfill this obligation for the Grantee, the Grantee shall reimburse the City for all reasonable costs or damages in excess of revenues from the system received by the City that are the result of the Grantee's failure to perform.

8.5 PROTECTION OF SUBSCRIBER PRIVACY.

A. At the time of entering into an agreement to provide any cable service or other service to a subscriber, and at least once a year thereafter, Grantee shall provide notice in the form of a separate written statement to each subscriber which clearly and conspicuously informs the subscriber of:

- (1) the nature of personally identifiable information collected or to be collected

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with respect to the subscriber and the nature of the use of such information;

- (2) the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;
- (3) the period during which such information might be maintained by the cable operator;
- (4) the times and places at which the subscriber may have access to such information in accordance with this Ordinance and other applicable federal, state, and local law.

B. Grantee shall not use the cable system to collect personally identifiable information concerning any subscriber, except as necessary to render a cable service or other service provided by the cable operator to the subscriber, or to detect unauthorized reception of cable communications, without the prior written or electronic consent of the subscriber concerned.

C. Grantee shall not, without the specific written or electronic consent of the subscribers concerned, sell, disclose or otherwise make available to any party any list of the names and addresses of individual subscribers, any list which identifies the viewing habits of individual subscribers, or any personal data, social security number, income and other data the Grantee may have on file about individual subscribers, except as necessary to render or conduct a legitimate business activity related to a cable service or other service provided by the cable operator to the subscriber, or pursuant to a court order, or if Grantee has provided the subscriber the opportunity to prohibit or limit such disclosure and the disclosure does not reveal directly or indirectly the extent of viewing or other use by the subscriber of a cable service or other service provided by the cable operator, or the nature of any transaction made by the subscriber over the cable system.

D. Grantee shall not predicate regular subscriber service on the subscriber's grant or denial of permission to collect, maintain or disclose personally identifiable information. A subscriber may at any time revoke any permission previously given by delivering to the Grantee a written statement of that intent.

E. Each subscriber shall be provided access to all personally identifiable information regarding such subscriber that Grantee collects or maintains. Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by Grantee. The subscriber shall be provided the reasonable opportunity to correct any error in such information.

F. Grantee shall destroy personally identifiable information if the information is no longer necessary for the purpose for which it was collected and there are no pending

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requests or orders for access to such information under subsection 8.5 B. (E) or pursuant to a court order.

G. This section is not intended to prohibit the use or transmission of signals useful only for the control or measurement of system performance.

8.6 RIGHTS OF INDIVIDUALS.

A. Nondiscrimination Required. Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, religion, national origin, age, sex, or physical or mental handicaps, provided the subscriber shall pay all applicable fees for the service desired. Grantee shall comply at all times with all other applicable Federal, State and local laws and regulations relating to nondiscrimination which may hereafter be incorporated and made part of this Ordinance by reference.

B. Fairness of Accessibility. The entire system of the Grantee shall be operated in a manner consistent with the principles of fairness and equal accessibility of its facilities, equipment, channels, studios and other services to all citizens, businesses, public agencies and other entities having a legitimate use for the network; and no one shall be arbitrarily excluded from its use; provided, however, that allocation of use of said facilities shall be made according to the rules or decisions of the Grantee and any regulatory agencies affecting the same.

C. Information Accessibility.

- (1) Each individual shall have the right to information concerning the provisions of this Ordinance and the rules and regulations formulated pursuant to it by the Council, agent or entity created hereunder or pursuant to this Ordinance. The location and hours of operation for the delivery of such information shall be published in the newspaper of the greatest circulation within the City and in such other media as the Council may determine.
- (2) Each individual subscribing to the services of the Cable Communications System or leasing channels thereof or using the access channels shall be provided with a memorandum setting forth all rules and regulations specifically outlining such individual rights, duties and obligations pertinent to such use.
- (3) Such information as may herein be prescribed will be made available to the public and individual subscribers in such form required for understanding, including the deaf and blind, and in such languages as may be

specified by the Council.

- (4) Each document required to be maintained, prepared, filed or submitted under the provisions of this Ordinance or pursuant to it, except those required and designated confidential by the Grantee or the Federal Communications Commission, shall be a public document, available for public inspection and copying at the requestor's expense, at the office of the Grantee or the City during normal business hours. The charge for such copying shall approximate the cost of mechanical reproduction and shall not include a charge for labor.
- (5) Each individual shall have the right to representation on such boards, commissions, agencies or other entities created hereunder or hereafter by the Council pursuant to the provisions of this Ordinance. Such representation by citizens of the City shall be in the manner and form as the Council may determine, insuring equal participation of all protected groups.

IX. BOOKS, RECORDS, AND REPORTS.

9.1 BOOKS AND RECORDS AVAILABLE TO THE CITY. The Grantee shall manage all of its operations in accordance with a policy of open books and records as such may pertain to the operation of the system in the City. The City shall have the right to inspect upon twenty four (24) hours written notice at any time during normal business hours, books, records, maps, plans, service complaint logs, performance test results and other like materials of the Grantee which relate to the operation of the system.

9.2 REPORTS REQUIRED. The Grantee shall file with the City:

A. Regulatory Communications. All reports required by the Federal Communications Commission (FCC) including, but not limited to annual proof of performance tests and results, and Equal Employment Opportunity (EEO) reports.

B. Facilities Report. An annual report setting forth the physical miles of plant construction and plant in operation during the fiscal year.

C. Grantee Rules. The Grantee's schedule of charges, contract or application forms of regular subscriber policy regarding the processing of subscriber complaints, delinquent subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Grantee's policy in connection with its system subscribers shall be filed with the City.

D. Proof of Bonds and Insurance. Grantee shall submit to the City the required performance bond, or a certified copy thereof, and written evidence of payment of required premium, and

certificates of policies of insurance required by this Ordinance, and written notice of payment of required premium.

E. Financial and Ownership Reports. The financial reports for the Grantee shall be submitted annually to the City:

F. Operational Reports. The following system and operational reports shall be submitted annually to the City:

- (1) A report on the system's technical tests and measurements as set forth herein and in the Franchise Agreement.
- (2) A summary of the previous year's activities including, but not limited to, new services offered.
- (3) A summary of complaints received and handled.
- (4) A summary of the number of outages (5 or more service calls in one area).

G. Additional Reports. The Grantee shall prepare and furnish to the City at the times and in the form prescribed, such additional reports with respect to its operation, affairs, transactions or property, as may be reasonably necessary and appropriate to the performance of any of the functions or duties of the City in connection with the system.

9.3 RECORDS REQUIRED.

A. The Grantee shall at all times maintain:

- (1) A record of all complaints received and interruptions or degradation of service experience for the preceding period prior to a performance review.
- (2) A full and complete set of plans, records and "as built" maps showing the exact location of all cable communication system equipment installed or in use in the City, exclusive of subscriber service drops.
- (3) A comprehensive record of all personnel transactions and utilization of contractors, subcontractors, vendors and suppliers by race and sex.

B. Other Records. The City may impose reasonable requests for additional information, records and documents from time to time.

X. MISCELLANEOUS PROVISIONS.

10.1 PUBLIC NOTICE. Minimum public notice of any public meeting relating to this Ordinance or the franchise shall be by publication in a newspaper of general circulation in the area at least seven (7) days prior to the meeting, posting at City Hall,

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and by announcement on at least one (1) local origination channel of the Grantee's Cable Communications System between the hours of 11:00 a.m. and 9:00 p.m. for five (5) consecutive days prior to the meeting.

10.2 CAPTIONS. The captions to sections throughout this Ordinance are intended solely to facilitate reading and reference to the sections and provisions of this proposal. Such captions shall not affect the meaning or interpretation of this Ordinance.

10.3 FRANCHISE APPLICATIONS. Applicants for a franchise shall submit to the City written applications utilizing the appropriate standard format provided by the City, at the time and place designated by the City for accepting applications and including the designated application fee, if any.

This ordinance shall become effective upon adoption.

Approved as to form:

Henry W. Underhill Jr.
City Attorney

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ORDINANCE NO. 2324-X

AN ORDINANCE TO AMEND ORDINANCE NO. 2198-X, THE 1987-88 BUDGET ORDINANCE, PROVIDING AN APPROPRIATION FOR A GRANT AGREEMENT WITH THE COMMITTEE TO PRESERVE AND RESTORE THIRD WARD, INC.

BE IT ORDAINED by the City Council of the City of Charlotte, North Carolina;

Section 1. That the sum of \$60,000 is hereby estimated to be available from Community Development fund balance.

Section 2. That the sum of \$60,000 is hereby appropriated to Community Development Fund 6911;225.00.199 - Committee to Preserve and Restore Third Ward, Inc.

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. This ordinance shall become effective upon its adoption.

Approved as to form:

Henry W. Underhill Jr.
City Attorney

Read, approved and adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the 23rd day of November, 1987, the reference having been made in Minute Book 89, and is recorded in full in Ordinance Book 36, at page(s) 263.

Pat Sharkey
City Clerk

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ORDINANCE NO. 2325-X

AN ORDINANCE TO AMEND ORDINANCE NO. 2198-X, THE 1987-88 BUDGET ORDINANCE, PROVIDING A SUPPLEMENTAL APPROPRIATION TO THE CITYFAIR CAPITAL PROJECT FOR EXTENDED CONSTRUCTION INSPECTION SERVICES.

BE IT ORDAINED by the City Council of the City of Charlotte, North Carolina;

Section 1. That the sum of \$25,000 is hereby estimated to be available from the following sources:

<u>Source</u>	<u>Amount</u>
CityFair Parking Deck Revenues	\$15,000
Carley Capital Group	<u>10,000</u>
Total	\$25,000

These funds will allow for the extension of an engineering services contract with Dana H. Rucker and Associates.

Section 2. That the sum of \$25,000 is hereby appropriated to the Marketplace Parking Facility Project Fund 2020; 276.00 - Marketplace Parking Facility.

Section 3. That the Finance Director or his designee is hereby authorized to advance the sum of \$15,000 from the Municipal Debt Service Fund Fund Balance to the Marketplace Parking Facility capital project (2020; 276.00) until such time that parking revenues are collected.

Section 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 5. This ordinance shall become effective upon its adoption.

Approved as to form:


City Attorney

Read, approved and adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the 23rd day of November, 1987, the reference having been made in Minute Book 89, and is recorded in full in Ordinance Book 36, at page(s) 264.

Pat Sharkey
City Clerk

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ORDINANCE NO. 2326-X

AN ORDINANCE TO AMEND ORDINANCE NO. 2198-X, THE 1987-88 BUDGET ORDINANCE, PROVIDING AN APPROPRIATION FOR SURVEY AND PRELIMINARY ENGINEERING SERVICES FOR THREE ROAD PROJECTS.

BE IT ORDAINED by the City Council of the City of Charlotte, North Carolina;

Section 1. That the sum of \$132,000 is hereby estimated to be available from 1987 Street Improvement Bonds.

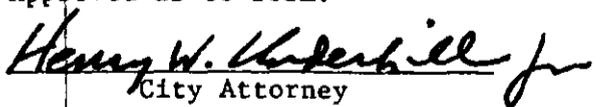
Section 2. That the sum of \$132,000 is hereby appropriated in accordance to the following schedule:

<u>Account</u>	<u>Amount</u>
2010; 351.00 - Beatties Ford Road Widening	\$ 44,000
2010; 354.00 - Park Road/Johnston Road Widening	44,000
2010; 348.00 - Monroe Road Widening	<u>44,000</u>
Total	\$132,000

Section 3. That the Finance Director or his designee is hereby authorized to advance the sum of \$132,000 from the Municipal Debt Service Fund unappropriated fund balance until such time that the 1987 Street Improvement Bonds or bond anticipation notes are issued. Upon issuance of these bonds, funds will be returned to the Municipal Debt Service Fund balance.

Section 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 5. This ordinance shall become effective upon its adoption.

Approved as to form:

City Attorney

Read, approved and adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the 23rd day of November, 1987, the reference having been made in Minute Book 89, and is recorded in full in Ordinance Book 36, at page(s) 265.

Pat Sharkey
City Clerk

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ORDINANCE NO. 2327

ORDINANCE AMENDING APPENDIX A-ZONING

AN ORDINANCE AMENDING THE ZONING ORDINANCE, APPENDIX A-ZONING,
OF THE CODE OF THE CITY OF CHARLOTTE.

BE IT ORDAINED, by the City Council of the City of Charlotte, North Carolina, that:

Section 1. Appendix A-Zoning, the Zoning Ordinance of the City of Charlotte, in the City Code of the City of Charlotte shall be amended as follows:

1. Amend § 1102, "Definitions", by deleting the definition of "Sign" and definitions thereunder .1 "Advertising sign", .2 "Bulletin board", .3 "Business sign", .4 "Flashing sign", and .5 "Identification sign", and furthermore by deleting the definition of "Sign area" and the definition of "Sign illumination", all of which are deleted in their entirety and by substituting in lieu thereof the following:

"Sign. For purposes of this Zoning Ordinance, 'Sign', is defined in § 2102.17. Said definition includes the various types of signs defined in § 2102.22, "Sign Types."

2. Amend § 1206, "Sign Permits", by:

.1 Amending § 1206, "Sign Permits", by deleting the caption, "Sign Permits", and substituting in lieu thereof, the following:

"1206. Special sign permit regulations."

.2 Amending § 1206, "Special sign permit regulations", by deleting §§ 1206.1, 1206.3, 1206.4, and 1206.6 in their entirety.

.3 Amending § 1206.2 by changing it to § 1206.1 and by deleting the first three complete sentences thereof, beginning with the words "The superintendent" and ending with the words "sign application." and leaving the remainder as a new § 1206.1.

.4 Amending § 1206.5 by changing it to § 1206.2.

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.5 Amending § 1206.7 by changing it to § 1206.3 and by deleting the word "adoption" which appears in .1, "Purpose", and .2, "Temporary cessation of issuance of outdoor advertising sign permits", and substituting, in both places, in lieu thereof, the words "effective date".

3. Amend § 1207, "Citation for Certain Violations", by deleting said section in its entirety.

4. Amend § 1500, "Non-conforming Uses", by deleting § 1507, "Nonconforming Signs", in its entirety.

5. Amending § 1508, "Changes in Zoning", by changing it to § 1507, "Changes in Zoning."

6. Amend § 2111, "Uptown Mixed Use District", by relocating it in its entirety into the new § 2109.6, "Uptown Mixed Use District (UMUD)", adopted on November 9, 1987, and declared on the date of adoption as "Reserved."

7. Amend §§ 2100 through 2111, "Signs", by deleting said sections in their entirety and by substituting in lieu thereof the new §§ 2100 through 2114, "Signs", as adopted by the Charlotte City Council on November 9, 1987, and incorporated herein by reference.

8. Amend § 3052, "Urban Industrial District, UI", by deleting in its entirety § 3052.7, "Signs", which includes subsections .1 through .4, and substituting in lieu thereof the following:

"3052.7. Signs. Signs are permitted in the Urban Industrial District in accordance with the provisions of § 2100".

9. Amend § 3402, "Business Park District (BP)", by deleting in its entirety, § 3402.8, "Signs", and substituting in lieu thereof the following:

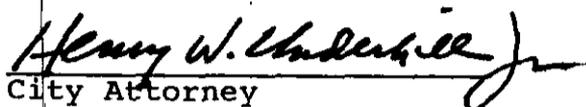
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"3402.8. Signs. Signs are permitted in the Business Park District in accordance with the provisions of § 2100".

Section 2. This ordinance shall become effective

February 1, 1988.

Approved as to form:


City Attorney

CERTIFICATION

I, Pat Sharkey, City Clerk of the City of Charlotte, North Carolina, do hereby certify that the foregoing is a true and exact copy of an ordinance adopted by the City Council of the City of Charlotte, North Carolina, in meeting held on the 23rd day of November, 1987, and recorded in full in Ordinance Book 36, beginning on page 266-268.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the 25th day of November, 1987.

Pat Sharkey, City Clerk

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ORDINANCE NO. 2328-X

AN ORDINANCE TO AMEND ORDINANCE NO. 2198-X, THE 1987-88 BUDGET ORDINANCE, PROVIDING A SUPPLEMENTAL APPROPRIATION FOR THE DESIGN OF AN EXTENSION TO WESTINGHOUSE BOULEVARD.

BE IT ORDAINED by the City Council of the City of Charlotte, North Carolina;

Section 1. That the sum of \$518,500 is hereby estimated to be available from the 1987 Street Improvement Bonds.

Section 2. That the sum of \$518,500 is hereby appropriated to the General Capital Improvement Fund account 2010; 295.00 - Westinghouse Boulevard Extension.

Section 3. That the Finance Director or his designee is hereby authorized to advance the sum of \$518,500 from the Municipal Debt Service Fund unappropriated fund balance to the General Capital Improvement Fund account 2010; 295.00 until such time that the 1987 Street Improvement Bonds or bond anticipation notes are issued. Upon issuance of these bonds, funds will be returned to the Municipal Debt Service Fund balance.

Section 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 5. This ordinance shall become effective upon its adoption.

Approved as to form:


City Attorney

Read, approved and adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the 23rd day of November, 1987, the reference having been made in Minute Book 89, and is recorded in full in Ordinance Book 36, at page(s) 269.

Pat Sharkey
City Clerk

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ORDINANCE NO. 2329-X

AN ORDINANCE TO AMEND ORDINANCE NO. 2198-X, THE 1987-88 BUDGET ORDINANCE, TRANSFERRING CAPITAL FUNDS TO PROVIDE A SUPPLEMENTAL APPROPRIATION FOR INDEPENDENCE PLAZA PARK LAND ACQUISITION.

BE IT ORDAINED by the City Council of the City of Charlotte, North Carolina;

Section 1. That the sum of \$48,000 is hereby transferred from General Capital Improvement account 2010; 259.00 - Public Land Acquisition to General Capital Improvement account 2010; 480.91 - Independence Plaza Park. These funds provide for the final settlement payment for the park land.

Section 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 3. This ordinance shall become effective upon its adoption.

Approved as to form:


City Attorney

Read, approved and adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the 23rd day of November, 1987, the reference having been made in Minute Book 89, and is recorded in full in Ordinance Book 36, at page(s) 270.

Pat Sharkey
City Clerk