

Item # 8B

**City of Carson City
Agenda Report**

Date Submitted: December 12, 2006

Agenda Date Requested: December 21, 2006

Time Requested: 5 minutes

To: Mayor and Supervisors

From: Linda Ritter, City Manager

Subject Title: Action to introduce, on first reading, Bill No. _____, an ordinance repealing Carson City Municipal Code Title 5 Public Utility Franchises and Requirements, Chapter 5.19 Cable Systems which regulates the occupancy and use of public ways by cable systems and provides for the establishment of customer service standards and other matters properly related thereto.

Staff Summary: Currently, Carson City has a cable systems regulatory ordinance which governs Charter Communications, Inc. and any other cable television provider who enters the Carson City market. Per the Agreement to Extend Cable Franchise dated December 21, 2006, the City has agreed to repeal the ordinance in its entirety.

Type of Action Requested: (check one)

- Resolution
- Ordinance - First reading
- Formal Action/Motion
- Other (Specify)

Does This Action Require A Business Impact Statement: Yes No

Recommended Board Action: I move to introduce, on first reading, Bill No. _____, an ordinance repealing Carson City Municipal Code Title 5 Public Utility Franchises and Requirements, Chapter 5.19 Cable Systems which regulates the occupancy and use of public ways by cable systems and provides for the establishment of customer service standards and other matters properly related thereto.

Explanation for Recommended Board Action: In July 2005, as the City and Charter had not yet reached agreement on renewal of the franchise agreement, the Board of Supervisors approved a cable system regulatory ordinance. As part of the Agreement to Extend Cable Franchise between the City and Charter, the City has agreed to repeal the ordinance in its entirety.

Applicable Statue, Code, Policy, Rule or Regulation: NRS Chapter 711

Fiscal Impact: None.

Explanation of Impact: n/a

Funding Source: n/a

Supporting Material: Attached draft repeal of ordinance.

Prepared By: L. Teixeira

Reviewed By: [Signature]
(City Manager)

Date: 12/12/06

Melanie Buketta
(District Attorney)

Date: 12-12-06

Board Action Taken:

Motion: _____

- 1) _____
- 2) _____

Aye/Nay

(Vote Recorded By)

BILL NO. _____

AN ORDINANCE REPEALING CARSON CITY MUNICIPAL CODE TITLE 5 PUBLIC UTILITY FRANCHISES AND REQUIREMENTS, CHAPTER 5.19 CABLE SYSTEMS WHICH REGULATES THE OCCUPANCY AND USE OF PUBLIC WAYS BY CABLE SYSTEMS AND PROVIDES FOR THE ESTABLISHMENT OF CUSTOMER SERVICE STANDARDS AND OTHER MATTERS PROPERLY RELATED THERETO.

The Board of Supervisors of Carson City do ordain:

SECTION I:

That Title 5 of the Carson City Municipal Code is hereby amended as follows:

Title 5

PUBLIC UTILITY FRANCHISES AND REQUIREMENTS

Chapters:

- 5.02 T.C.I. of Nevada, Inc.
- 5.04 Southwest Gas Corporation
- 5.06 Sierra Pacific Power Company
- 5.08 Western Union Telegraph Company
- 5.10 Solid Waste and Recyclable Materials
- 5.12 Other Public Utilities
- 5.18 Ambulance Services
- [5.19 Cable Systems]
- 5.20 Carson City Television Commission

SECTION II:

That Section 5.19.010 of the Carson City Municipal Code is hereby added as follows:

[5.19.010 Legislative Declaration and Purpose.

Carson City has the authority to regulate the use of streets, public rights-of-way, and to grant access thereto upon certain terms and conditions. Carson City has reviewed its authority under state and federal law, and has considered how it may exercise its authority to accomplish the following: protect the public health, safety, and welfare; effect responsible management of

the public rights-of-way; meet the obligations of the City to manage and maintain the public rights-of-way; minimize disruption and inconvenience to the use of the public rights-of-way for transportation purposes; and ensure reasonable nondiscriminatory access to the public rights-of-way by secondary users. The public rights-of-way within the City are a valuable and scarce community resource physically limited in dimension requiring the City to manage them efficiently and to protect against premature exhaustion of the public rights-of-way as an economic resource, and to minimize the inconvenience to and negative effects upon the public from such facilities' construction, emplacement, relocation, and maintenance in the rights-of-way. The right to place privately-owned facilities and fixtures in such rights-of-way for the business of providing cable and related services for hire is a valuable economic right to use a unique public resource that has been acquired and is maintained at great expense to the City and its taxpayers, the economic benefit of which should be shared with the taxpayers of the City. The City wishes to promote the availability of high-quality and diverse cable services to City residents, businesses, the City, and other public institutions; and to promote the availability of diverse information resources to the community, including through the development of advanced systems that can support public, educational, and governmental programming and high-speed access to the Internet. The City wishes to provide opportunities to the public to obtain access to communications facilities for the purpose of disseminating and receiving information; to promote competitive cable rates and services; to take advantage of opportunities presented by cable systems to provide for more open government; to enhance educational opportunities throughout the community and provide opportunities for building a stronger community; and to allow flexibility to respond to changes in technology, subscriber interests, and competitive factors that will affect the health, welfare, and well-being of the community. In light of federal and state law, and the changes to local procedures required by them, Carson City finds that it is necessary to enact the following requirements and further finds it appropriate to apply this ordinance to existing franchisees, permittees, and licensees as far as is possible and to apply it to those with pending or new applications to place facilities in public rights-of-way for cable and other related services. Carson City finds that it is in the interest of the public to franchise and to establish standards for franchising such operators in a manner that promotes these objectives and otherwise protects the public interest. The purposes of this Title are to:

- Establish a nondiscriminatory local policy concerning cable systems that use the public rights-of-way;
- Promote the availability of diverse, multimedia information resources to the community;
- Provide for enhancing educational opportunities throughout the community and building a stronger community;
- Encourage the provision of advanced and competitive cable services on the widest possible basis to the businesses, institutions and residents of Carson City;
- Encourage economic development while preserving aesthetic and other community values and preventing proliferation of above-ground facilities; and
- Establish the potential for universal access to video programming services for all residents and businesses.]

SECTION III:

That Section 5.19.020 of the Carson City Municipal Code is hereby added as follows:

[5.19.020 Definitions.

- (a) General definitions. Except as otherwise provided herein, all words shall have the customary dictionary meaning.
 - (1) The present tense includes the future tense.
 - (2) The singular number includes the plural and the plural number includes the singular.
 - (3) The masculine, feminine and neuter genders shall each be deemed to include the other or others whenever the context so indicates.
 - (4) The word "person" includes a firm, corporation, association, organization, trust, or partnership.
 - (5) The word "shall" is mandatory.
 - (6) The word "may" is permissive.
- (b) Specific definitions. It is the intention of the City that the following definitions also be made part of subsequent cable franchise agreements.
 - (1) "Access", "PEG access", or "PEG use" refers to the availability of a cable system for public, education or government use by various agencies, institutions, organizations, groups, and individuals, including Carson City and its designated Access providers, to acquire, create, and distribute programming that is not under a Franchisee's editorial control. Access includes the following subparts:
 - a. "Public Access" means access where organizations, groups, or individual members of the general public, on a non-discriminatory basis, are the primary or designated programmers or users having editorial control over their communications;
 - b. "Education Access" means access where accredited educational institutions are the primary or designated programmers or users having editorial control over their communications;
 - c. "Government Access" means access where government institutions or their designees are the primary or designated programmers or users having editorial control over their communications.

- (2) "Adoption" shall mean the process necessary to formally enact the provisions of this Chapter within the city's jurisdiction under applicable law.
- (3) "Affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person.
- (4) "Basic services tier" means those broadcast and nonbroadcast services provided by the Cable Operator at the lowest monthly charge and consisting of local stations, access channels, and any other distant retransmission and/or satellite channels selected by the Cable Operator.
- (5) "Board of Supervisors" means the present governing body of the City or any future Board constituting the legislative body of the City.
- (6) "Cable Act" means the Cable Communications Policy Act of 1984, and any subsequent amendments.
- (7) "Cable 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 information, including 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 subscribers without using, or connecting to a facility that uses, any public right-of-way within the City;
 - c. a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II (Common Carriers) of the Communications Act of 1934, as amended, except that such facility shall be considered a Cable system to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;
 - d. any facilities of any electric utility used solely for operating its electric utility systems; or
 - e. an Open Video System that is certified by the FCC.

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

- (8) "Cable Operator" shall mean any person or group of persons that holds a valid City cable television franchise, and who provides cable service over a cable system and directly or through one or more affiliates, owns a significant interest in such cable system, or who otherwise controls or is responsible for the management and operation of such cable system in the Franchise Service Area.
- (9) "Cable service" means (i) the one-way transmission to Subscriber of video programming or other programming service, and (ii) Subscriber interaction, if any, which is required for the selection by the Subscriber of such video programming or other programming service.
- (10) "Channel" means a single path or section of the spectrum that carries an analog or digital television signal.
- (11) "City" means the City of Carson City, a municipal corporation of the State of Nevada.
- (12) "City Manager" means the City Manager or the City Manager's designee.
- (13) "Construction", "operation" or "repair" and similar formulations of that term means the named actions interpreted broadly, encompassing, among other things, installation, extension, maintenance, replacement of components, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, and excavation.
- (14) "Converter" or "digital converter" means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber, and with an appropriate channel selector which also permits a Subscriber to view all signals delivered at designated converter dial locations.
- (15) "Customer" or "Subscriber" shall mean any person who legally receives or is eligible to receive cable television service from the Cable Operator, including Carson City.
- (16) "Customer Service Representative"(or "CSR") shall mean any person employed by the Cable Operator to assist, or provide service to, Subscribers, whether by answering public telephone lines, writing service or installation orders, answering Subscribers' questions,

receiving and processing payments.

- (17) "Disability". A person is considered to have a disability if that person (1) has a physical or mental impairment which substantially limits one or more of that person's life activities such as hearing, seeing, speaking, walking, breathing, performing manual tasks, caring for oneself, learning or working; and (2) has a medical record of such an impairment.
- (18) "Dwelling unit" means residential living facilities as distinguished from temporary lodging facilities such as hotel and motel rooms and dormitories, and includes single-family residential units and individual apartments, condominium units, mobile homes within mobile home parks, and other multiple-family residential units.
- (19) "Franchise" means an authorization granted by Carson City to the Operator of a cable system giving the Operator the non-exclusive right to occupy the space, or use facilities upon, across, beneath, or over public rights of way in Carson City, and to provide specified services within a Franchise area.
- (20) "Franchise Area" means the area of Carson City that a Cable Operator is authorized to serve by the terms of its Franchise or by operation of law.
- (21) "FCC" means the Federal Communications Commission, or successor governmental entity thereto.
- (22) "Gross Revenues" means all cash, credits, property, or other consideration of any kind or nature received directly or indirectly by a Cable Operator, and/or its affiliates, from any source whatsoever arising from, attributable to, or in any way derived from a Cable Operator's operation of a cable system within the franchise area. Gross Revenues include, but are not limited to, fees charged to subscribers for basic service; fees charged to subscribers for any optional, premium, per-channel, or per-program service; monthly fees charged to subscribers for any tier of service other than basic service; installation, disconnection, re-connection, and change-in-service fees; leased channel fees; fees, payments, or other payment received as consideration from programmers for carriage of programming on the cable system; converter rentals or sales; studio rental, production equipment, and personnel fees; advertising revenues, including a per capita share of advertising revenues for advertising carried on more than one cable system; revenues from home shopping channels; sales of programming guides; and such other revenue sources as may now exist or hereafter develop. The definition shall be interpreted in a manner that permits the City to collect the maximum

franchise fee permitted by law, irrespective of the source of revenue. Gross Revenues, however, shall not include any bad debt (defined as unpaid subscriber or advertiser accounts), any taxes on services furnished to a Cable Operator and imposed directly upon any subscriber by the state, city, or other governmental unit and collected by a Cable Operator on behalf of said governmental unit, or as otherwise proscribed in state law. The amount paid as a franchise fee shall not be deducted from Gross Revenues unless required to be deducted under federal law.

- (23) "Installation" means the connection of the system from feeder cable to Subscribers' terminals.
- (24) "Interactive services" means services provided to Subscribers where the Subscriber either (i) both receives information consisting of either television or other signals and transmits signals generated by the Subscriber or equipment under his/her control for the purpose of selecting what information shall be transmitted to the Subscriber or for any other purpose; or (ii) transmits signals to any other location for any purpose.
- (25) "Interconnect" means a link by various technical means to other cable systems for purposes of program distribution.
- (26) "Leased access channels" means any channel or portion of a channel available for programming for a fee or charge by persons or entities other than the Cable Operator.
- (27) "Local origination channel" means any channel or portion of a channel that is programmed by the Cable Operator.
- (28) "Normal operating conditions" means those service conditions that are within the control of the Cable Operator. Those conditions which are not within the control of the Cable Operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Cable Operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular or seasonal demand periods, and maintenance or upgrade of the cable system.
- (29) "Pay-per-view" (PPV) means per-event video programming for which the Subscriber pays over and above the fee for regular cable service.
- (30) "Person" includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not Carson City.

- (31) "Premium services" means video programming over and above those provided by basic services for which there is additional charge.
- (32) "Property of the Cable Operator" means all property owned, installed or used by a Cable Operator in the conduct of a cable business in the City under the authority of a franchise granted pursuant to this Chapter.
- (33) "Proposal" means the response, by an individual or organization, to a request by the City regarding the provision of cable services; or an unsolicited plan submitted by an individual or organization seeking to provide cable services in the city.
- (34) "Public way" or "public right(s) of way" means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City in the service area which shall entitle the City and the Cable Operator to the use thereof for the purpose of installing or transmitting the Cable Operator's cable service or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, attachments and other property as may be ordinarily necessary and pertinent to the cable system.
- (35) "Service interruption" or "loss of service" means the loss of picture or sound on one or more cable channels.
- (36) "Termination" means the conclusion of a Franchise by any means, including, but not limited to, by expiration of its term, abandonment or revocation.
- (37) "Transfer" means any transaction in which:
- (1) all or a portion of any facilities or any rights to use or operate facilities located in the public way are sold conveyed, transferred, assigned, encumbered (except as set forth herein) or leased, in whole or in part, directly or indirectly, by one or more transactions to another person, whether voluntarily or by operation of law or otherwise; or
 - (2) there is any change, acquisition, or transfer in the identity of the person in control of the Cable Operator, or any person that

controls the Cable Operator, including, without limitation, forced or voluntary sale, merger, consolidation, or receivership; or

- (3) the rights or obligations under the Franchise are sold, conveyed, transferred, assigned, encumbered (except as set forth herein) or leased, in whole or in part, directly or indirectly, by one or more transactions to another Person, whether voluntarily or by operation of law or otherwise.

It will be presumed, for purposes of clause (2) above, that any transfer or cumulative transfer of a voting interest by a person or group of persons acting in concert of ten percent (10%) or more of a Cable Operator, or person that controls a Cable Operator, or any change in the managing general partners of a Cable Operator is a change of control. "Transfer" does not include: (1) a lease to a UVPP pursuant to 47 U.S.C. Sections 532 or 573; (2) the transmission of a commodity or electronic signal using facilities on a common carrier basis; (3) a lease or other right to use facilities mandated pursuant to 47 U.S.C. Section 224, or (4) a pledge in trust, mortgage or other encumbrance against the facilities, or any portion thereof, given to a bona fide institutional lender in connection with a loan or other financing required to secure the construction, operation, or repair of the facilities ("Loan") provided that such Loan is subject to the rights and powers of the City pursuant to the Franchise and applicable law, including, without limitation, the right of Carson City to approve any Transfer upon foreclosure.

Transferring and Transferee shall have correlative meanings.

- (38) "Unaffiliated Video Programming Provider" or "UVPP" means any Person who uses capacity on a franchised Cable system to deliver Cable service or other communications service (as that term is used in 47 U.S.C. Section 542(h)) to Subscribers and who is not an Affiliate of the Cable Operator.
- (39) "Video programming" means programming provided by or generally considered comparable to programming provided by a television broadcast station.]

SECTION IV:

That Section 5.19.030 of the Carson City Municipal Code is hereby added as follows:

[5.19.030 Regulation of basic service rates and charges.

- (a) The City may regulate rates except to the extent prohibited by state and federal law.

- (b) In connection with state and federal law, as set forth in paragraph (a) above, the City will ensure a reasonable opportunity for consideration of the views of interested parties.
- (c) The City Manager is authorized to execute on behalf of the City and file with the FCC such certification forms or other instructions as are now or may hereafter be required by the FCC rate regulations in order to enable the City to regulate basic service rates and charges.
- (d) Each Cable Operator shall file with the City Clerk an up-to-date rate schedule and user rates, fees and charges for all cable services and products provided at least 30 days before the changes go into effect.]

SECTION V:

That Section 5.19.040 of the Carson City Municipal Code is hereby added:

[5.19.040 Terms.

- (a) Authority to grant franchises or licenses for cable television: It shall be unlawful to engage in or commence construction, operation, or maintenance of a cable television system without a franchise issued under this Chapter or a franchise granted prior to the adoption of this Chapter. The Board may award a nonexclusive franchise to construct, operate and maintain a cable television system which complies with the terms and conditions of this Chapter subject to federal, state and local laws.

Any franchise granted pursuant to this Chapter shall be nonexclusive and shall not preclude the City from granting other or further franchises or permits or preclude the City from using any roads, rights-of-way, streets or other public properties or affects its jurisdiction over them or any part of them; or limit the full power of the City to make all necessary changes, as the City in its sole discretion shall decide, including the dedication, establishment, maintenance and improvements of all new rights-of-way and thoroughfares and other public properties of any type. All franchise agreements granted subsequent to the effective date of this master cable ordinance shall be granted consistent with the terms and conditions of this Chapter.

- (b) Nature and extent of the franchise: Any franchise granted hereunder by the City shall authorize the Cable Operator, subject to the provisions herein contained:
 - (1) To engage in the business of operating and providing cable service and the distribution and sale of such service to subscribers within the city;

- (2) To erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any street, such amplifiers and appliances, lines, cables, conductors, vaults, manholes, pedestals, attachments, supporting structures, and other property as may be necessary and appurtenant to the cable communications system and, in addition, so to use, operate, and provide similar facilities, or properties rented or leased from other persons, firms or corporations, including but not limited to any public utility or other Cable Operator franchised or permitted to do business in the city;
- (3) A Franchise shall not include, or be a substitute for:
 - a. complying with requirements for the privilege of transacting and carrying on a business within the City, including but not limited to complying with the conditions the City may establish before constructing facilities for, or providing, non-cable services;
 - b. any permit, agreement or authorization required in connection with operations on or in public ways or public property, including by way of example and not limitation, street cut permits; or
 - c. any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by the Franchise.
- (4) A UVPP that is only delivering cable service or other communications service (as that term is used in 47 U.S.C. Section 542(h)) to subscribers.
- (c) A Franchise does not relieve a Cable Operator of its duty to comply with all City ordinances and regulations, and every Cable Operator must comply with the same. Likewise, the rights granted under a Franchise are subject to the exercise of police and other powers the City now has or may later obtain, including but not limited to the power of eminent domain.
- (d) A Franchise does not convey title, equitable or legal, in the public way. Rights granted may not be subdivided or subleased.
- (e) A Franchise shall not convey rights other than as specified in this ordinance, or in a Franchise agreement; no rights shall pass by implication.
- (f) Every Franchise shall be for a term of years that shall be specified in the Franchise.
- (g) Unless otherwise specifically stated in a Franchise or required by law, all acts which a Cable Operator is required to perform under the Franchise or applicable

law must be performed at the Cable Operator's expense.

- (h) If a Cable Operator fails to perform work that it is required to perform within the time provided for performance, the City may perform the work and bill the Cable Operator therefore. The Operator shall pay the amounts billed within 30 days.]

SECTION VI:

That Section 5.19.050 of the Carson City Municipal Code is hereby added as follows:

[5.19.050 Violation- - Penalty.

- (a) Any notice of violation issued pursuant to this Chapter shall be adjudicated in accordance with the provisions of subsection (b) below.
- (b) Franchise Violation-Notice and Procedures. Before revoking a Franchise or issuing an order to assess liquidated damages, the City shall follow the procedures set forth below:
 - (1) The City shall notify a Cable Operator in writing of any alleged violation ("Violation Notice") of a Franchise or this Chapter. The Violation Notice shall: (a) identify the violation; (b) direct the Cable Operator to cure the violation or show cause why the violation cannot or should not be cured; and (c) state the time for the Cable Operator's response, which shall be at minimum thirty (30) days from the date of issuance of the Violation Notice, except for violations that present a danger to public health, safety or welfare, in which case the time for response may be shortened.
 - (2) Within the time period designated for response, the Cable Operator shall respond in writing to the City indicating that: (a) the Cable Operator intends to contest the Violation Notice and describing all facts relevant to its claim; or (b) the Cable Operator has completely cured the violation, in which case the Cable Communications System Operator shall provide documentation demonstrating that the violation has been completely cured; or (c) the Cable Communications System Operator has begun to correct the violation, however, the violation cannot be corrected immediately despite the Cable Communications System Operator's continued due diligence, in which case the Operator shall describe in detail the steps already taken and Operator's proposed plan and time schedule for completely curing the violation. Correction of the violation is not complete until all damages and penalties owed are paid in full.

- (3) If the Cable Operator contests the Violation Notice or the City determines that the Cable Operator has failed to completely cure the violation, to submit an acceptable plan to cure the violation, or to work diligently to cure the violation, the City shall schedule a hearing before an impartial Hearings Officer ("Violation Hearing"). The City shall provide Cable Operator written notice of the Violation Hearing at least twenty (20) days prior to the hearing ("Hearing Notice").
 - (4) The Hearing Notice shall indicate: (a) the time and place of the Violation Hearing; (b) the nature of the violation; and (c) the Cable Operator's right to present oral and written testimony at an open and public meeting.
 - (5) At the Violation Hearing, the Hearings Officer shall hear and consider evidence from the Cable Operator, City staff and members of the public regarding the alleged violation. The Cable Operator shall be given an opportunity to present any and all evidence relating to the alleged violation.
 - (6) If, based upon the evidence presented at the Violation Hearing, the Hearings Officer finds that Cable Operator has violated a Franchise, this Enabling Ordinance or any applicable state or federal law, the Hearings Officer may assess penalties as set out in subsection (i), or recommend to the Board of Supervisors that they issue an order assessing liquidated damages if provided for by the Operator's Franchise, or, subject to subsection (c) and the terms of the Cable Operator's Franchise, revoke or shorten the Franchise.
- (c) **Revocation and termination.** The Board of Supervisors may revoke a Franchise or reduce the term of a Franchise if it finds, after complying with procedures set forth above, that a Cable Operator has violated this Chapter or its Franchise; has defrauded or attempted to defraud the City or Subscribers; or has attempted to evade the requirements of this Chapter or its Franchise. Except as to violations that are impossible to cure, and as provided in subsections (d) and (e), the Franchise may only be revoked if the Cable Operator (1) was given notice of the default; and (2) 30 days to cure the default; and (3) the Cable Operator failed to cure the default, or to propose a schedule for curing the default acceptable to the City where it is impossible to cure the default in 30 days.
- (d) **Exception for certain acts.** No opportunity to cure is required for repeated violations, and fraud and attempted fraud shall be deemed incurable. Further, the City may declare a Franchise forfeited without opportunity to cure where a Cable Operator (A) voluntarily stops providing service it is required to provide; or (B) transfers the Franchise without the prior consent of the City other than as

required by Federal law.

- (e) Remedies cumulative. Remedies provided for under this Chapter, or under a Franchise shall be cumulative. Recovery by the City of any amounts under insurance, the performance bond, the security fund or letter of credit, does not limit a Cable Operator's duty to indemnify the City; or relieve a Cable Operator of its Franchise obligations or limit the amounts owed to the City.
- (f) In addition to any other remedies provided for in this Chapter or otherwise available by law, the City's hearing officer shall have the power to impose monetary penalties in the event a Cable Operator violates any provision of this Chapter or other provision of the Municipal Code, a franchise agreement, or any rule or regulation lawfully adopted thereunder. The amounts of such penalties shall be based on the following principles:
 - (1) Penalties shall exceed the financial benefits to a Cable Operator delaying or failing to comply with the applicable requirement;
 - (2) Even where such benefits are not easily discernible, the penalties shall be high enough to have a significant deterrent effect on a Cable Operator; and
 - (3) Penalties shall be sufficient to protect the City and other affected parties against loss of revenues resulting from violations.
- (g) A franchise shall also provide for fines, liquidated damages and other monetary sanctions, the amounts of which shall also reflect the foregoing principles.]

SECTION VII:

That Section 5.19.060 of the Carson City Municipal Code is hereby added as follows:

[Section 5.19.060 Application for new franchise.

An applicant for a new franchise to construct, operate, and maintain a cable television system within the city shall file an application as required by the City. The application shall be accompanied by a nonrefundable filing fee in an amount of \$7,500.00. Such fee may be used as partial payment of franchise fees provided that all direct costs incurred by the City in the franchising process have been paid; otherwise such filing fee will be applied to any such unreimbursed costs.

- (a) The City shall require information in a cable franchise application pertaining, but not limited to, the following and as required in NRS 711.230:

- (1) Experience: Detailed description of the applicant's experience in providing cable service to other municipalities.
- (2) Financial: Copies of annual reports and pro forma financial projections pertaining to the requested franchise.
- (3) Character: Full disclosure by the applicant of any criminal convictions or other misconduct affecting Cable Operator's performance including false/misleading advertising, perjury, anti-trust violations as well as data pertaining to civil proceedings, if any, pertinent to the City's evaluation of the applicant.
- (4) Conflicts of interest: The nature of any potential conflict of interest will be required.]

SECTION VIII:

That Section 5.19.070 of the Carson City Municipal Code is hereby added as follows:

[5.19.070 Plans and specifications.

Each application for a new franchise shall include detailed plans and specifications for the cable television system to be installed. Upon completion, the applicant shall file strand maps with the City Clerk--in both hard copy and electronic mapping format compatible with the current City electronic mapping format--showing the detailed location of all underground and aerial cable plant and active electronics, including but not limited to, all transmitting and receiving pickup location samplers and pedestal locations.]

SECTION IX:

That Section 5.19.080 of the Carson City Municipal Code is hereby added as follows:

[5.19.080 Hearing.

- (a) After the application for a new franchise has been received, the Board of Supervisors shall conduct a public hearing and shall consider the following factors among others in granting said franchise:
 - (1) That the public will be benefited by the granting of a franchise to the applicant;
 - (2) The economic impact upon private property within the franchise area;

- (3) That the applicant has the necessary financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the applicant's proposal, and
- (4) That the applicant's proposal is reasonable to meet the future cable-related community needs and interests taking into account the cost of meeting such needs and services;
- (5) That the applicant is capable of complying with all relevant federal, state and local regulations pertaining to the construction, operation and maintenance of the facilities and systems incorporated in its application for a franchise;
- (6) The capacity of public rights-of-way to accommodate the cable systems;
- (7) The present and future use of the public rights-of-way to be used by the cable system;
- (8) The potential disruption to existing users of the public rights-of-way to be used by the cable system and the resultant inconvenience which may occur to the public;
- (9) The applicant has substantially complied with the material terms and applicable law in other franchises that may have been granted in other jurisdictions, if applicable;
- (10) The quality of the applicant's service has been reasonable in the light of the needs of other communities that the applicant has provided service, if applicable;
- (11) Other societal interests as are generally considered in cable television franchising;
- (12) Other matters that the City may determine to be relevant to the public interest.]

SECTION X:

That Section 5.19.090 of the Carson City Municipal Code is hereby added as follows:

[5.19.090 Franchise renewal.

The hearing and factors to be considered in renewing an existing cable franchise shall be conducted in accordance with the Cable Act.]

SECTION XI:

That Section 5.19.110 of the Carson City Municipal Code is hereby added as follows:

[5.19.110 Police power.

- (a) In accepting any franchise, the Cable Operator acknowledges that its rights hereunder are subject to the lawful police power of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and it agrees to comply with all applicable general laws enacted by the City pursuant to such power.
- (b) The City Manager is authorized to administer the provisions of this ordinance and any Franchise issued pursuant thereto, and to provide any notices (including noncompliance notices) and to take any action on the City's behalf that may be required hereunder or under applicable law.
- (c) The failure of the City, upon one or more occasions, to exercise a right or to require compliance or performance under a Franchise or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing.
- (d) The City may designate one or more entities, including itself, to control and manage the use of Public, Educational and Government Access Channels, facilities and equipment.]

SECTION XII:

That Section 5.19.120 of the Carson City Municipal Code is hereby added as follows:

[5.19.120 Construction requirements.

- (a) Duty to report: Commencing at the end of the first full calendar quarter following the issuance of a new franchise pursuant to the provisions of this Chapter, and continuing every calendar quarter thereafter until the date cable television services are made available to 100 percent of the dwelling units within each franchise area, the Cable Operator shall file with the City Clerk a written declaration identifying the number and percentage of dwelling units in each franchise area to which such services have been made available as of the last day of the quarter for which the declaration is made. Upon request the Cable Operator shall make available to the City such maps, documents and other data as were used by the Cable Operator to compile the aforesaid declaration and which do not contain proprietary information . Cable Operator shall provide the City the opportunity to inspect at its office any information

that is considered proprietary and confidential or competitively sensitive, however, City may not copy or remove said documents. Said quarterly declarations shall be filed not later than the first day of the second calendar month following the end of the quarter for which the report is filed.

(b) Completion of new franchise:

- (1) A final order of completion shall be issued by the Board of Supervisors when:
 - a. Construction of the cable television system under a new franchise agreement has been completed within the entirety of each franchise area in compliance with construction standards and the design and other requirements of this Chapter;
 - b. Cable television services have been made available to 100 percent of the dwelling units within each franchise area;
 - c. Any and all studio facilities, equipment, channels and other services, resources or benefits required for public, educational, and governmental access purposes pursuant to the provisions of this Chapter or the franchise agreement have been completed and made available;
 - d. Complete and accurate strand maps pursuant to Section 5.19.120 have been filed by the Cable Operator with the City Clerk; and
 - e. A notice of completion has been filed by the Cable Operator.
- (2) For purposes of this Chapter, cable television service shall be deemed to be made available when cable television services are offered on a nondiscriminatory basis for immediate provision to the owner or legal representative of the owner empowered to consent to use of the property of such individual dwelling units.
- (3) During the period of new construction of the cable television system and the 60-day period following the filing of the notice of completion, all elements and components thereof, and all equipment and studio facilities required by the franchise documents shall be subject to inspection by City employees or authorized agents or representatives thereof, for the purpose of determining whether the system and related facilities comply with the franchise and the provisions of this Chapter. The Cable Operator shall authorize such inspection and provide such information and cooperation as is required in order to permit an adequate investigation to determine the existence or nonexistence of such

compliance.]

SECTION XIII:

That Section 5.19.130 of the Carson City Municipal Code is hereby added as follows:

[5.19.130 Construction notification.

The city may establish reasonable minimum requirements for advance notification to residents adjacent to proposed construction areas.]

SECTION XIV:

That Section 5.19.140 of the Carson City Municipal Code is hereby added as follows:

[5.19.140 Communications with regulatory agencies.

The Cable Operator shall maintain a list and description of all regular, special and non-routine communications filed with regulatory agencies regarding the cable systems within the City, which shall be filed with the City Clerk within 15 days following regulatory agency filing. Copies of any petitions, applications, communications, and reports submitted by the Cable Operator to the FCC, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting construction or operation of the cable television system or services provided through the system, shall be filed upon request with the City Clerk. Copies of responses or any other communications from the regulatory agencies to the Cable Operator, shall likewise be filed upon the request of the City Manager with said Clerk.]

SECTION XV:

That Section 5.19.150 of the Carson City Municipal Code is hereby added as follows:

[5.19.150 Technical standards.

The Cable Operator shall, at a minimum, comply with technical standards of the FCC Regulations Part 76, Subpart K.]

SECTION XVI:

That Section 5.19.160 of the Carson City Municipal Code is hereby added as follows:

[Section 5.19.160 Minimum requirements.

In addition to satisfying such additional or stricter conditions as the City finds necessary based on its investigations, the following elements shall be required in every Franchise

serving more than 1000 subscribers.

- (a) System design. Each Cable Operator shall provide a cable system that uses at least 625 MHZ equipment of high quality and reliability. Each Cable Operator shall install and activate the return portion of the cable system in the sub-low frequency spectrum of 5 MHZ to 30 MHZ.
- (b) Public, educational and governmental use of the system.
 - (1) Each Cable Operator shall provide a minimum of 2 channels for PEG Access to each subscriber.
 - (2) Each Cable Operator shall install, maintain, and replace as necessary, a dedicated, bi-directional fiber optic link between its headend and a location designated by the City as the primary Access center.
 - (3) Each Cable Operator shall install, maintain, and replace activated two-way cable plant and all headend, cable plant, and node equipment required to make it operable so that the City, schools, and all designated PEG Access centers and Access facilities located within the franchise area will be able to send and receive signals (video, audio, and data) using the activated two-way cable plant.
 - (4) Each Cable Operator shall ensure that technically adequate signal quality, routing systems, and switching and/or processing equipment are initially and continuously provided for all Access interconnections both within Cable Operator's Cable system and with other Cable systems throughout the duration of its Franchise.
 - (5) In the event a Cable Operator makes any change in the cable system and related equipment and facilities or in the Cable Operator's signal delivery technology which directly or indirectly substantially affects the signal quality or transmission of Access programming, the Cable Operator shall at its expense take necessary steps or provide necessary technical assistance, including the acquisition of all necessary equipment, to ensure that the capabilities of Access programmers are not diminished or adversely affected by such change.
 - (6) Each Cable Operator shall maintain all Access Channels (both upstream channels and downstream channels) and all interconnections of access channels at the same level of technical quality and reliability as the best commercial channels carried on

the Cable Operator's system.

- (c) Service to Franchise area. It is the policy of the City to ensure that every cable system provides service in its franchise area upon request to any person or any government building. Each Cable Operator shall extend service upon request within its franchise area, provided that, a franchise may permit a franchisee to require a potential subscriber to contribute a fair share of the capital costs of installation or extension as a condition of extension or installation in cases where such extension or installation may be unduly expensive. Service must be provided within time limits specified in the following section.
- (d) Time for extension. Except as a franchise may otherwise provide, service must be extended upon request to any person or to any government building in a Cable Operator's franchise area (i) within seven days of the request, where service can be provided by activating or installing a drop; (ii) within 90 days of the request where an extension of one-half mile or less is required; or (iii) within six months where an extension of one-half mile or more is required.
- (e) Interconnection. Upon request of the City, every Cable Operator shall be required to interconnect with every other cable system within, or adjacent to Carson City on fair and reasonable terms for purposes of providing PEG and I-Net services.
- (f) Each Cable Operator shall, during the term of the franchise, ensure that subscribers are able to receive continuous service. In the event the franchise is revoked or terminated, the franchisee may be required to continue to provide service for a reasonable period to assure an orderly transition of service from the franchisee to another entity. A franchise may establish more particular requirements under which these obligations will be satisfied.]

SECTION XVII:

That Section 5.19.170 of the Carson City Municipal Code is hereby added as follows:

[Section 5.19.170 Technical capability and standards.

- (a) General capability: Each cable television system shall, at minimum:
 - (1) Relay to Subscriber terminals those broadcast signals required by the FCC;
 - (2) Distribute in color all television signals that it receives in color;

- (b) Standby/emergency power: Each cable television system shall include equipment capable of providing standby power for the headend. The equipment shall be so constructed as to automatically notify the Cable Operator when it is in operation or to automatically revert to the standby mode when the AC power returns.

- (c) Technical standards: Each Cable Operator shall construct, install and maintain its cable television system in a manner consistent and in compliance with all applicable laws, ordinances, construction standards, *governmental* requirements, and technical standards equivalent to, at a minimum, those established by the FCC. Each Cable Operator shall provide to the City Clerk written reports of the Cable Operator's annual proof of performance tests conducted pursuant to FCC standards and requirements.
 - (1) Each Cable Operator shall at all times comply with the National Electrical Safety Code (National Bureau of Standards); National Electrical Code (National Bureau of Fire Underwriters); applicable FCC and other federal, state and local regulations; and codes and other ordinances of the City.
 - (2) In any event, the cable television system shall not endanger or interfere with the safety of persons or property within the city or other areas where the Cable Operator may have equipment located.
 - (3) All working facilities, conditions, and procedures used or occurring during construction of the cable television system shall comply with the standards of the Occupational Safety and Health Administration.
 - (4) Construction, installation and maintenance of the cable television system shall be performed in an orderly and workmanlike manner, and in close coordination with public and private utilities serving the city following accepted construction procedures and practices.
 - (5) All cable and wires shall be installed, where possible, parallel with electric and telephone lines, and multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering consideration.
 - (6) Any antenna structure used in the cable television system shall comply with construction, marking and lighting of antenna structures required by the United States Department of Transportation.]

SECTION XVIII:

That Section 5.19.180 of the Carson City Municipal Code is hereby added as follows:

[Section 5.19.180 Leased access channels.

The Cable Operator shall be in compliance with Section 612 of the Cable Act.]

SECTION XIX:

[Section 5.19.190 Restrictions and obligations regarding street lights.

- (a) The following restrictions and obligations in the use or construction of streets shall be complied with by the Cable Operator notwithstanding the grant to use streets made by the franchise.
- (1) Nothing in the franchise shall be construed to prevent the City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any street; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating or repairing any sidewalk, curb, storm drain, traffic signal, street light, signs or other public work. The City shall exercise best efforts to ensure that all such work is done in such manner as not to obstruct, injure or prevent the free use and operation of the poles, wires, conduits, ducts, pipes or appurtenances of the Cable Operator. If any such property of the Cable Operator shall interfere with the construction or relocation, maintenance or repair of any street or public improvement, whether it be construction, repair, maintenance, removal or relocation of a sewer, public sidewalk, or curb water main, street or any other public improvement, 30 days' notice shall be given to the Cable Operator by the City and all such poles, wires, conduits, or other appliances and facilities shall be removed or replaced by the Cable Operator in such manner as shall be directed by the City so that the same shall not interfere with the said public work of the City and such removal or replacement shall be at the expense of the Cable Operator.
 - (2) The Cable Operator shall construct and maintain the system so as not to unreasonably interfere with other uses of streets.
 - (3) If the City shall make improvements or changes on all or any parts of streets, sewer, water main or public sidewalk, over, under or along which any part of the system has been installed, then in such case the Cable Operator shall, after 30 days' notice from the City, proceed to alter, change, vacate or remove from the right-of-way or easement any part of the Cable Operator's system necessary to conform with said City improvements or changes without cost whatsoever to the City.
- (b) The Cable Operator shall have the option to request and the City shall not

unreasonably withhold the extending of deadlines for removal of the system due to the Cable Operator's need to purchase equipment or on a showing of some other legitimate need for an extension of time.

- (c) A Franchise is required before a permit may be issued for work associated with the construction of a cable system. Any permit issued for such work to a person that does not hold a Franchise shall vest no rights in the permittee; the permit may be revoked at will, and the permittee shall remove all facilities installed under the permit upon the City's demand.
- (d) Construction, operation, excavations of any kind or repair of a cable system shall not commence until all required permits have been obtained from the proper City officials and all required fees have been paid. All work performed will be performed in strict accordance with the conditions of the permit. Upon order of the City, any work and/or construction undertaken that is not completed in compliance with the City's requirements, or which is installed without obtaining necessary permits and approvals shall be removed.
- (e) Work shall be publicized by the Cable Operator(s) at the Cable Operators' expense as the City may direct from time to time. The publication of work may be used to notify the public and operators of other communications systems, of the impending work, in order to minimize inconvenience and disruption to the public.
 - (1) Each Cable Operator shall provide the City a plan for any initial system construction, or for any substantial rebuild, upgrade or extension of its facility, which shall show its timetable for construction of each phase of the project, and the areas of the City that will be affected.
- (f) To the extent possible, Cable Operators shall use existing poles and conduit. Additional poles may not be installed in the right-of-way, nor may pole capacity be increased by vertical or horizontal extenders, without the permission of the City Manager.
- (g) To minimize disruption of public passage or infrastructure, to forestall or relieve exhaustion of rights-of-way capacity, or to protect environmentally sensitive areas, the City Manager may require as a condition of issuing any rights-of-way permit for erection of new poles or construction of underground conduit, the installation of which requires excavation of or along any public right of way that the Cable Operator or holder of a permit provide pole space or empty conduits in excess of its own present and reasonably foreseeable requirements for the purpose of accommodating the City and/or other Cable Operators.
- (h) Whenever existing utilities are located underground in an area in the City, every Cable Operator in the same area must locate its cable system underground.

- (1) Whenever the owner of a pole locates or relocates underground within an area of the City, every Cable Operator in the same area shall be provided a thirty (30) day notice of the relocation and concurrently relocate its facilities underground.
- (2) The City Manager may, for good cause shown, exempt a particular system or facility or group of facilities from the obligation to locate or relocate facilities underground, where relocation is impractical, or where the City and the subscriber's interest can be protected in another manner. Nothing in this Section prevents the City from ordering communications facilities to be located or relocated underground except for Cable Operator's ordinary engineering practice making *undergrounding* impracticable or infeasible under other provisions of the Municipal Code.
 - (i) Any and all public ways, other public property, or private property that is disturbed or damaged during the construction, operation, maintenance or repair of a cable system shall be promptly repaired by the system's Cable Operator. Public property and public ways must be restored to the satisfaction of the City to a condition as good or better than before the disturbance or damage occurred.

SECTION XX:

That Section 5.19.200 of the Carson City Municipal Code is hereby added as follows:

[5.19.200 New developments, future services.

In the case of new developments where utilities are to be placed underground, the developer shall have the responsibility for insuring that cable service is made available to that new development by providing the cable company with at least four weeks advance notice of any construction or development, including a copy of any final plan, and of the particular date on which open trenching or other facilities shall be available for the Cable Operator's installation of cable. The developer shall be solely responsible for the cost of opening and closing of such trenches and for the installation of conduit. Upon request the Cable Operator shall also provide specifications to the developer as needed for trenching, or other technical data that may be required.

If technical equipment such as prewiring or distribution system is installed by the developer, it is the developer's responsibility to make certain that such equipment meets FCC as well as state, City and the Cable Operator's standards.]

SECTION XXI:

That Section 5.19.210 of the Carson City Municipal Code is hereby added as follows:

[5.19.210 Movement facilities.

Whenever any person shall have obtained permission from the City to use any street for the purpose of moving any large object, vehicle, building or other structure, a Cable Operator, upon seven days written notice from the City Manager, shall raise or remove, at the expense of that person desiring to move the large object, vehicle, building or other structure, any of its or their wires which may obstruct the removal of such large object, vehicle, building or other structure. Where more than one street is available for the moving of such building, the building shall be moved on such street as shall cause the least interference with the lines of the Cable Operator and other franchise holders. It is further provided that the person or persons moving such building shall indemnify and save harmless said Cable Operator of and from any and all damages or claims of whatsoever kind or nature caused directly or indirectly for such temporary arrangement of the lines and poles of the franchise.]

SECTION XXII:

That Section 5.19.220 of the Carson City Municipal Code is hereby added as follows:

[5.19.220 Tree trimming.

- (a) Upon the City's Manager's timely written approval, which shall not be unreasonably withheld, the Cable Operator shall have the authority to trim trees upon and overhanging public rights of way so as to prevent the branches of such trees from coming in contact with the wires and cables of the Cable Operator. The Cable Operator shall be responsible for debris removal from such activities. At the option of the City, and with advance written notice and approval by the Cable Operator, which shall not be unreasonably withheld, such trimming may be done by the City or under its supervision and direction, with reasonable costs to be borne by the Cable Operator.]

SECTION XXIII:

That Section 5.19.230 of the Carson City Municipal Code is hereby added as follows:

[5.19.230 Private property.

- (a) Trees and shrubs or other landscaping that are damaged by the Cable Operator, or agent of the Cable Operator during installation or construction shall be restored to their prior condition or replaced. Trees and shrubs shall not be removed without the prior permission of the owner or legal tenant of the property on which they are located.

- (b) Property damages and restoration. The Cable Operator shall, at its own cost and expense, and in a manner approved by the property owner and the City, restore any property to as good condition as before the work causing such disturbance was initiated. The Cable Operator shall repair, replace or compensate a property owner for any damage resulting from the Cable Operator's installation, construction, service or repair activities.
- (c) Reasonable notice of work on private premises required. Except in the case of an emergency involving public safety or service interruption to a large number of Subscribers, the Cable Operator shall give reasonable notice to property owners, legal tenants, and property managers, as applicable, prior to entering upon private premises, and the notice shall specify the work to be performed; provided that in the case of construction operations such notice shall be delivered or provided in writing at least 24 hours prior to entry. Nothing herein shall be construed as authorizing access or entry to private property, or any other property, where such right to access or entry is not otherwise provided by law. If damage is caused by any Cable Operator activity, the Cable Operator shall reimburse the property owner 100 percent of the cost of the damage or replace the damaged property. For the installation of pedestals or other major construction or installation projects, property owners shall also be notified in writing at least 24 hours in advance. In the case of an emergency, the Cable Operator shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made.
- (d) Worksites are to be kept clean and refuse is to be disposed of in an appropriate manner. Cable Operator personnel shall clean all areas surrounding any work site and ensure that all refuse and excess materials have been disposed of properly on a daily basis.]

SECTION XXIV:

That Section 5.19.240 of the Carson City Municipal Code is hereby added as follows:

[5.19.240 Customer service standards.

- (a) Each Cable Operator must satisfy FCC, state and City cable customer service standards and consumer protection standards. City cable customer service standards may be adopted by resolution. In the case of a conflict among standards, the stricter standard shall apply.]

SECTION XXV:

That Section 5.19.250 of the Carson City Municipal Code is hereby added as follows:

[5.19.250 Customer 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, a Cable Operator shall provide notice in the form of a separate, written statement to such Subscriber which clearly and conspicuously informs the Subscriber of:
- (1) The nature of personally identifiable information collected or to be collected 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 any identification of the types of persons to whom the disclosure may be made;
 - (3) The period during which the Cable Operator will maintain such information;
 - (4) The times and place at which the Subscriber may have access to such information in accordance with subsection (a)(2) of this section; and
 - (5) The limitations provided by this section with respect to the collection and disclosure of information by a Cable Operator and the right of the Subscriber under subsections (i) and (j) to enforce such limitations.
- (b) For purposes of this section, the term "personally identifiable information" does not include any record aggregate data which does not identify particular persons. The term "other service" includes any wire or radio communications service provided using any of the facilities of a Cable Operator that are used in the provision of cable service.
- (c) Except as provided in subsection (d) of this section, a Cable Operator shall not use the cable system to collect personally identifiable information concerning any Subscriber without the prior written or electronic consent of the Subscriber concerned, and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the Subscriber or Cable Operator.
- (d) A Cable Operator may use the cable system to collect personal identifiable information in order to:
- (1) Obtain information necessary to render a cable service or other service provided by the Cable Operator to the Subscriber; or
 - (2) Detect unauthorized reception of cable communications.
- (e) Except as provided in subsection (f) of this section, a Cable Operator shall not

disclose personally identifiable information concerning any Subscriber without the prior written or electronic consent of the Subscriber concerned and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or cable operator.

- (f) A Cable Operator may disclose such information if the disclosure is:
- (1) 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;
 - (2) Subject to subsection (j), made pursuant to a court order authorizing such disclosure, if the Subscriber is notified of such order by the person to whom the order is directed; or;
 - (3) A disclosure of the names and addresses of Subscribers to any cable service or other service, if:
 - a. The Cable Operator has provided the Subscriber the opportunity to prohibit or limit such disclosure, and
 - b. The disclosure does not reveal, directly or indirectly, the extent of any 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 of the Cable Operator.
- (g) A Subscriber shall be provided, free of charge, access to all personally identifiable information regarding that Subscriber which is collected and maintained by a Cable Operator. Such information shall be made available to the Subscriber at reasonable times and at a convenient place designated by Cable Operator. A cable Subscriber shall be provided reasonable opportunity to correct any error in such information.
- (h) A Cable Operator 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 requests or orders for access to such information under subsection (g) or pursuant to a court order.
- (i) Any person aggrieved by any act of a Cable Operator in violation of this section may bring a civil action in a United States District court or court of general jurisdiction, as provided in Section 631 of the Cable Act.
- (j) Nothing in this chapter shall be construed to prohibit the City from enacting or enforcing additional laws consistent with this section for the protection of

Subscriber privacy.

- (k) A governmental entity may obtain personally identifiable information only if, in the court proceeding relevant to such court order:
 - (1) Such entity offers clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the case; and
 - (2) The subject of the information is afforded the opportunity to appear and contest such entity's claim.]

SECTION XXVI:

That Section 5.19.260 of the Carson City Municipal Code is hereby added as follows:

[5.19.260 Safety.

- (a) The Cable Operator shall install and locate its facilities, cable system, and equipment in compliance with all federal, state, local, and company safety standards, and in such manner as shall not unduly interfere with or endanger persons or property.
- (b) The Cable Operator shall, at all times, employ professional care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damages, injuries, or nuisances to the public.
- (c) Whenever the Cable Operator receives notice that an unsafe condition exists with respect to its equipment, the Cable Operator shall investigate such condition immediately, and shall take such measures as are necessary to remove or eliminate any unsafe condition.
- (d) All structures and all lines, equipment and connections in, over, under and upon the streets, sidewalks, alleys, and public ways or places of the franchise area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair.
- (e) The City reserves the general right to see that the system of the Cable Operator is constructed and maintained in a safe condition. If an unsafe condition is found to exist by the City, it may order the Cable Operator to make necessary repairs immediately from the receipt of the City's notification stating the exact nature thereof and, if not so made, the City may make the repairs itself or have them made and collect all reasonable costs thereof from the Cable Operator.]

SECTION XXVII:

That Section 5.19.270 of the Carson City Municipal Code is hereby added as follows:

[5.19.270 Complaints and security fund.

- (a) Cable Operator shall maintain and make available accurate records of customer complaints. The Cable Operator shall, in a manner consistent with the privacy rights of Subscribers and federal and state law, keep accurate and comprehensive files of any and all complaints regarding the cable system, operation of the cable system, and the Cable Operator's actions in response to those complaints. These files shall remain open to the City and the public during normal business hours. The City may make a written request to the Cable Operator to provide the City Clerk an executive summary monthly, which shall include information concerning Subscriber complaints. A summary of service requests, identifying the number and nature of the requests and their disposition, shall also be completed by the Cable Operator for each month and submitted to the City, upon written request, by the fifteenth (15th) day of the following month. The Cable Operator shall retain, and make available to the City Clerk the records and reports specified in this section for a period of three years.
- (b) Security fund. Within 30 days of the effective date of any franchise granted by the City, or renewal thereof, the Cable Operator shall supply a commercial surety bond to the City in a form approved by the City for a reasonable amount of money to protect Subscribers within its jurisdiction. Such reasonable amount shall be the greater of:
 - (1) \$50,000.00 or
 - (2) \$1.00 per Subscriber within the franchise area. The number of Subscribers within the franchise area shall be determined and documented by the Cable Operator as of the effective date of each franchise granted or renewed and shall be updated on January 1st of each year thereafter.

The surety bond shall constitute a "Security Fund" for ensuring compliance with this Chapter for the benefit of the City and the Subscribers within the franchise area. The surety bond shall be maintained even if amounts are withdrawn pursuant to any provision of this Chapter. At any time during the term of this agreement, the City may require the Cable Operator to increase the amount of the Security Fund, if it finds that new risk factors exist, which necessitate such an increase. The Security Fund shall serve as security for the payment of any penalties, fees, charges or credits as provided for herein and for the dutiful performance by the Cable Operator of all its obligations under this Chapter and any franchise agreement. The rights reserved to the City with

respect to the Security Fund are in addition to all other rights of the City, whether reserved by any applicable franchise agreement or authorized by law, and no action, proceeding or exercise of a right with respect to same shall in any way affect, or diminish, any other right the City may otherwise have.

- (c) Complaint procedure. The Cable Operator shall establish written procedures, which are consistent with this Chapter, for receiving, acting upon, and resolving Subscriber complaints, and crediting Subscriber accounts and shall publicize such procedures through printed documents at the Cable Operator's sole expense. Said written procedures shall prescribe a simple manner in which any Subscriber may submit a complaint by telephone, FAX, E-mail, in-person, or in writing to the Cable Operator that it has violated any provision of this Chapter, any terms or conditions of the Subscriber's contract with the Cable Operator, or reasonable business practices. At the conclusion of the Cable Operator's investigation of a Subscriber complaint, but in no more than 15 calendar days after receiving the complaint, the Cable Operator shall notify the Subscriber of the results of its investigation and findings and any proposed action or credit. The Cable Operator shall also notify the Subscriber of the Subscriber's right to file a complaint with the City in the event the Subscriber is dissatisfied with the Cable Operator's decision, and shall thoroughly explain the necessary procedures for filing such complaint with the City. A copy of the Cable Operator's complaint procedures, and changes to thereof, shall be provided to the City prior to implementation.]

SECTION XXVIII:

That Section 5.19.280 of the Carson City Municipal Code is hereby added as follows:

[5.19.280 Verification of compliance.

- (a) The Cable Operator shall establish its compliance with this Chapter by providing reports to the City Clerk that demonstrate such compliance within the franchise area, including but not limited to:
 - (1) Quarterly comments on citizen relations, such as the number of billing disputes, repair service disputes, complaints referred by the City and how those issues were resolved;
 - (2) A quarterly summary by category of subscriber complaints, identifying the number and nature of complaints and their dispositions;
 - (3) Quarterly telephone call analysis showing the telephone answer times and wait times; and
 - (4) Quarterly telephone call analysis showing the percentage of calls

receiving busy signals; and

- (5) Quarterly log of service interruptions; and
 - (6) Subject to applicable federal and state laws and regulations, any other information requested by the City.
- (b) In the event the City documents a pattern of complaints during a single 30-day period that is unrelated to a force majeure condition, City may require Cable Operator to provide monthly reports for any of the above listed reports for a period not to exceed six months, unless the pattern of complaints remains uncured.
- (c) The Cable Operator shall retain, and make available to the City upon written request, the reports specified in subsection (a) for a period of three years.]

SECTION XXIX:

That Section 5.19.290 of the Carson City Municipal Code is hereby added as follows:

[Section 5.19.290 Overall quality of service.

- (a) The City may evaluate the overall quality of customer service provided by the Cable Operator to Subscribers in conjunction with any performance review provided for in the franchise agreement; and
- (b) The City may evaluate the overall quality of customer service provided by the Cable Operator to Subscribers at any other time, at its sole discretion, based on the number of Subscriber complaints received by the Cable Operator and the City, and the Cable Operator's response to those complaints.]

SECTION XXX:

That Section 5.19.300 of the Carson City Municipal Code is hereby added as follows:

[5.19.300 Noncompliance.

Non-compliance with any provision of this Chapter is deemed to be a violation of this Chapter and a violation of the terms of the Cable Operator's franchise agreement.

SECTION XXXII:

That Section 5.19.310 of the Carson City Municipal Code is hereby added as follows:

[5.19.310 Franchise fee.

(a) A Cable Operator shall pay to the City a franchise fee in an amount equal to five percent (5%) of Gross Revenues, or such other amount as may be specified in the Franchise; provided, however, that if the Franchise specifies a legal maximum amount, that amount shall be subject to increase should federal limits on fee payments be eliminated or changed and other Franchisees are subject to a higher fee.

(1) Bundled Services. In the event that a Cable Operator shall offer bundled, tied, or combined cable services (which are subject to the franchise fee) with non-cable services (which may not be subject to the franchise fee) to individual subscribers, the combined revenues from such bundled services shall be allocated consistent with the rates or prices advertised by the Cable Operator through its marketing materials or on its published rate card. In the event the Cable Operator does not advertise or publish separate prices for the combined services, the percentage that the price for the combined services is discounted from the regular retail rates of the individual services shall be pro-rated across all the services in the bundled package; provided, however, that the net revenues derived from services subject to mandatory tariff rates imposed by the Nevada State Public Utilities Commission (or other governmental entity having such authority) shall be deducted from the combined revenue to determine the revenue subject to the franchise fee. As an example, a Cable Operator may offer a "bundle" of video, voice and data services for a flat fee of \$75.00 where the retail rate for the services purchased on an individual basis would equal \$100.00. Assuming that there is no service subject to the mandated tariff rate, the Cable Operator would apply a twenty-five percent (25%) discount to each service. Thus, if the retail rate for the cable service in the bundle were \$50.00, the Cable Operator would recognize cable service revenue in the amount of \$37.50 and pay a franchise fee on that revenue.

(2) The definition of Gross Revenue is to be as inclusive as possible consistent with existing applicable law. If a change in federal law occurs subsequent to the effective date of this ordinance, such change shall not impact the Gross Revenues definition in such a way to reduce Gross Revenues – unless the change specifically preempts the affected portion of the definition above.

(b) Late payment: Any franchise fee not paid by the Cable Operator within 60 days of date due shall bear interest at the rate of 12 percent per annum of the amount due, if such percentage does not exceed the legal maximums, from the date due, until paid.

(c) Financial reports: Each franchise fee payment shall be accompanied by a

financial report in a form approved by the City showing the basis for the Cable Operator's computation separately indicating revenues received by the Cable Operator within the City from basic service, pay TV service, other applicable sources of revenue, and such other information directly related to confirming the amount of the Cable Operator's gross revenues as may be reasonably required by the City.

- (d) Accounting standards: Not less than annually, the Cable Operator shall provide the City Manager with an unqualified certification by a fiscal officer of the Cable Operator attesting to the accuracy of the quarterly franchise fee payments paid within the preceding 12 months as hereinabove set forth. Said certification shall be prepared in accordance with generally accepted accounting standards as established by the financial accounting standards board (FASB).
- (e) Auditing and financial records: During the term of each franchise, the City may, not more frequently than once a year, conduct an audit of the books, records and accounts of the Cable Operator for the purpose of determining whether the Cable Operator has paid franchise fees in the amount hereinabove prescribed. The audit may be conducted by an auditor of the City or by a consultant retained by the City, and shall be conducted at the sole expense of the City. The party conducting the audit shall prepare a written report containing its findings, and the report shall be filed with the City Clerk, and mailed to the City and Cable Operator.

Each Cable Operator shall make available for inspection by authorized representatives of the City, its books, accounts, and all other financial records reasonably related to the computation of franchise fees at reasonable times and upon reasonable advance notice for the purpose of permitting exercise of the authorities conferred by this section.

In the event that such audit discloses a discrepancy of more than four percent (4%) between the financial report submitted by the Cable Operator with a payment and the actual gross revenues collected by the Cable Operator, the Cable Operator agrees to pay to City the reasonable costs of such audit, up to \$10,000. In the event that such audit results in a determination that additional franchise fees are due the City, the Cable Operator shall pay the additional franchise fees due and payable together with interest as required for late payment on such additional franchise fees computed from the date on which such additional franchise fees were due and payable.

- (f) Nonwaiver: No acceptance of any franchise fee payment by the City shall be construed as an agreement by the City that the franchise fee paid is in fact the correct amount, nor shall its acceptance of payment be construed as a release or waiver of any claim the City may have for further or additional sums payable under the provisions of this Chapter.

- (g) Taxes: Nothing in this section shall limit the Cable Operator's obligation to pay applicable local, state, or federal taxes.]

SECTION XXXIII:

That Section 5.19.320 of the Carson City Municipal Code is hereby added as follows:

[5.19.320 Consumer Protection.

The quality of service provided to the residents of Carson City by the Cable Operator is of utmost concern to the City. To that end, periodic meetings and certain reports will be required. In addition to these meetings and reports, the City Manager shall maintain an oversight review of the Cable Operator's performance in those areas in accordance with Section 632 of the Cable Act.]

SECTION XXXIV:

That Section 5.19.330 of the Carson City Municipal Code is hereby added as follows:

[5.19.330 Reports.

- (a) Throughout the term of the franchise, the Cable Operator shall be required to furnish to the City Clerk by June 30 of each year a report of its activities within the City, including, but not limited to the following:
- (1) A revenue report certified as correct by an officer of the Company;
 - (2) A list of officers and members of the board of directors of the Cable Operator and its parents;
 - (3) A list of stockholders holding five percent or more of the voting stock of the Cable Operator or its parents;
 - (4) A copy of the Cable Operator's annual report and those of its parent;
 - (5) Listings of the number of Subscribers within the City;
 - (6) The number of homes passed;
 - (7) The number of Subscribers with basic services;
 - (8) The number of Subscribers with premium services;
 - (9) The number of hook-ups in period;

- (10) The number of disconnects in period;
 - (11) The number of miles of cable laid in period;
 - (12) Total number of miles of cable in the City;
 - (13) A complete listing of all Subscriber and user rates, fees and charges and their effective dates for all cable services provided;
 - (14) Plans for future technical upgrading;
 - (15) Plans for future programming and/or changes;
 - (16) Maps indicating existing location of headend equipment, trunk and distribution lines;
 - (17) A statement of its current billing practices;
 - (18) Report on operations--Such report with respect to its operation, affairs, transactions or property, as may be determined to be within the purview of the City;
 - (19) Status of emergency power supply;
 - (20) Current service policy procedures.
- (b) Surveys. In addition to providing such other information as may be requested under subsection (a), the Cable Operator shall provide the following special reports:
- (1) Once every three years, an opinion survey report approved by the City as to form and content, which identifies subscriber satisfaction/dissatisfaction with cable services offered by the Cable Operator. Surveys required to make said report shall be statistically valid and reliable. In lieu of this obligation, a Cable Operator may agree in a franchise agreement to pay a sum to the City so that the City may perform the survey.
- (c) Material misrepresentations. Any material misrepresentation made by the Cable Operator in any report required by this section shall subject the Cable Operator to the penalty provisions of this chapter and shall subject the Cable Operator to all remedies available to the City by law.
- (d) Access to books and records.

- (1) The City or its authorized agent may inspect and copy non-proprietary books and records of the Cable Operator that are reasonably necessary to the enforcement of any provision of this chapter; the franchise agreement; to the conduct of performance evaluation sessions; or to the exercise of any authority that the City may have under the same or any other provision of applicable law. Without limiting the foregoing, a Cable Operator shall provide the City access to complaint data to enable the City to fully investigate subscriber complaints. Books and records shall be made available to the City for inspection at City Administration offices or at such other mutually agreed upon location within the City. The City will not unreasonably refuse a request that it inspect documents at the Cable Operator's facilities within the City. Provided, however, that nothing in this chapter shall be read to require the Cable Operator to violate any provision of federal or state law relating to Subscriber privacy. Information requested shall be made available for inspection within 14 business days of a request therefor, which period shall be subject to extension for good cause shown where no harm will result to the public interest from the delay.
- (2) A Cable Operator must produce the books and records requested by the City Manager even if the Cable Operator does not believe that the request satisfies the standard set out above, unless the Board of Supervisors waives the requirement, or the Cable Operator obtains a court order from a court of competent jurisdiction enjoining the request.
- (3) A Cable Operator may not refuse City inspection of Cable Operator books and records in Cable Operator's local office on the ground that such books and records contain proprietary information.]

SECTION XXXV:

That Section 5.19.340 of the Carson City Municipal Code is hereby added as follows:

[5.19.340 Cable system evaluation.

- (a) Cable Operator shall supply City with copies of its bi-annual FCC Performance Tests. In addition to FCC Performance Tests, the City Manager may require reasonable technical evaluation sessions at any time during the term of the franchise no more often than once every three years, or in the event of a documented pattern of uncured complaints relating to technical issues.
- (b) To assist in the technical evaluation, the City Manager may enlist an independent consultant to conduct an analysis of the cable system and its performance and to submit a report of such analysis to the City.
- (c) During a technical evaluation session, the Cable Operator shall fully cooperate with the City or its consultant and shall provide without cost such information

and nonproprietary documents as the City or its consultant may reasonably request to perform technical evaluation.

- (d) If, as a result of the evaluation session, or at any other time, the City Manager determines that reasonable evidence exists of inadequate cable system performance, it may require the Cable Operator to perform technical tests and analyses directed toward such suspected inadequacies. The report prepared by the Cable Operator shall include at least:
- (1) A description of the problem in cable system technical performance, which precipitated the special tests.
 - (2) What cable system components were tested.
 - (3) The equipment used and procedures employed in testing.
 - (4) The method, if any, by which such cable system technical performance problem was resolved.
 - (5) Any other information pertinent to said tests and analyses, which may be required by the City Manager, or determined when the test is performed.
- (e) If the tests indicate that the system is not in substantial compliance with FCC standards, the Cable Operator shall reimburse the City for any reasonable costs involved in such test such as consultant fees or other expenses.]

SECTION XXXVI:

That Section 5.19.350 of the Carson City Municipal Code is hereby added as follows:

[Section 5.19.350 Formal performance reviews.

- (a) The City and the Cable Operator agree that it is in the Cable Operator's, the City's, and the Subscribers' best interest to conduct formal performance reviews every three years. The subjects which shall be discussed at the review shall include, but not be limited to, those items covered in the periodic reports (section 5.19.330) as well as other possible items, such as:
- (1) Subscriber service procedures for subsequent period and evaluation of performance of past period;
 - (2) Interconnection;
 - (3) Free or discounted services;

- (4) Application of new technologies;
 - (5) Technical standards;
 - (6) System performance;
 - (7) Services provided;
 - (8) Programming offered;
 - (9) Access channels, facilities and support;
 - (10) Municipal uses of cable;
 - (11) Use and promotion of institutional networks;
 - (12) Local origination;
 - (13) Consumer protection;
 - (14) Privacy;
 - (15) EEO compliance;
 - (16) Proposed amendments to the franchise;
 - (17) Judicial rulings;
 - (18) Channel utilization;
 - (19) Congressional actions;
 - (20) FCC rulings;
 - (21) The need for providing other installations in public buildings;
 - (22) Emergency standby power;
 - (23) Telephone answering;
 - (24) Other matters of concern.
- (b) The City also reserves the right to conduct periodic reviews from time to time on subjects of concern.]

SECTION XXXVII:

That section 5.19.360 of the Carson City Municipal Code is hereby added as follows:

[Section 5.19.360 Continuity of service.

It shall be the right of all Subscribers to continue receiving service so long as their financial and other obligations to the Cable Operator are fulfilled.]

SECTION XXXVIII:

That Section 5.19.370 of the Carson City Municipal Code is hereby added as follows:

[5.19.370 Modification.

In the event the Cable Operator shall seek to have the existing franchise modified, Section 625 of the Cable Act shall govern the procedure for the modification request unless the City and the Cable Operator shall otherwise agree.]

SECTION XXXIX:

That section 5.19.380 of the Carson City Municipal Code is hereby added as follows:

[5.19.380 Nondiscrimination.

The Cable Operator shall not as to rates, charges, service facilities, rules, regulations or in any other respect make or grant any preferences or advantage to any person nor subject any person to any prejudice or disadvantage, provided that nothing in this Chapter shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled, and provided further that connection and/or service charges may be waived or modified during promotional campaigns of the Cable Operator.

The Cable Operator will not deny access to cable television service to any group of potential subscribers because of the income of the residents of the local area in which the group resides.]

SECTION XL:

That Section 5.19.390 of the Carson City Municipal Code is hereby added as follows:

[5.19.390 Equal employment opportunity.

The Cable Operator shall be required to comply with state and City regulations pertaining to equal employment opportunity and in accordance with Section 635 of the

Cable Act.]

SECTION XLI:

That Section 5.19.400 of the Carson City Municipal Code is hereby added as follows:

[5.19.400 Transfer of ownership.

- (a) The following provisions apply to any transfer of ownership, change of control or assignment as defined in Section 5.19.020(b)(37).

Every change, transfer or acquisition of control of the Cable Operator's company shall make the franchise subject to cancellation unless and until the City shall have consented thereto subject to federal law.

In order to obtain approval of a transfer, an applicant must show, at a minimum, that: the transferee is qualified; the transfer will not adversely affect the interests of subscribers, the public, or the City; and that non-compliance issues have been resolved. No application shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of this title and the Franchise, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous Cable Operator for all purposes.

The proposed transferee shall pay all reasonable costs incurred by the City in reviewing and evaluating the transfer or change of control.

- (b) As part of the transfer application, and in addition to the FCC Form 394 application or its successor application, the Cable Operator shall furnish to the City the following documents:
- (1) A financial statement that verifies that assignee has the ability to comply with all terms and conditions in this Chapter and the franchise agreement.
 - (2) A list of all cable systems owned and operated by assignee within the State of Nevada.
 - (3) If assignee is a corporation, a list of officers, directors and shareholders owning five percent or more of the outstanding stock. If assignee is a partnership, a listing and biographical statement of the partners.
 - (4) A summary of current litigation with any franchising authority located within the State of Nevada.

- (5) Consistent with federal and state law, any other documents and information necessary by the City in order to render an informed transfer decision.
- (c) The City shall review and act on any and all requests for franchise transfer within 120 days after receipt of a transfer application as required by federal law and the franchise, unless the City and the Cable Operator mutually agree to an extension of this time in accordance with federal law.

Approval of any transfer or change in ownership shall not be unreasonably withheld. Any transfer or assignment approved by the City shall be evidenced by a written instrument, a duly executed copy of which shall be filed within 60 days after the approval of the transfer or assignment by the City. By said instrument the assignee shall agree to comply with all terms of this Chapter and the franchise agreement. The City shall have the right to require that any conditions in the original franchise be fulfilled prior to such transfer.]

SECTION XLII:

That Section 5.19.410 of the Carson City Municipal Code is hereby added as follows:

[5.19.410 Right of City to purchase.

The City reserves the right to purchase the existing system pursuant to Section 627 of the Cable Act.]

SECTION XLIII:

That Section 5.19.420 of the Carson City Municipal Code is hereby added as follows:

[5.19.420 Alternative remedies.

No provision of this Chapter shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of the franchise documents or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in said chapter nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages (except where liquidated damages are otherwise prescribed) for such violation by the Cable Operator, or judicial enforcement of the Cable Operator's obligations by means of specific performance, injunction, relief or mandate, or any other judicial remedy at law or in equity.]

SECTION XLIV:

That Section 5.19.430 of the Carson City Municipal Code is hereby added as follows:

[5.19.430 Anti-competitive practices.

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

SECTION XLV:

That Section 5.19.440 of the Carson City Municipal Code is hereby added as follows:

[5.19.440 Insurance.

The Cable Operator shall provide evidence to the City Clerk of both liability and property damage insurance in the amounts set out in subsection (b).

- (a) Indemnity required. No Franchise shall be valid or effective until and unless the City obtains an adequate indemnity from the Cable Operator. The indemnity must:
- (1) Release the City from and against any and all liability and responsibility in or arising out of the construction, operation or maintenance of the cable system. Each Cable Operator must further agree not to sue or seek any money or damages from the City in connection with the above mentioned matters.
 - (2) Indemnify and hold harmless the City, its trustees, elected and appointed officers, agents, and employees, from and against any and all claims, demands, or causes of action of any kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees sustained by the City or any third party arising out of, or by reason of, or resulting from or of the acts, errors, or omissions of the Cable Operator, or its agents, independent contractors or employees related to or in any way arising out of the construction, operation or repair of the system.
 - (3) Provide that the covenant and representations relating to the indemnification provision shall survive the term of the Franchise or other authorization and continue in full force and effect as to the party's responsibility to indemnify.

- (b) Insurance required. A Cable Operator (or those acting on its behalf) shall not commence construction or operation of the system without obtaining insurance in amounts satisfactory to The City. The required insurance must be obtained and maintained for the entire period the Cable Operator has facilities in the rights-of-way. If the Cable Operator, its contractors, or subcontractors do not have the required insurance, The City may order such entities to stop operations until insurance is obtained and approved.
- (c) Certificates and endorsements of insurance, reflecting evidence of the required insurance and naming the City as an additional insured, and other proofs as the City may find necessary, shall be issued to the City. For Persons issued Franchises after the effective date of this ordinance, certificates and other required proofs shall be filed within 30 days of the issuance of a Franchise, prior to the commencement of construction, at policy renewal, and whenever there is any change in coverage. For entities that have facilities in the Public Rights-of-Way as of the effective date of this Chapter, the certificate and endorsements shall be issued within 60 days of the effective date of this Chapter, at policy renewal, and whenever there is any change in coverage, unless a pre-existing Franchise provides for filing of certificates in a different manner. In the event that the insurance will terminate or lapse during the term of the Franchise or License, then in that event, the Cable system Operator shall furnish, at least 30 days prior to the expiration of such insurance, a new or renewed certificate of insurance as proof that the required coverage has been obtained.
- (d) Certificate contents. Certificates and/or endorsements shall contain a provision that coverages afforded under these policies will not be canceled until at least 30 days' prior written notice has been given to the City. Policies shall be issued by companies authorized to do business under the laws of the State of Nevada. Financial Ratings must be no less than "A" VII in the latest edition of "Bests Key Rating Guide", published by A.M. Best Guide, or equivalent financial security.
- (e) Insurance amounts. A Cable Operator (and those acting on its behalf to construct or operate the system) shall maintain the following minimum insurance. The City shall be named as an additional insured on the general liability and automotive policies; those insurance policies shall be primary.
 - (1) COMPREHENSIVE GENERAL LIABILITY insurance to cover bodily injury, death, and property damage. Exposures to be covered are: premises, operations, products/completed operations, and certain contracts. Coverage must be written on an occurrence basis, with the following limits of liability:

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

Completed Operations and Products Liability shall be maintained for two years after the termination of the Franchise or License (in the case of the Cable system owner or Operator) or completion of the work for the Cable system owner or Operator (in the case of a contractor or subcontractor).

Property Damage Liability Insurance shall include Coverage for the following hazards:
X - explosion, C - Collapse, U - underground.

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

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

(3) COMPREHENSIVE AUTO LIABILITY

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

Coverage shall include owned, hired, and non-owned vehicles. In every Franchise or License agreement The City shall reserve the right to require any other insurance coverage it deems necessary depending upon exposures

- (f) Construction Bonds. Every Operator of a Cable System shall obtain and maintain bonds during periods of rebuild or upgrade of the Cable System to ensure the faithful performance of its responsibilities under this Chapter and any Franchise. The amount of the construction bonds shall be set at \$250,000 . The bond is not in lieu of any additional bonds that may be required through the permitting process. The bond shall be in a form acceptable to the District Attorney. Bonds must be obtained prior to the effective date of any Franchise, Transfer or Franchise renewal, unless the City Manager specifically provides otherwise.]

SECTION XLVI:

That Section 5.19.450 of the Carson City Municipal Code is hereby added as follows:

[5.19.450 Bonds.

The Cable Operator shall comply with all present and future ordinances and regulations of the City regarding excavation or construction and, in whatever amount deemed necessary by the City, shall be, unless specifically excepted, required to post a reasonable performance bond in favor of the City warranting, among other things, that all restoration shall be done promptly and in a workmanlike manner.]

SECTION XLVII:

That Section 5.19.460 of the Carson City Municipal Code is hereby added as follows:

[5.19.460 Inconsistency.

If any portion of this Chapter should be inconsistent with any rule or regulation now or hereinafter adopted by the FCC or other federal legislation, then to the extent of the inconsistency, the rule or regulation of the FCC or other federal legislation shall control so long, but only for so long, as such rule or regulation shall remain in effect, but the remaining provisions of this Chapter shall not thereby be effected.]

SECTION XLVIII:

That Section 5.19.470 of the Carson City Municipal Code is hereby added as follows:

[5.19.470 Severability.

Each section, subsection or other portion of this Chapter shall be severable and the invalidity of any section, subsection, or other portion shall not invalidate the remainder.]

SECTION XLIX:

That Section 5.19.480 of the Carson City Municipal Code is hereby added as follows:

[5.19.480 Force majeure.

In the event that the Cable Operator's performance of any of the terms, conditions, obligations or requirements of this Chapter is prevented or impaired due to any cause(s) beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof.]

SECTION L:

That no other provisions of Chapter 5 of the Carson City Municipal Code are affected by this ordinance.

Proposed on _____ (Month) _____ (Day), 2006.

Proposed by Supervisor _____

Passed _____ (Month) _____ (Day), 2007.

Vote: Ayes: Supervisors: _____

Nays: Supervisors: _____

Absent: Supervisors: _____

Marv Teixeira, Mayor

Attest:

Alan Glover, Clerk/Recorder

This Ordinance Shall Be in Force and Effect from and after the _____ Day of the Month of _____ of the Year, 2007.