

THIS ARTICLE IS TO BE REPEALED

Santa Barbara County, California, Code of Ordinances >> CHAPTER 2 - ADMINISTRATION* >> Article XIA. - Small System Cable Television Franchises >>

Article XIA. - Small System Cable Television Franchises

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Sec. 2-90.1.- Purpose.

If any cable television system, large or small, as defined hereinafter desires to operate in the unincorporated territory of the County of Santa Barbara, using county public streets, highways, alleys, easements or other public property, the county may authorize such use by a franchise or license as provided in Government Code section 53066. It has recently become technically and economically feasible to design, construct and operate small cable television systems for isolated small population areas not served by large cable television systems. Demand for such service has arisen in small, isolated communities in Santa Barbara County not now served by cable television. It is the intent of the ordinance codified in this article to provide for franchising small cable television systems.

(Ord. No. 3365, § 1)

Sec. 2-90.2.- Definitions.

For the purposes of this article, unless otherwise apparent from the context, certain words and terms used in this article are defined as follows:

- (a) "Small antenna television system" also referred to herein as "SCATV," means a system employing antenna, microwave, wires, coaxial cables or other conductors, equipment or facilities designed, constructed or used for the following purposes:

- (1) Collecting and amplifying local and distant broadcast television or radio signals and distributing and transmitting them;
 - (2) It shall also include, where such service is provided, transmitting original cable cast programming not received through television broadcast signals;
 - (3) Transmitting television pictures, film and videotape programs not received through broadcast television signals, whether or not encoded or processed to permit reception by only selected receivers;
 - (4) It shall also include, where such service is provided, transmitting and receiving all other signals; digital, voice and audio-visual; provided, however, that any of the services, permitted hereunder to be performed as described above, shall be those performed by the grantee for subscribers, as defined in this section in the operation of a cable television or CATV system franchised by the county and not otherwise;
 - (5) To small, isolated areas of population in the county not exceeding one thousand dwelling units.
- (b) Fair rate of return on investment means that rate of return for an efficiently operated small cable system company required in the financial market place to produce funds for purchase of plant required to serve subscribers. Actual or depreciated value of the plant plus sufficient working capital to cover billing cycles shall be considered the investment or "rate base" for purposes of determining return on investment. Cost of capital required for purchase of the plant necessary to serve subscribers will further be determined by the proportionate cost of leveraged or borrowed funds to funds furnished by investors. Unamortized goodwill is not to be considered part of the rate base for this purpose.
 - (c) "Franchise" means and includes any authorization granted under this article in terms of a franchise, privilege, permit, license, or otherwise, to construct, operate and maintain a SCATV system in the county. Any such authorization, in whatever term granted, does not mean or include any license or permit required for the privilege of transacting and carrying on a business within the county in accordance with the business license regulations of the county, now or hereafter in effect. See section 2-90.10(b) as to fees and tax waivers for such license or permit.
 - (d) "Grantee" means the person, firm or corporation to whom or to which a franchise, as defined in subsection (b) of this section, is granted by the board under the provisions of this article, and the lawful successor, transferee, or assignee of such person, firm or corporation.
 - (e) "Gross annual receipts" means any and all compensation and other consideration in any form whatever and any contributing grant or subsidy received directly or indirectly by a grantee from subscribers or users in payment for television or FM radio signals received within the county, except revenue received from line extension and installation fees. Furthermore, gross annual receipts shall not include any taxes on the service furnished by a grantee imposed directly on any user or subscriber by any city, state, federal or other government unit and collected by a grantee for such government unit.
 - (f) "Property of grantee" means all property owned, installed, or used by a grantee in the conduct of a SCATV business in the county under the authority of a franchise granted pursuant to the provisions of this article.
 - (g) "Street" means the surface of and the space above and below any public street, road, highway, freeway, lane, path, alley, court, sidewalk, parkway or drive now or hereafter existing as such within the county, whether owned, leased or operated by the county.
 - (h) "Subscriber" or "user" means any person or entity receiving for any purpose any service of the grantee's cable television system including, but not limited to, the conventional cable television system service of retransmission of television broadcast radio signals, grantee's original cable casting and the local government education and public access channels and other services, such as leasing of channels, data and facsimile transmission, pay television and police, fire and similar public service communication.

(Ord. No. 3365, § 1)

Sec. 2-90.3.- Franchise—Required—Granted by board.

- (a) A nonexclusive franchise to construct, operate, and maintain a SCATV system within all or any portion of the county may be granted by the board, by resolution, to any person, firm or corporation, whether operating under an existing franchise or not, who or which offers to furnish and provide such system under and pursuant to the terms and provisions of this article.
- (b) No provision of this article shall require the granting of a franchise when, in the opinion of the board, it is not in the public interest to do so.

(Ord. No. 3365, § 1)

Sec. 2-90.4.- Uses permitted by grantee.

- (a) Any franchise granted pursuant to the provisions of this article shall authorize and permit the grantee to engage in the business of operating and providing a SCATV system in the county and, for that purpose, to erect, install, construct, repair, replace, reconstruct, maintain, and retain in, on, over, under, upon, across and along any public street such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be necessary and appurtenant to the SCATV

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 grantee franchised or permitted to do business in the county.

- (b) The granting of a franchise pursuant to the provisions of this article shall not be construed as permission or authority to enter on, occupy, or otherwise use private property without the express consent of the owner or person lawfully in possession thereof.
- (c) The grantee may make charges to subscribers for installations or connections to its SCATV system and a fixed monthly charge as provided in this article. For the first year of operations service offered to subscribers, grantee shall charge the subscriber no more for each nonpremium service than the rates and charges originally approved by the board of supervisors when the franchise is granted. After the first year of operative service to subscribers, grantee shall provide the county auditor-controller, at least thirty days prior to the effective date thereof, the proof of service of notice to all subscribers affected of any proposed increases in rates or charges for service, or both, or for additional services. The notification to subscribers shall include a written list showing the rates and charges currently being charged and the proposed changes in rates or charges, or both, and shall state in writing thereon that the proposed changes will become effective thirty days after delivery of such notice unless a written protest is received by the board of supervisors no later than the next regular board of supervisors meeting, at least twenty days after submission to the board of supervisors of the proof of service of notification. Notice shall also specify the last day that written protest will be received. Unless before the time specified in the notice there is received by the clerk of the board of supervisors written protests by at least fifteen percent of the current nondelinquent subscribers set out hereinafter, the board of supervisors shall, by resolution, adopt the proposed charges which shall thereupon become a part of any franchise granted hereunder and affected thereby. In the event of the failure of the board of supervisors to act as provided herein the proposed charges shall be deemed automatically approved as specified in the notice.

In any franchise area where there are five hundred or less nondelinquent subscribers, the percentage for valid protest shall be thirty-five percent of such valid subscribers. In any franchise area where there are more than five hundred, but less than one thousand subscribers of such nondelinquent valid subscribers, the percentage for a valid protest shall be twenty-five percent. Upon receipt of any such protest the board of supervisors shall direct the county clerk to schedule a public hearing before the board of supervisors at least two weeks from and after the meeting of the board of supervisors immediately following such protest and shall further direct the clerk of the board of supervisors to advertise such public hearing in a newspaper of general circulation in the County of Santa Barbara at least seven days before the date of such hearing. After the public hearing on the proposal of the grantee the board shall make a determination as to whether or not to grant the proposed increase in rates or charges, in whole or in part, within two weeks after said public hearing is concluded. A reduction in the rates or charges by a grantee may be requested by a petition of valid nondelinquent subscribers in the same percentages as set out above for a valid protest of increase of rates or charges and the procedure for notice and public hearing and decision thereon and the time limits therefor shall be the same as for a protest of a proposed increase in rates or charges as set out herein.

In the case of either a protest of proposed increase of rates or charges or both or of a petition for a decrease in rates or charges or both, the board shall direct that a rate analysis study be made and presented to the board before the public hearing. No increase or decreases in rates or charges, or both, shall be made unless the board, in its discretion, shall decide that such increase or decrease is justified and still provides for a fair rate of return on grantee's investment as defined in this article.

(Ord. No. 3365, § 1)

Sec. 2-90.5.- Cable television service.

- (a) Basic Service. The cable television system permitted to be installed and operated hereunder shall:
 - (1) Be operationally capable of relaying to subscriber terminals a minimum of twelve video channels including but not limited to those television and radio broadcast signals for the carriage of which the grantee is now or hereafter authorized by the Federal Communications Commission;
 - (2) Distribute color television signals which it receives in color.
- (b) Nonbasic Service. The cable television system permitted to be installed and operated hereunder may also engage in the business of:
 - (1) Transmitting original cable cast programming not received through television broadcast signals;
 - (2) Transmitting television pictures, film and video tape programs not received through broadcast television signals whether or not coded or processed to permit reception by only selected receivers or subscribers;
 - (3) Transmitting and receiving all other signals: digital, voice and audiovisual.

(Ord. No. 3365, § 1)

Sec. 2-90.6.- Franchise—Application requirements.

The application for a franchise under the provisions of this article shall be a signed original with ten copies thereof in writing, accompanied by an application fee of two hundred fifty dollars, nonrefundable, filed with the

county clerk for transmission to the board, and to the county administrative officer, public works director (two copies), auditor-controller and county counsel and shall contain the following information:

- (a) The name and address of the applicant, if the applicant is a partnership, the application shall state the name and address of each partner; if the applicant is a corporation, the application shall state the names and addresses of its directors, main officers, major stockholders and associates, and the names and addresses of parent and subsidiary companies;
- (b) A statement and description of the SCATV system proposed to be constructed, installed, maintained or operated by the applicant; the proposed location of such system and its various components; the manner in which the applicant proposed to construct, install, maintain and operate such system; and, particularly, the extent and manner in which existing or future poles or other facilities of other public utilities will be used for such system;
- (c) A description, acceptable to the county department of public works, road division, of the public streets, public places and proposed public streets within which the applicant proposes to seek authority to construct, install, maintain or operate any SCATV equipment and facilities; a description of the equipment or facilities proposed to be constructed, installed, maintained or operated therein;
- (d) A statement or schedule setting forth the number of channels and all of the television or radio stations proposed to be received, transmitted, conducted, relayed or otherwise conveyed over the SCATV system;
- (e) A statement or schedule of proposed rates and charges to subscribers for installation and services, and a copy of the proposed service agreement between the grantee and its subscribers shall accompany the application. For unusual circumstances, such as underground cable required, or more than one hundred fifty feet of distance from the cable to the connection of service to subscribers, an additional installation charge over that normally charged for installation as specified in the applicant's proposal may be charged, with easements to be supplied by subscribers. For remote, relatively inaccessible subscribers within the county, service may be made available on the basis of the cost of materials, labor and easements if required by the grantee. The decision of the board as to what shall be remote or relatively inaccessible under the provisions of this subsection shall be final;
- (f) A copy of any contract, if existing, between the applicant and any public utility providing for the use of facilities of such public utility, such as poles, lines or conduits;
- (g) A statement setting forth all agreements and understandings, whether written, oral or implied, existing between the applicant and any person, firm or corporation with respect to the proposed franchise or the proposed SCATV operation. If a franchise is granted to a person, firm or corporation posing as a front or as the representative of another person, firm or corporation, and such information is not disclosed in the original application, such franchise may, at the option of the board of supervisors be deemed void and of no force and effect whatsoever;
- (h) A current financial statement prepared by a certified public accountant, or public accountant, showing the applicant's financial status and his financial ability to complete the construction and installation of the proposed CATV system; and
- (i) Such supplementary, additional or other information as the board may demand at any time, and which the applicant shall provide, and which the board may deem reasonably necessary to determine whether the requested franchise should be granted.

(Ord. No. 3365, § 1)

Sec. 2-90.7.- Franchise—Conditions required for application approval.

Upon consideration of any such application, the board may refuse to grant the requested franchise, or the board, by resolution, may grant a franchise for a SCATV system to any such applicant as may appear from such application to be, in the opinion of the board, best qualified to render proper and efficient SCATV service to the television viewers and subscribers in the county. The board's decision in the matter shall be final. If favorably considered, the application submitted shall constitute and form a part of the franchise as granted. It is the intention of this article that the franchise shall not be granted upon a cash auction bid, but that the board shall consider those facts set forth in section 53066 of the Government Code of the state in granting the franchise, including, but not limited to, the following:

- (a) The quality of service offered;
- (b) The rates to the subscriber;
- (c) The experience and financial responsibility of the applicant;
- (d) The applicant's proposals for providing service to local schools and city installation, if applicable.

(Ord. No. 3365, § 1)

Sec. 2-90.8.- Franchise—Condition for operation.

- (a) Any franchise granted under the provisions of this article shall include the following condition: "The SCATV system herein franchised shall be used and operated for the purposes authorized by the Santa Barbara County Code, Chapter 2, Article XIA, and any other applicable Federal or State Laws and regulations."
- (b) Inclusion of the foregoing statement in any such franchise shall not be deemed to limit the authority of the

any renewal thereof and thereafter until the grantee has liquidated all of its obligations with the county that may have arisen from the acceptance of such franchise or renewal by the grantee or from its exercise of any privilege therein granted. The bond shall provide that thirty days' prior written notice of intention not to renew, cancellation, or material change be given to the county.

- (b) In lieu of such bond requirements, other performance security arrangements satisfactory to the county counsel and the board of supervisors may be arranged, provided it is one or more of the types described in Government Code section 66499 as performance securities.
- (c) Neither the provisions of this article, nor any bond or other security arrangement accepted by the county pursuant to the provisions of this article, nor any damages recovered by the county thereunder shall be construed to excuse faithful performance by the grantee or limit the liability of the grantee under any franchise issued under the provisions of this chapter or for damages, either to the full amount of the bond or otherwise.

(Ord. No. 3365, § 1)

Sec. 2-90.12.- Indemnification of county.

- (a) The grantee, concurrently with the filing of an acceptance of award of any franchise granted under the provisions of this article, shall furnish to the county and file with the special services division of the office of the county counsel, and at all times thereafter maintain in full force and effect for the term of such franchise or any renewal thereof, at the grantee's sole cost and expense, a general comprehensive single limit or equivalent liability insurance policy or policies in a company or companies approved by the county counsel and in a form satisfactory to the county counsel, indemnifying and saving harmless the county, its officers and employees from and against any and all claims, demands, actions, suits and proceedings by others against all liability to others, protecting the county and all persons against liability for loss or damage for personal injury, death and property damage occasioned by the operations of the grantee under such franchise, with minimum liability limits of two hundred fifty thousand dollars for the personal injury or death of any one person, and/or damage to property. County may increase this requirement to meet its self-insured retention limit and grantee may reduce this amount of coverage for the same reason.
- (b) The policy or policies mentioned in subsection (a) of this section shall name the county, all special districts of which the board of supervisors is the governing body, and their officers, boards, commissions, agents and employees as additionally insured and shall contain a provision that a written notice of cancellation or reduction in coverage of such policy shall be delivered to the county counsel thirty days in advance of the effective date thereof; if such insurance is provided by a policy which also covers the grantee or any other entity or person other than those named in this section, such policy shall contain the standard cross-liability endorsement.

(Ord. No. 3365, § 1)

Sec. 2-90.13.- Rights reserved to the county.

- (a) Nothing contained in this article shall be deemed or construed to impair or affect, in any way, to any extent, the right of the county to acquire the property of the grantee, either by purchase or through the exercise of the right of eminent domain, at a fair and just value, which shall not include any amount for the franchise itself or for any of the rights or privileges granted, and nothing contained in this article shall be construed to contract away or to modify or abridge, either for a term or in perpetuity, the county's right of eminent domain.
- (b) There is reserved to the county every right and power which is required to be reserved by the provisions of this article or by any law of the county, and the grantee, by its acceptance of any franchise, agrees to be bound thereby and to comply with any action or requirements of the county in its exercise of such rights or power heretofore or hereafter enacted or established.
- (c) Neither the granting of any franchise under the provisions of this article nor any of the provisions contained in this article shall be construed to prevent the county from granting any identical or similar franchise to any other person, firm or corporation within all or any portion of the county.
- (d) There is reserved to the county the power to amend any section or any part of any franchise granted pursuant to this article entitled "Small System Franchises," irrespective of whether a similar power exists in relation to a franchise granted pursuant to other sections of this chapter 2, so as to require additional or greater standards of construction, operation, maintenance, service, or any other provision of a franchise granted pursuant to this article. The power of this county to amend any franchise granted pursuant to this article shall be liberally construed and, by accepting a franchise granted pursuant to this article, the grantee expressly acknowledges and agrees that said power of amendment shall exist on behalf of the county even if the exercise of said power produces a material financial cost upon the grantee, so long as such amendment shall not substantially decrease a grantee's return on its investment. Such power to amend shall be exercised only after thirty days written notice to grantee and a hearing before the board of supervisors at which grantee may present any written or oral testimony or arguments pertaining to such proposed amendment and a fair and reasonable return on its investment.
- (e) Neither the granting of any franchise under the provisions of this article nor any provisions of this article shall constitute a waiver or bar to the exercise of any government right or power of the county.
- (f) The board may do all things which are necessary and convenient in the exercise of its jurisdiction under the provisions of this article and may determine any question of fact which may arise during the existence of any

franchise granted under the provisions of this article. The county director of public works is authorized and empowered to adjust, settle, or compromise any controversy or charge arising from the operations of any grantee under the provisions of this article, either on behalf of the county, the grantee, or any subscriber, in the best interests of the public. Either the grantee or any subscriber to the SCATV system concerned, who may be dissatisfied with the decision of the county director of public works may appeal the matter to the board for hearing and determination. The board may accept, reject or modify the decision of the county director of public works and the board may adjust, settle or compromise any controversy or cancel any charge arising from the controversy.

- (g) In connection with the issuance of any franchise under the provisions of this article, the board may impose such reasonable restrictions, conditions and limitations as to the areas of the county to be served, operating conditions and cooperative working arrangements relative to local television broadcasting stations serving the county as will provide subscribers with the highest quality service technically possible under the circumstances applying to the area to be served.

(Ord. No. 3365, § 1)

Sec. 2-90.14.- Franchise—Limitations.

- (a) A franchise granted under the provisions of this article shall be nonexclusive.
- (b) No privilege or exemption shall be granted or conferred by any franchise granted under the provisions of this article except as specifically prescribed in this article.
- (c) Any privilege claimed under any franchise by the grantee in any street or other public property shall be subordinate to any prior lawful occupancy of the streets or other public property;
- (d) (1) A franchise shall not be subject or assigned nor shall the rights or privileges therein granted or authorized be leased, assigned, sold or transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, except the grantee, either by act of the grantee or by operation of law, without the prior written consent of the county. The granting of such consent shall not render unnecessary any subsequent consent. The board of supervisors shall not unreasonably withhold consent to any requested transfer.
- (2) The grantee shall properly notify the county board of supervisors of any proposed change in control of the grantee with respect to which the consent of the county is required. Such change in control shall make the franchise null and void unless and until the county board of supervisors shall have consented thereto; provided, however, that if the board has not acted within thirty days after receipt of such notice, the change of control shall be deemed to be automatically approved. For the purpose of determining whether it will consent to such change, transfer, or acquisition of control, the county may inquire into the qualifications of the prospective controlling party, and the grantee shall assist the county in any such inquiry. The county may condition said transfer upon the terms and conditions it deems appropriate. The county board of supervisors shall not unreasonably withhold its consent to any such change of ownership. For the purposes of this section presumptive change of control will exist upon sale or transfer, or successful sale or transfers, during the term of any franchise granted hereunder which amounts to fifty percent or more of the original grantee's ownership stock or other control, except for transfers occasioned by probate of an estate.
- (3) The grantee, at least sixty days prior to any transfer as heretofore described, shall file with the county board of supervisors a copy of the deed, agreement, mortgage, lease or other written instrument evidencing such sale, transfer or lease, certified and sworn to as correct by the grantee.
- (4) Every such transfer as heretofore described, whether voluntary or involuntary, shall be deemed void and of no effect unless grantee shall have filed said certified copy as is required and county board of supervisors has given approval.
- (e) Time shall be of the essence of any franchise granted under the provisions of this article. The grantee shall not be relieved of his obligation to comply promptly with any of the provisions of this article or by any failure of the county to enforce prompt compliance.
- (f) Any right or power in, or duty impressed upon, any officer, employee, department or board of the county shall be subject to transfer by the county to any officer, employee, department or board of the county.
- (g) The grantee shall have no recourse whatsoever against the county for any loss, cost, expense or damage arising out of any provision or requirement of this article or of any franchise issued hereunder, or because of the enforcement of the provisions of this article.
- (h) The grantee shall be subject to all the provisions, rules, regulations and conditions prescribed by federal, state, county and other applicable local laws heretofore or hereafter enacted or established during the term of any franchise granted under the provisions of this article. Copies of all petitions, applications and communications submitted by the grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting CATV operations authorized pursuant to this franchise shall also be submitted simultaneously to the county director of public works.
- (i) Any franchise granted under the provisions of this article shall not relieve the grantee of any obligation involved in obtaining pole space from any department of the county, from any utility company, or from others maintaining poles in streets.
- (j) Except as otherwise provided in this article, any franchise granted under the provisions of this article shall be in lieu of any and all other rights, privileges, powers, immunities, and authorities owned, possessed,

controlled or exercisable by the grantee, or any successor to any interest of the grantee, of or pertaining to the construction, operation or maintenance of any SCATV system in the county; and the acceptance of any franchise granted under the provisions of this article shall operate, as between the grantee and the county, as an abandonment of any and all such rights, privileges, powers, immunities and authorities within the county to the effect that, as between the grantee and the county, any and all construction, operation and maintenance by any grantee of any SCATV system in the county shall be, and shall be deemed and construed in all instances and respect to be, under and pursuant to such franchise.

(Ord. No. 3365, § 1)

Sec. 2-90.15.- Inspection of property and records.

- (a) At all reasonable times the grantee shall permit any duly authorized representative of the county to examine all property of the grantee, together with any appurtenant property of the grantee situated within or without the county, and to examine and transcribe any and all maps and other records kept or maintained by the grantee or under its control which deal with the operations, affairs, transactions or property of the grantee with respect to its franchise. If any such maps or records are not made available in the county, and if the board determines that an examination thereof is necessary or appropriate, all travel and maintenance expenses necessarily incurred in making such examination shall be paid by the grantee.
- (b) The grantee shall prepare and furnish to the county administrative officer, the county auditor-controller, and the county director of public works at the times and in the form prescribed by any of said officers, such reports with respect to its operations, affairs, transactions or property as may be reasonably necessary or appropriate to the performance of any of the rights, functions or duties of the county or any of its officers in connection with the franchise.
- (c) The grantee at all times shall make and keep in the county on file with the director of public works, full and complete plans and maps, acceptable to public works, road division, showing the exact location of all SCATV system equipment installed or in use in streets and other public places in the county, any changes in location of such SCATV system equipment, or any additions thereto or deletions thereof.

(Ord. No. 3365, § 1)

Sec. 2-90.16.- Signal quality required, technical standards.

The grantee shall produce a picture, whether in black and white or in color, that is undistorted, free from ghost images, and accompanied with proper sound on typical standard production TV sets in good repair required as per the FCC standards in effect at the time.

When there has been a pattern of complaints made, or where there exists other evidence, which, in the judgment of the county department of public works, casts doubt on the reliability or quality of cable service, the public works department shall have the right and authority to require the grantee to test, analyze and report on the performance of the system. Grantee shall fully cooperate with the public works department in performing such testing and shall prepare results and a report, if requested, within thirty days after notice. Such report shall include the following information:

- (a) The nature of the complaint or problem which precipitated the special tests.
- (b) What system component was tested.
- (c) What equipment used and procedures taken in testing.
- (d) The method, if any, in which such complaint or problem was resolved.
- (e) Any other information pertinent to said tests and analysis which may be required.

The county department of public works may require that tests be supervised, at grantee's expense, by a professional engineer, not on the permanent staff of the grantee. The engineer should sign all records of special tests and forward to the department of public works such records with a report interpreting the results of the tests and recommending actions to be taken. The county's right under this section shall be limited to requiring tests, analyses and reports covering specific subjects and characteristics based on said complaints or other information disputed by the grantee and when and under such circumstances as the county department of public works has reasonable grounds to believe that the complaints or other evidence require that tests be performed to protect the public against substandard cable service.

The service furnished by the grantee hereunder to said county and its inhabitants shall be first class in all respects and shall be such as will insure the least danger to life and property. Such service shall at all times conform to those technical standards approved by county and incorporated in the franchise as well as FCC technical standards, and other applicable laws, ordinances and construction standards. In addition, licensee shall provide the county department of public works, upon request, with a written report of the results of grantee's annual proof of performance tests conducted pursuant to FCC standards and requirements.

All installations and connections of wires, cables and lines from grantee's equipment and facilities to subscribers' residences and building shall be made and constructed so that openings shall be waterproof and inaccessible to insects and vermin.

The grantee shall continue, through the term of the franchise, to maintain quality of service and meet the operational and technical standards of this article. Should the county department of public works find that the grantee has failed to maintain adequate quality of service and meet operational and technical standards, it shall specifically enumerate such improvements to be made and so notify the grantee in writing. Failure to make such improvements within three months of the date of notification shall be deemed a violation by the grantee of this article. Said three months period shall be extended by the period of time said improvements are delayed due to fire, weather, earthquake, war, labor disputes or other events reasonably beyond the control of grantee.

The grantee shall at all times employ ordinary care and shall install, maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

Grantee shall install and maintain its wires, cables, fixtures and other equipment in accordance with the requirements of the State of California Public Utilities Commission, General Orders No. 95 and 128, any successors or amendments thereto, and any applicable county code provisions. The installations shall not interfere or conflict with any installations of the county or of any other utility serving the county.

Grantee shall at all times keep and maintain a safe, suitable, substantial condition, and in good order and repair all structures, lines, equipment and connections in, over, under and upon the streets, sidewalks, alleys and public ways or places of the county, wherever situated or located.

In the event the FCC standards, or the said PUC General Orders are discontinued, the latest versions thereof shall, nevertheless, remain in effect for the purposes of this article and any franchise granted hereunder, subject to the power of county to amend this article and any franchise granted hereunder as set out herein.

(Ord. No. 3365, § 1)

Sec. 2-90.17.- Rates.

- (a) Prior to granting any franchise hereunder, the board of supervisors shall establish and fix all rates and charges for the basic service defined in this chapter allowable to grantee such as:
 - (1) Charges for installation;
 - (2) Subscriber rates, except the rates for paid television; unless county should acquire the power to regulate rates for paid television in which case county may decide to regulate such rates;
 - (3) Service charges for separate classifications of service, for example, additional connections.
 Once established such rates or charges shall not be changed at any time after granting of a franchise except as otherwise provided in this article.
- (b) Neither the board nor the grantee shall ask rates, charges, service, service facilities, rules, regulations or in any other respect make or grant any preference or advantage to any person over other persons nor subject any person to prejudice or disadvantage.
- (c) The rights of the board set out in this article are subject to all applicable laws of the State of California including but not limited to sections 53066.1 and 53066.2 of the Government Code and any amendments and successors thereto.

(Ord. No. 3365, § 1)

Sec. 2-90.18.- Franchise—Regulations generally.

- (a) When not otherwise prescribed in this article, all matters required in this chapter to be filed with the county shall be filed with the county director of public works.
- (b) The grantee, without charge, shall provide all subscriber services of its system, including multiple-connection services, except as prohibited by standard controls with producers and distributors of the programming, to all public and nonprofit private schools, county police and fire stations, county recreation centers, and such other buildings owned or controlled by the county, which shall from time to time be designated by the county director of public works; provided, however, such buildings shall be located within the franchise area. The grantee shall install, without charge to the county or such public or private schools, up to two hundred feet of service connection from the transmission cable otherwise maintained or required to be maintained by the grantee for the service of paying subscribers of the grantee. The county or any such public or private schools shall pay to the grantee the costs of all labor and materials supplied by the grantee for the installation of any service connection in excess of the initial two hundred feet.
- (c) In the case of any emergency or disaster, the grantee, upon request of the county emergency services officer, sheriff or fire chief, shall make available its facilities to the county for emergency use during the emergency or disaster period.
- (d) The grantee shall maintain an office within the county limits, or at a location which subscribers may call without incurring added message or toll charges, so that SCATV maintenance service shall be available promptly to subscribers. The county director of public works, on behalf of the county, shall receive

$$R_1 = P_1 - \left(\frac{A}{N} - \frac{B}{42} \right)$$

$$R_2 = \frac{L}{L} P_2 - \left(\frac{A}{N_1} - \frac{B}{42} \right)$$

$$R_3 = \frac{L}{L} P_2 - \left(\frac{A}{N_3} - \frac{B}{42} \right)$$

Where:

P₁	=	Premium installation charge per subscriber for all parties subscribing prior to commencement of SCATV service to the subject distribution line extension and for the first twelve months thereafter.
P₂	=	Premium installation charge per subscriber for all parties who commence subscription for SCATV service during the second year service is available on the subject distribution line extension but never to exceed P1.
P₃	=	Premium installation charge subscriber for all parties who commence subscription for SCATV service during the third year service is available on the subject distribution line extension, but never to exceed P2.
A	=	Actual cost in labor and materials to construct distribution line extension.
B	=	Seven thousand dollars per mile or an amount approved by the county department of public works as hereinafter provided.
N	=	Original number of parties agreeing to subscribe prior to the commencement of service to the subject distribution line extension.
N₁	=	Number of subscribers on the subject line extension on the last day of the first year of service to the distribution line extension.
N₂	=	Number of subscribers on the subject line extension on the last day of the second year of service to the distribution line extension.

Premium installation charges are in addition to the monthly service charge and installation charges set forth above. No premium installation charges shall be made to any party who subscribes after the close of the third year of SCATV service to the subject distribution line extension. No premium installation charge shall be made to a new subscriber where all previous subscribers have been totally reimbursed for the premium installation charges they have paid.

At one year intervals for a period of three years after commencement of service to a distribution line extension, grantee will review the number of subscribers receiving service from such distribution line extension for which a premium installation fee has been charged and make refunds to those subscribers on the distribution line extension at the close of the previous year if there has been any increase in the number of subscribers. Said refunds shall be calculated in accordance with the following formulas:

$$R_1 = P_1 - \left(\frac{A}{N} - \frac{B}{42} \right)$$

$$R_2 = \frac{L}{L} P_2 - \left(\frac{A}{N_1} - \frac{B}{42} \right)$$

$$R_3 = \frac{L}{L} P_2 - \left(\frac{A}{N_3} - \frac{B}{42} \right)$$

Where:

R₁	=	First year's refund is payable to each subscriber on the subject distribution line extension at the close of the first year's service to the distribution line extension.
R₂	=	Second year's refund is payable to each subscriber on the subject distribution line extension at the close of the second year's service to the distribution line extension.
R₃	=	Third year's refund is payable to each subscriber on the subject distribution line extension at the close of the third year's service to the distribution line extension.
P₁	=	Initial and first year premium installation charge as calculated pursuant to the distribution line extension formula.
P₂	=	Second year premium installation charge as calculated pursuant to the distribution line extension formula.

P_3	=	third year premium installation charge as calculated pursuant to the distribution line extension formula.
A	=	Actual cost in labor and materials to construct distribution line extension.
B	=	Seven thousand dollars per mile or an amount approved by the county department of public works as hereinafter provided.
N_1	=	Number of subscribers on the subject distribution line extension on the last day of the first year of service to the distribution line extension, not to exceed forty two.
N_2	=	Number of subscribers on the subject distribution line extension on the last day of the second year of service to the distribution line extension, not to exceed forty-two.
N_3	=	Number of subscribers on the subject distribution line extension on the last day of the third year of service to the distribution line extension, not to exceed forty-two.

Grantee shall pay all refunds within thirty days of the close of the year's service to the subject distribution line extension. No refunds shall be made to those parties subscribing after the close of the third year's service to the subject distribution line extension. In no event shall the aggregate amount of the refunds payable hereunder exceed the premium installation charge paid by any subscriber.

Grantee shall be responsible for providing documentary evidence to the county department of public works, supporting any change in constant "B" in the formulas set forth above. The constant "B" shall not be changed without prior approval of the county department of public works. In no event shall such change in constant "B" affect any premium installation charge or reimbursement for distribution line extensions which commenced or completed construction prior to the change in the constant "B."

In the event that grantee includes equipment or facilities or capacity in or on the distribution line extension in excess of that needed to provide the type and level of service prevailing in the franchise area wherein the extension is being accomplished, then grantee shall bear the full cost of same and no charge shall be made to any subscriber for such excess equipment, facilities or capacity.

At any time that the actual cost in labor and materials to construct a distribution line extension (A) exceeds the constant "B" of seven thousand dollars per mile or an amount approved by the county department of public works, grantee shall submit to the county department of public works documentary evidence supporting the said actual construction.

Grantee shall report to the county department of public works the particulars of the various charges, costs and expenses to subscribers on each line extension implemented hereunder.

(Ord. No. 3365, § 1)

Sec. 2-90.21.- Grantee's property—Location.

- (a) Any poles, wires, cable lines, conduits or other properties of the grantee to be constructed or installed in streets shall be so constructed or installed only at such locations and in such manner as shall be approved by the county director of public works acting in the exercise of his reasonable discretion.
- (b) The grantee shall not install or erect any facilities or apparatus in or on other public property, places or rights-of-way, or within any privately owned area within the county which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by the county, except those installed or erected upon public utility facilities now existing, without obtaining the prior written approval of the county director of public works.
- (c) In those areas and portions of the county where the transmission or distribution facilities of both the public utility providing telephone service and the utility providing electric service are underground or hereafter may be placed underground, the grantee shall construct, operate and maintain all of its transmission and distribution facilities underground. Amplifiers in the grantee's transmission and distribution lines may be in appropriate housings upon the surface of the ground as approved by the county director of public works. The county shall not be responsible in any manner for any costs incurred by the grantee in placing the grantee's facilities underground.

(Ord. No. 3365, § 1)

Sec. 2-90.22.- Grantee's property—Removal and abandonment.

- (a) In the event the use of any part of the SCATV system is discontinued for any reason for a continuous period of three months, or in the event such system or property has been installed in any street or public place without complying with the requirements of the grantee's franchise or the provisions of this article, or in the event the franchise has been terminated or cancelled or has expired, the grantee, upon being given ten days' notice, shall promptly remove from the streets or public places all such property and poles of such system other than any which the county director of public works may permit to be abandoned in place. In the event of such removal, the grantee shall promptly restore the street or other area from which such property

has been removed to a condition satisfactory to the county director of public works.

- (b) Any property of the grantee remaining in place sixty days after the termination or expiration of the franchise shall be considered permanently abandoned. The county director of public works may extend such time not to exceed an additional thirty days.
- (c) Any property of the grantee to be abandoned in place shall be abandoned in such manner as the county director of public works shall prescribe. Subject to the provisions of any utility joint use attachment agreement, upon permanent abandonment of the property of the grantee in place, the property shall become that of the county, and the grantee shall submit to the county director of public works an instrument in writing, to be approved by the county counsel, transferring to the county the ownership of such property.

(Ord. No. 3365, § 1)

Sec. 2-90.23.- Changes required by public improvements.

The grantee, at its expense, shall protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place any property of the grantee when required by the county director of public works by reason of traffic condition, public safety, street vacation, freeway and street construction, change or establishment of street grades, or the installation of sewers, drains, waterpipes, powerlines, signal lines, tracks, or any other type of structures or improvements by public agencies; provided, however, the grantee in all cases shall have the privileges, and be subject to the obligations, to abandon any property of the grantee in place as provided in subsection (c) of section 2-90.20.

(Ord. No. 3365, § 1)

Sec. 2-90.24.- Street work.

Grantee shall not perform any work on a county street right-of-way without complying with all applicable requirements of the Santa Barbara County Code for such work, as set out in chapter 28 thereof or any amendments or successors thereto.

(Ord. No. 3365, § 1)

Sec. 2-90.25.- Joint use of utility poles and facilities.

When any portion of the SCATV system is to be installed on public utility poles and facilities, copies of the agreements for such use of poles and facilities, when not already submitted pursuant to this article, shall be filed with the county director of public works.

(Ord. No. 3365, § 1)

Sec. 2-90.26.- Acceptance and effective date of franchise.

- (a) No franchise granted under the provisions of this chapter shall become effective unless and until the resolution granting the franchise has become effective and, in addition, unless and until all things required in this section, and in sections 2-90.12 and 2-90.13, are done and complete, all of such things being declared to be conditions precedent to the effectiveness of any such franchise granted under the provisions of this chapter. In the event any of such things are not done and completed in the time and manner required, the board may declare the franchise null and void.
- (b) Within fifteen days after the effective date of the resolution awarding a franchise, or within such extended period of time as the board in its discretion may authorize, the grantee shall file with the county director of public works its written acceptance of the franchise, together with the bond and insurance policies (the last to be forwarded to the county counsel) required by sections 2-90.12 and 2-90.13 and its agreement to be bound by and to comply with and to do all things required of it by the provisions of this article and the franchise. Signature of such acceptance and agreement shall be acknowledged by the grantee before a notary public, and in form and content shall be satisfactory to and approved by the county counsel.

(Ord. No. 3365, § 1)

Sec. 2-90.27.- Administration and enforcement.

Except as expressly otherwise provided herein, this article XIA and any franchises granted hereunder shall be administered and enforced by the director of public works of the county. Furthermore, all notices, correspondence and other documents and communications pertaining to or required by this article XIA from any grantee hereunder, unless expressly otherwise provided herein or in any franchise granted hereunder, shall be made to the county department of public works.

(Ord. No. 3365, § 1)

Sec. 2-90.28.- Violations.

From and after April 1, 1983, it is unlawful for any person to establish, operate or carry on the business of distributing to any person in the unincorporated territory of the county, other than on lands under federal or state jurisdiction, any television signal or radio signal by means of a SCATV system unless a franchise therefor has first been obtained pursuant to the provisions of this article and unless such franchise is in full force and effect.

- (b) From and after April 1, 1983, it is unlawful for any person to construct, install, maintain or operate within any public street in the county, or within any other public property of the county, or within any privately owned area within the county which has not yet become a public street, but is designated or delineated as a proposed public street on any tentative subdivision map approved by the county, any equipment or facilities for distributing any television signal or radio signal by means of a SCATV system unless a franchise authorizing such use of such street or property or area has first been obtained pursuant to the provisions of this chapter and unless such franchise is in full force and effect.
- (c) It is unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of a franchised SCATV system within the county for the purpose of taking or receiving any television signal, radio signal, picture, program or sound.
- (d) It is unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of a franchised SCATV system within the county for the purpose of enabling himself or others to receive any television signal, radio signal, picture, program or sound without payment to the owner of such system.
- (e) It is unlawful for any person, without the consent of the owner, to willfully tamper with, remove or injure any cables, wires or equipment used for the distribution of any television signal, radio signal, picture, program or sound.

(Ord. No. 3365, § 1)

Sec. 2-90.29.- Penalties.

Any person violating any of the provisions of section 2-90.28 of this article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding five hundred dollars or be imprisoned in the county jail for a period not exceeding six months or be both so fined and imprisoned. Each day said violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

(Ord. No. 3365, § 1)

Sec. 2-90.30.- Conflict with Article XI.

Whenever in this article XIA of this chapter 2, any provisions hereof pertaining to SCATV systems conflict with any provisions of article XI of this chapter 2, the provisions of this article XIA shall prevail.

(Ord. No. 3365, § 1)

Sec. 2-90.30.1.- Replacement ordinance.

The foregoing article XIA shall remain in force and be effective as to all franchises which may have been granted under the authority of said article until such franchise is renewed. It shall be of no effect for any franchises granted or renewed after the enactment of this ordinance section, the provisions of said article XIA having been replaced by a new chapter 43 of the County Code. Said article XIA shall be repealed effective December 31, 2004 unless this section is earlier amended.

(Ord. No. 4371, § 1)

THIS ARTICLE IS TO BE REPEALED

Santa Barbara County, California, Code of Ordinances >> CHAPTER 2 - ADMINISTRATION* >>
Article XIB. - Cable Television Franchises >>

Article XIB. - Cable Television Franchises

- Sec. 2-90.31. - Purpose.
- Sec. 2-90.32. - Definitions.
- Sec. 2-90.33. - Franchise—Required—Granted by board.
- Sec. 2-90.34. - Uses permitted by grantee.
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- Sec. 2-90.61. - Acceptance and effective date of franchise.
- Sec. 2-90.62. - Administration and enforcement.
- Sec. 2-90.63. - Violations.
- Sec. 2-90.64. - Penalties.
- Sec. 2-90.65. - Replacement ordinance.

Sec. 2-90.31.- Purpose.

If any cable television system, as defined hereinafter, desires to operate in the unincorporated territory of the County of Santa Barbara, using county public streets, highways, alleys, easements or other public property, the county may authorize such use by a franchise or license as provided in Government Code section 53066. It is the intent of the ordinance codified in this article to provide for franchising cable television systems.

(Ord. No. 3436, § 1)

Sec. 2-90.32.- Definitions.

For the purposes of this article, unless otherwise apparent from the context, certain words and terms used in this article are defined as follows:

- (a) "Cable television system" and "CATV" means a system employing antenna, microwave wires, coaxial cables or other conductors, equipment or facilities designed, constructed or used for the following purposes:
- (1) Collecting and amplifying local and distant broadcast television or radio signals and distributing and transmitting them;
 - (2) It shall also include, where such service is provided, transmitting original cable cast programming not received through television broadcast signals;
 - (3) Transmitting television pictures, film and videotape programs not received through broadcast television signals, whether or not encoded or processed to permit reception by only selected receivers;
 - (4) It shall also include, where such service is provided, transmitting and receiving all other signals; digital, voice and audio-visual; provided, however, that any of the services, permitted hereunder to be performed, as described above, shall be those performed by the grantee from subscribers, as defined in this section in the operation of a cable television or CATV system franchised by the county and not otherwise;
 - (5) It does not include a cable television system franchised under article XIA of chapter 2 of the Santa Barbara County Code.
- (b) "Fair rate of return on investment" means that rate of return for an efficiently operated cable system company required in the financial market place to produce funds for purchase of plant required to serve subscribers. Actual or depreciated value of the plant plus sufficient working capital to cover billing cycles shall be considered the investment or "rate base" for purposes of determining return on investment. Cost of capital required for purchase of the plant necessary to serve subscribers will further be determined by the proportionate cost of leverage or borrowed funds to funds furnished by investors. Unamortized goodwill is not to be considered part of the rate base for this purpose.
- (c) "Franchise" means and includes any authorization granted under this article in terms of a franchise, privilege, permit, license, or otherwise, to construct, operate and maintain a CATV system in the county. Any such authorization, in whatever term granted, does not mean or include any license or permit required for the privilege of transacting and carrying on a business within the county in accordance with the business license regulations of the county, now or hereafter in effect. See section 2-95.10(b) as to fees and tax waivers for such license for permit.
- (d) "Grantee" means the person, firm or corporation to whom or to which a franchise, as defined in subsection (c) of this section, is granted by the board of supervisors under the provisions of this article, and the lawful successor, transferee or assignee of such person, firm or corporation.
- (e) "Gross annual receipts" means any and all compensation and other consideration in any form whatever and any contributing grant or subsidy received directly or indirectly by a grantee from subscribers or users in payment for television or FM radio signals received within the county, except revenue received from line extension and installation fees. Furthermore, gross annual receipts shall not include any taxes on the service furnished by a grantee imposed directly on any user or subscriber by any city, state, federal or other government unit and collected by a grantee for such governmental unit.
- (f) "Property of grantee" means all property owned, installed or used by grantee in the conduct of a CATV business in the county under the authority of a franchise granted pursuant to the provisions of this article.
- (g) "Street" means the surface of and the space above and below any public street, road, highway, freeway, lane, path, alley, court, sidewalk, parkway or drive now or hereafter existing as such within the county, whether owned, leased or operated by the county.
- (h) "Subscriber" or "user" means any person or entity legally receiving for any purpose any service of the grantee's cable television system including, but not limited to, the conventional cable television system service of retransmission of television broadcast radio signals, grantee's original cable casting and the local government, education and public access channels; and other services, such as leasing of channels, data and facsimile transmission, pay television and police, fire and similar public service communication.

(Ord. No. 3436, § 1)

Sec. 2-90.33.- Franchise—Required—Granted by board.

- (a) A nonexclusive franchise to construct, operate and maintain a CATV system within all or any portion of the county may be granted by the board of supervisors, by resolution, to any person, firm or corporation, whether operating under an existing franchise or not, who or which offers to furnish and provide such system under and pursuant to the terms and provisions of this article.
- (b) No provision of this article shall require the granting of a franchise when, in the opinion of the board of supervisors, it is not in the public interest to do so.

(Ord. No. 3436, § 1)

Sec. 2-90.34.- Uses permitted by grantee.

- (a) Any franchise granted pursuant to the provisions of this article shall authorize and permit the grantee to engage in the business of operating and providing a CATV system in the county and, for that purpose, to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any public street such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be necessary and appurtenant to the CATV system; and, in addition, so to use, operate and provide similar facilities or properties rented or leased from other persons, firm or corporations, including, but not limited to, any public utility or other grantee franchised or permitted to do business in the county.
- (b) The granting of a franchise pursuant to the provisions of this article shall not be construed as permission or authority to enter on, occupy or otherwise use private property without the express consent of the owner or person lawfully in possession thereof.

(Ord. No. 3436, § 1)

Sec. 2-90.35.- Minimum capacity service.

The cable television system shall be operationally capable of relaying to subscriber terminals a minimum of twelve video channels including but not limited to those television and radio broadcast signals for the carriage of which the grantee is now or hereafter required or authorized by the Federal Communications Commission.

(Ord. No. 3436, § 1)

Sec. 2-90.36.- Franchise—Application requirements.

The application for a franchise under the provisions of this article shall be signed original with ten copies thereof in writing, accompanied by a nonrefundable application fee to be established by the county, filed with the county clerk for transmission to the board of supervisors, and to the county administrative officer, county director of public works (two copies), county auditor-controller and county counsel, and shall contain the following information:

- (a) The name and address of the applicant, if the applicant is a partnership, the application shall state the name and address of each partner; if the applicant is a corporation, the application shall state the names and addresses of its directors, main officers, major stockholders and associates, and the names and addresses of parent and subsidiary companies;
- (b) A statement and description of the CATV system proposed to be constructed, installed, maintained or operated by the applicant; the proposed location of such system and its various components; the manner in which the applicant proposed to construct, install, maintain and operate such system; and, particularly, the extent and manner in which existing or future poles or other facilities of other public utilities will be used for such system;
- (c) A map, acceptable to the county department of public works, road division, of the proposed service area and signal receiving sites;
- (d) A statement or schedule setting forth the number of channels and all of the television or radio stations proposed to be received, transmitted, conducted, relayed or otherwise conveyed over the CATV system;
- (e) A statement or schedule of proposed rates and charges to subscribers for installation and services, and a copy of the proposed service agreement between the grantee and its subscribers shall accompany the application;
- (f) A copy of any contract, if existing, between the applicant and any public utility providing for the use of facilities of such public utility, such as poles, lines or conduits;
- (g) A statement setting forth all agreements and understandings, whether written, oral or implied, existing between the applicant and any person, firm or corporation. If a franchise is granted to a person, firm or corporation posing as a front or as the representative of another person, firm or corporation, and such information is not disclosed in the original application, such franchise may, at the option of the board of supervisors be deemed void and of no force and effect whatsoever;
- (h) A current financial statement prepared by a certified public accountant, or public accountant, showing the applicant's financial status and its financial ability to complete the construction and installation of the proposed CATV system; and
- (i) Such supplementary, additional or other information as the board of supervisors may demand at any time, and which the applicant shall provide, and which the board of supervisors may deem reasonably necessary to determine whether the requested franchise should be granted.

(Ord. No. 3436, § 1)

Sec. 2-90.37.- Franchise—Conditions required for application approval.

Upon consideration of any such application, the board of supervisors may refuse to grant the requested franchise, or grant a franchise by resolution for a CATV system to any applicant as may appear from such application to be, in the opinion of the board of supervisors, best qualified to render proper and efficient CATV service to the television viewers and subscribers in the county. The board of supervisor's decision in the matter shall be final. If favorably considered, the application submitted shall constitute and form a part of the franchise as granted. It is the intention of this article that the franchise shall not be granted upon a cash auction bid but that the board of supervisors shall consider those factors set forth in section 53066 of the Government Code of the state in granting the franchise, including, but not limited to the following:

- (a) The quality of service offered;
- (b) The rates to the subscriber;
- (c) The experience and financial responsibility of the applicant; and
- (d) The applicant's proposals for providing service to governmental entities.

(Ord. No. 3436, § 1)

Sec. 2-90.38.- Franchise—Condition for operation.

- (a) Any franchise granted under the provisions of this article shall include the following condition: "The CATV system herein franchised shall be used and operated for the purposes authorized by the Santa Barbara County Code, Chapter 2 and any other applicable Federal or State laws and regulations."
- (b) Inclusion of the foregoing statement in any such franchise shall not be deemed to limit the authority of the county to include any other reasonable condition, limitation or restriction which it may deem necessary to impose in connection with such franchise pursuant to the authority conferred by the provisions of this article.

(Ord. No. 3436, § 1)

Sec. 2-90.39.- Franchise—Term—Duration and termination.

- (a) The franchise granted by the board of supervisors under this article shall be for a maximum term of fifteen years from the date of its acceptance by the grantee.
- (b) In addition to all other rights and powers retained by the county under this franchise or otherwise, the county reserves the right to forfeit and terminate the franchise and all rights and privileges of the franchise hereunder in the event of a substantial breach of its terms and conditions, or of any material rule or regulation of the board of supervisors or county administrative officer, validly adopted pursuant to this article. A substantial breach by grantee shall include, but shall not be limited to, the following:
 - (1) Violation of any material provision of the franchise or any material rule, order, regulation or determination of the county made pursuant to this article;
 - (2) Attempt to dispose of any of the facilities or property, except in the normal course of business of its CATV system, to prevent the county from purchasing it, as provided for herein;
 - (3) Attempt to evade any material provision of the franchise or to practice any fraud or deceit upon the county or its subscribers or customers;
 - (4) Failure to begin or complete system construction or system extension as provided under the franchise;
 - (5) Failure to provide the types of services required by the franchise;
 - (6) Failure to restore service after ninety-six consecutive hours of interrupted service, except when approval of such interruption is obtained from the county administrative officer;
 - (7) Material misrepresentation of fact in the application for or negotiation of the franchise;
 - (8) Conviction of any director, officer, employee or agent of the franchise of the offense of bribery or fraud connected with or resulting from the awarding of this franchise to the grantee; or
 - (9) Failure to pay any penalty leveled against the grantee.

The foregoing shall not constitute a major breach if the violation occurs without fault of the grantee, its agents or employees, or occurs as a result of circumstances beyond its control. Economic hardship or misconduct of a director, officer or employee shall not be considered beyond grantee's control.

- (c) Prior to any forfeiture or termination, the county administrative officer shall set forth the items of breach and make written demand that the grantee do or comply with any requirement, limitation, term, condition, rule or regulation required by the franchise. If the failure, refusal or neglect of the grantee continues for a period of thirty days following such written demand or if the failure, refusal or neglect cannot be cured, the county administrative officer may place his request for termination of the franchise upon the board of supervisors' agenda. The county administrative officer shall cause to be served upon such grantee, at least ten days prior to the date of such board of supervisors' meeting, a written notice of his intent to request such termination, and the time and place of the meeting, notice of which shall be published by the county clerk at least once ten days before such meeting in a newspaper of general circulation in the

county.

- (d) The board of supervisors shall consider the request of the county administrative officer and shall hear any persons interested therein, and shall determine, in its discretion, whether or not any failure, refusal or neglect by the grantee was with just cause.
- (e) If such failure, refusal or neglect by the grantee was with just cause, the board of supervisors shall direct the grantee to comply with such time and manner and upon such terms and conditions as are reasonable.
- (f) If the board of supervisors shall determine such failure, refusal or neglect by the grantee was without just cause, then the board of supervisors may, by resolution declare that the franchise of such grantee shall be terminated and forfeited unless the board of supervisors finds that grantee has cured said breach within the thirty days after notice previously given by the county administrative officer.
- (g) The termination and forfeiture of any franchise shall in no way affect any of the rights of the county under the franchise or any provisions of law.
- (h) In the event of any holding over after expiration or other termination of any franchise granted hereunder, without the prior consent of the county, expressed by resolution, the grantee shall pay to the county reasonable compensation and damages, of not less than one hundred percent of its gross revenue during said period.

(Ord. No. 3436, § 1)

Sec. 2-90.40.- Renewal of franchise.

This franchise may be renewed by the county upon application of the grantee pursuant to the procedure established as follows, and in accordance with the then applicable law:

- (a) At least thirty-six months prior to the expiration of the franchise, grantee shall inform the county in writing of its intent to seek renewal of the franchise.
- (b) After receipt of said notice, county shall determine whether (1) to negotiate with grantee for renewal, or (2) seek additional applicants for a CATV franchise. Grantee shall have no right or expectation of renewal and the decision of the county shall be at its sole discretion.
- (c) If county decides to negotiate with grantee, grantee shall thereafter submit a complete application. In the event that the county and grantee do not agree on the terms and conditions of renewal, county may seek additional applications or competitive bids from grantee or other applicants.
- (d) Costs to be borne by the grantee for a franchise renewal shall include all costs incurred by the county in a franchise renewal study, including evaluation of system and application. The maximum amount of said costs shall be determined and approved by grantee and county at time of application for renewal.

(Ord. No. 3436, § 1)

Sec. 2-90.41.- Purchase of system by county.

- (a) Rights to Purchase. At the expiration of the term of the franchise, county shall have the right to purchase grantee's property located within the county devoted to the system for the value thereof as defined immediately following.
- (b) Property Valuation. The value of the grantee's property shall be its replacement value and the going concern value of the franchised CATV system.

"Replacement value" is defined as the cost of building a new and equally-sized system using the latest technology and current costs less an allowance for the age and condition of the present system.

The "going concern value" means the benefits that attach to the business as a result of its location in the county, grantee's reputation among subscribers or potential subscribers for dependability and quality of service, and any other circumstances resulting in probable retention of subscribers or acquisition of new subscribers; provided that no value shall be assigned to either the franchise itself or any right, privilege or expectancy arising to grantee out of the right to transact business under the franchise, and particularly no value shall be allowed for any increase in value arising out of any expectation of CATV system revenues beyond the forfeiture and termination date or expiration date, whichever is sooner.

- (c) Date of Valuation. The date of valuation shall be the date county makes a fair and reasonable offer for the system or the date of transfer of ownership, whichever occurs first.
- (d) Transfer to County. Upon exercise of this option and the payment of the above sum by the county and its service of official notice of such action upon grantee, the grantee shall immediately transfer to the county possession and title of all facilities and property, real and personal, of the CATV system, free from any and all liens and encumbrances not agreed to be assumed by the county in lieu of some portion of the purchase price set forth above; and the grantee shall execute such warranty deeds or other instruments of conveyance to county as shall be necessary for this purpose.

- (e) Arbitration of Value and Costs.
- (1) In the event county and grantee cannot agree upon the value of grantee's property devoted to CATV system, either may give notice of a demand to the other for arbitration.
 - (2) Arbitration shall commence and proceed according to the law except as follows:
 - (A) The parties shall, within fifteen days, appoint one arbitrator each who is experienced and knowledgeable in the valuation of cable television property. Arbitrators shall each agree upon the selection of a third arbitrator, similarly qualified, within fifteen days.
 - (B) Within thirty days after appointment of all arbitrators and upon ten days with written notice to parties, the board of arbitrators shall commence a hearing on the issue of valuation.
 - (C) The hearing shall be recorded and transcribed at the request of either party. All hearing proceedings, debate and deliberations shall be open to the public and at such times and places as contained in the notice or as thereafter stated in the order to adjourn, except as otherwise authorized by the county counsel.
 - (D) At the close of the hearings and within thirty days, the board shall prepare its findings and decision agreed upon by a majority of the board, which shall then be filed with the county and served by mail upon the grantee.
 - (E) The decision of the board as to the value shall be final and binding upon the parties.
 - (F) Cost of arbitration shall be borne equally unless the board finds the offer of the county or the demand of the grantee was unreasonable, in which case costs may be apportioned by the board so that less or none of the costs may be borne by one party.

(Ord. No. 3436, § 1)

Sec. 2-90.42.- Performance evaluation sessions.

- (a) The county and the grantee shall hold scheduled performance evaluation sessions within thirty days of the third, sixth, ninth and twelfth anniversary dates of the award of the franchise. All such evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with legal notice. Grantee shall notify its subscribers of all evaluation sessions by announcement on at least two channels, if available, of its system between the hours of 9:00 A.M. and 12:00 Noon and 7:00 P.M. and 9:00 P.M., for five consecutive days preceding each session. Evaluation sessions may include, but not be limited to, service rate structures; franchise fee; penalties; free or discounted services; application of new technologies; system performance; services provided; programming offered; customer complaints; privacy; amendments to this article; judicial and FCC rulings; line extension policies; and grantee or county rules.
- (b) Special evaluation sessions may be held at any time during the term of the franchise at the request of the county or the grantee. Said session to be board of supervisors work sessions.
- (c) There is hereby reserved to the county the power to amend any section of this article or franchise issued hereunder so as to require additional or greater standards of construction, channel capacity, operation, maintenance or otherwise, on the part of the grantee to reflect technical and economic changes occurring during the franchise term, and to enable the county and the grantee to take advantage of new developments in the cable television industry so as to more effectively, efficiently and economically serve the public.

The board of supervisors shall have the authority to order a public hearing from time to time on the provision of additional CATV services by grantee.

After such a hearing, the parties shall negotiate in good faith to determine whether there exists a reasonable demand for additional CATV services, a reasonable rate of return for said additional services, and whether it will be reasonable to require grantee to submit a plan for approval to provide said services. Grantee shall not unreasonably refuse to submit a plan, taking into consideration its then current financial capability.

A like procedure shall be available to the board of supervisors in instances where "current state technology" are desired to be considered for inclusion in grantee's CATV system. Without implying any limitations as to other provisions of this franchise this section is a material provision of the franchise.

(Ord. No. 3436, § 1)

Sec. 2-90.43.- Franchise—Payments.

- (a) In consideration of the granting and exercise of a franchise to use the county streets as defined in this article for the operation of a cable television system, any grantee shall pay to the county, during the life of such franchise, a sum not to exceed five percent of the grantee's gross revenues per year from all the cable services in the community. If state or federal laws legally limit that amount, the permitted amount shall be set forth in the resolution granting the franchise.
- (b) The percentage payments provided for in this section shall be made monthly (or less frequently if so

provided in the franchise resolution) with the submission of the financial statement as provided in subsection (c) of this section. Said payments and statements shall be delivered to the division of revenue and trust of the county auditor-controller's office. Such payment by grantee to the county shall be in lieu of any occupation tax, business license tax or similar levy but shall not excuse the grantee from obtaining a business license or other permits which may be required by other ordinances of the county.

- (c) The grantee shall file with the division of revenue and trust of the county's auditor-controller, within ninety days after the expiration of the fiscal year of the grantee or portion thereof during which such franchise is in force, a financial statement prepared by a certified public accountant, or public accountant, showing in detail the gross annual receipts, as defined in section 2-90.32(e) of this article, of the grantee during the preceding calendar year or portion thereof.
- (d) The county shall have the right to inspect the grantee's records showing the gross receipts from which its franchise payments are computed and the right of audit and recomputation of any and all amounts paid under the provisions of this article. Financial data shall be available to county officers and employees for purposes of this review and shall be kept confidential if not otherwise available to the public.
- (e) Any holding over after the expiration or other termination of any franchise granted under the provisions of this article, without the consent of the county board of supervisors having been first granted, shall be deemed a violation of this article. The board of supervisors, however, shall not unreasonably withhold consent to holding over after expiration of the term of a franchise, due to continued good faith negotiations for a new franchise or other reasonable cause.
- (f) No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim the county may have for further or additional sums payable under this article or for the performance of any other obligation hereunder.

(Ord. No. 3436, § 1)

Sec. 2-90.44.- Security fund, insurance, construction bond.

- (a) Grantee shall indemnify and hold harmless the county, its officers, boards, commission, agents and employees, against and from any and all claims, demands, causes of actions, actions, suits, proceedings, damages (including but not limited to damages to county property and damages arising out of copyright infringements, and damages arising out of any failure by grantee to secure consents from owners, authorized distributors or licensees of programs to be delivered by grantee's cable television system), costs or liabilities (including costs or liabilities of the county with respect to its employees), of every kind and nature whatsoever, including but not limited to damages for injury or death or damage to person or property, and regardless of the merit of any of the same, and against all liability to others, and against any loss, cost and expense resulting or arising out of any of the same, including any attorney fees, accountant fees, expert witness or consultant fees, court costs, per diem expenses arising out of or pertaining to the exercise or the enjoyment of any franchise hereunder by the grantee. Grantee shall not be liable for any costs or damage due to the failure of county to comply with county's requirements in awarding a franchise.
- (b) Defense of Litigation. Grantee shall at the sole risk and expense of grantee, upon demand of the county, made by and through the county counsel, appear in and defend any and all suits, actions or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative, or otherwise, brought or instituted or had by third persons or duly constituted authorities, against or affecting the county, its officers, boards, commissions, agents or employees, and arising out of or pertaining to the exercise or the enjoyment of such franchise. County agrees to cooperation with grantee in any such proceeding.
 Grantee shall pay and satisfy and shall cause to be paid and satisfied any judgment, decree, order, directive or demand rendered, made or issued against grantee, the county, its officers, boards, commissions, agents or employees in any of these premises; and such indemnity shall exist and continue without reference to or limitation by the amount of any bond, policy of insurance, deposit, undertaking or other assurance required hereunder, or otherwise; provided, that neither grantee or county shall make or enter into any compromise or settlement of any claim, demand, cause of action, action, suit or other proceeding, without first obtaining the written consent of the other.
- (c) Insurance Required. Upon being granted a franchise, and upon filing of the acceptance, the grantee shall file with the county clerk and shall thereafter during the entire term of such franchise maintain in full force and effect at its own cost and expense each of the following policies of insurance:
 - (1) General comprehensive liability insurance, bodily injury liability insurance, for injuries including accidental death, and property damage liability insurance, as follows:
 - (A) The county shall be named as an additional insured in any of said insurance policies;
 - (B) Where such insurance is provided by a policy which also covers grantee or any other entity or person, it shall contain the standard cross-liability endorsement;
 - (C) The insurance shall be in an amount no less than two hundred fifty thousand dollars, combined single limit; and
 - (D) The amount and form of the insurance shall be reviewed with each three-year review and

county may require adjustment in an amount or form consistent with good insurance practice.

- (d) Within thirty days after the award of a franchise, the grantee shall obtain and maintain at its cost and expense, and file with the county clerk, a bond acceptable to the county counsel in a company authorized to do business in the State of California in the amount set forth in the franchise. Said bond shall guarantee the new construction required in the franchise and the items set forth in subsection (e) of this section. The bond shall provide that upon notice by county that grantee has failed to satisfactorily complete the required construction in the period of time set forth in the franchise, said funds shall be transferred to the county to be held in trust to pay for completion of construction. County may release said funds to grantee or may enter into contracts directly with contractors for said work. Upon completion of construction and the receipt of the performance bond required below, the unexpended funds from the bond fund or the bond itself shall be returned to grantee.

Any extension to the prescribed time limit must be expressly authorized by the board of supervisors. Such extension shall be authorized only when the board of supervisors find that such extension is necessary and appropriate due to causes beyond the control of the grantee. Such bond shall be terminated after the board of supervisors finds through resolution that the grantee has satisfactorily completed the system build or rebuild and activation of the entire system to the expanded channel capacity as set forth in the franchise. The rights reserved to the county with respect to such bond are in addition to all other rights of the county, whether reserved by this article or authorized by law, and no action, proceeding, or exercise of a right with respect to such bond shall affect any other rights the county may have. Such bond shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be cancelled by the surety, nor the intention not to renew be exercised by the surety until sixty days after receipt by the county, by registered mail, of a written notice of such intent to cancel or not to renew."

- (e) Upon return of the above bond and completion of construction, grantee shall submit a performance bond, in the amount set forth in the franchise, as to guarantee the performance by the grantee of the services set forth in the franchise and this article. Said bond shall also guarantee the payment of penalties and damages provided for in the franchise.

(Ord. No. 3436, § 1)

Sec. 2-90.45.- Foreclosure, receivership, bankruptcy.

- (a) Foreclosure. Upon the foreclosure or other judicial sale of all or a substantial part of the CATV system, or upon the termination of any lease covering all or a substantial part of the CATV system, the grantee shall notify the county of such fact, and such notification that a change in control of the grantee has taken place and the provisions of this franchise governing the consent of the board of supervisors to such change in control of the grantee shall apply.
- (b) Receivership. The board of supervisors shall have the right to cancel this franchise one hundred twenty days after the appointment of a receiver or trustee to take over and conduct the business of the grantee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty days, or unless:
- (1) Within one hundred twenty days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this article and remedied all defaults thereunder; and
 - (2) Such receiver or trustee, within one hundred twenty days, shall have executed an agreement, duly approved by the court having jurisdiction, whereby the receiver or trustee assumes and agrees to be bound by each and every provision of this article and the franchise granted to the grantee.
- (c) Bankruptcy. The board of supervisors shall have the right to cancel this franchise immediately should the grantee liquidate, become insolvent, bankrupt, make a transfer for the benefit of creditors, reorganize and enter into an arrangement for the benefit of creditors, or file a voluntary petition under any section or chapter of the National Bankruptcy Act, as amended, or under any similar law or statute of the United States or state thereof; or should an involuntary petition in bankruptcy be filed against the grantee and not be dismissed within one hundred twenty days after the filing.

(Ord. No. 3436, § 1)

Sec. 2-90.46.- Rights reserved to the county.

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

There is reserved to the county every right and power which is required to be reserved by the provisions of this article or by any law of the county, and the grantee, by its acceptance of any franchise, agrees to be bound thereby and to comply with any action or requirements of the county in its exercise of such rights or power heretofore or hereafter enacted or established except not contrary to state or federal laws.

- (c) Neither the granting of any franchise under the provisions of this article nor any of the provisions contained in this article shall be construed to prevent the county from granting any identical or similar franchise to any other person, firm or corporation within all or any portion of the county.
- (d) The board of supervisors may do all things which are necessary and convenient in the exercise of its jurisdiction under the provisions of this article and may determine any question of fact which may arise during the existence of any franchise granted under the provisions of this article. The county director of public works is authorized and empowered to adjust, settle or compromise any controversy between the county or grantee arising from the operations of any grantee under the provisions of this article. A grantee, who may be dissatisfied with the decision of the county director of public works, may appeal the matter to the board of supervisors for hearing and determination. The board of the county director of public works, and the board of supervisors may adjust, settle or compromise any controversy or cancel any charge arising from the controversy.

(Ord. No. 3436, § 1)

Sec. 2-90.47.- Franchise—Limitations.

- (a) A franchise granted under the provisions of this article shall be nonexclusive.
- (b) No privilege or exemption shall be granted or conferred by any franchise granted under the provisions of this article except as specifically prescribed in this article.
- (c) Any privilege claimed under any franchise by the grantee in any street or other public property shall be subordinate to any prior lawful occupancy of the streets or other public property.
- (d)
 - (1) A franchise shall not be sublet or assigned nor shall the rights or privileges therein granted or authorized be leased, assigned, sold or transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, except the grantee, either by act of the grantee or by operation of law, without the prior written consent of the county. The granting of such consent shall not render unnecessary any subsequent consent. The board of supervisors shall not unreasonably withhold consent to any requested transfer.
 - (2) The grantee shall properly notify the county board of supervisors of any proposed change in control of the grantee with respect to which the consent of the county is required. Such change in control shall make the franchise null and void unless and until the county board of supervisors shall have consented thereto; provided, however, that if the board of supervisors has not acted within thirty days after receipt of such notice, the change of control shall be deemed to be automatically approved. For the purpose of determining whether it will consent to such change, transfer of acquisition of control, the county may inquire into the experience and financial responsibility of the prospective controlling party, and the grantee shall assist the county in any such inquiry. Based upon said inquiry, the county may approve, deny or approve with conditions said transfer. For the purposes of this section, presumptive change of control will exist upon sale or transfer, or successful sale or transfers, during the term of any franchise granted hereunder which amounts to fifty percent or more of the original grantee's ownership stock or other control, except for transfers occasioned by probate of an estate.
 - (3) The grantee, within thirty days after any transfer as heretofore described, shall file with the county board of supervisors a copy of the deed, agreement, mortgage, lease or other written instrument evidencing such sale, transfer or lease, certified and sworn to as correct by the grantee.
 - (4) Every such transfer as heretofore described, whether voluntary or involuntary, shall be deemed void and of no effect unless grantee shall have filed said certified copy as is required and county board of supervisors have given approval.
- (e) Time shall be of the essence in any franchise granted under the provisions of this article. The grantee shall not be relieved of this obligation to comply promptly with any of the provisions of this article or by any failure of the county to enforce prompt compliance.
- (f) Any right or power in, or duty impressed upon, any officer, employee, department or board of the county shall be subject to transfer by the county to any officer, employee, department or board of the county.
- (g) The grantee shall be subject to all the provisions, rules, regulations and conditions prescribed by federal, state, county and other applicable local laws heretofore or hereafter enacted or established during the term of any franchise granted under the provisions of this article. Copies of all petitions, applications and communications submitted by the grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction with respect to any matters directly affecting CATV operations authorized pursuant to this franchise, shall also be submitted simultaneously to the county director of public works.
- (h) Any franchise granted under the provisions of this article shall not relieve the grantee of any obligation

involved in obtaining pole space from any department of the county, from any utility company, or from others maintaining poles in streets.

(Ord. No. 3436, § 1)

Sec. 2-90.48.- Inspection of property and records.

- (a) The grantee shall prepare and furnish to the county administrative officer, the county auditor-controller, and the county director of public works at the times and in the form prescribed by any of said officers, such reports with respect to its operations, affairs, transactions or property as may be reasonably necessary or appropriate to the performance of any of the rights, functions or duties of the county or any of its officers in connection with the franchise.
- (b) The grantee at all times shall make and keep in the county on file with the county director of public works, full and complete plans and maps, acceptable to the public works, road division, showing the exact location of all CATV system equipment installed or in use in streets and other public places in the county, any changes in location of such CATV system equipment, or any additions thereto or deletions thereof.

(Ord. No. 3436, § 1)

Sec. 2-90.49.- Signal quality required, technical standards.

The grantee shall produce a picture, whether in black and white or in color, that is undistorted, free from ghost images, and accompanied with proper sound on typical standard production television sets in good repair required as per the FCC standards in effect at the time.

When there has been a pattern of complaints made, or where there exists other evidence, which, in the judgment of the county department of public works, casts doubt on the reliability or quality of cable service, the public works department shall have the right and authority to require the grantee to test, analyze and report on the performance of the system. Grantee shall fully cooperate with the public works department in performing such testing and shall prepare results and a report, if requested within thirty days after notice. Such report shall include the following information:

- (a) The nature of the complaint or problem which precipitated the special tests;
- (b) What system component was tested;
- (c) What equipment was used and what procedures were taken in testing;
- (d) The method, if any, in which such complaint or problem was resolved; and
- (e) Any other information pertinent to said tests and analysis which may be required.

The county department of public works may require that tests be supervised, at grantee's expense, by a professional engineer, not on the permanent staff of the grantee. The engineer should sign all records of special tests and forward to the department of public works such records with a report interpreting the results of the tests and recommending actions to be taken. The county's rights under this section shall be limited to requiring tests, analyses and reports covering specific subjects and characteristics based on said complaints or other information disputed by grantee and when and under such circumstances as the county department of public works has reasonable grounds to believe that the complaints or other evidence require that tests be performed to protect the public against substandard cable service.

The service furnished by the grantee hereunder to said county and its inhabitants shall be first class in all respects and shall be such as will insure the least danger to life and property. Such service shall at all times conform to those technical standards approved by the county and incorporated in the franchise as well as FCC technical standards, and other applicable laws, ordinances and construction standards. In addition, grantee shall provide the county department of public works, upon request, with a written report of the results of grantee's annual proof of performance tests conducted pursuant to FCC standards and requirements.

The grantee shall continue, through the term of the franchise, to maintain quality of service and meet the operational and technical standards of this article. Should the county department of public works find that the grantee has failed to maintain adequate quality of service and meet the operational and technical standards, it shall specifically enumerate such improvements to be made and so notify the grantee in writing. Failure to make such improvements within three months of the date of notification shall be deemed a violation by the grantee of this article. Said three-month period shall be extended by the period of time said improvements are delayed due to fire, weather, earthquake, war, labor disputes or other events reasonably beyond the control of grantee.

The grantee shall at all times employ ordinary care and shall install, maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

Grantee shall install and maintain its wires, cables, fixtures and other equipment in accordance with the

requirements of the State of California Public Utilities Commission, General Orders No. 95 and 128, any successors or amendments thereto, and any applicable county code provisions. The installations shall not interfere or conflict with any installations of the county or of any other utility serving the county.

Grantee shall at all times keep and maintain in safe, suitable, substantial condition, and in good order and repair, all structures, lines, equipment and connections in, over, under and upon the streets, sidewalks, alleys and public ways or places of the county, wherever situated or located.

In the event said FCC standards, or said PUC general orders are discontinued, the latest versions thereof shall, nevertheless, remain in effect for the purpose of this article and any franchise granted hereunder, subject to the power of county to amend this article and any franchise granted hereunder as set out herein.

(Ord. No. 3436, § 1)

Sec. 2-90.50.- Rates.

- (a) At the time of granting any franchise hereunder, the board of supervisors, by resolution, shall, if not preempted by state or federal law, establish and fix maximum allowable rates for services which shall include, but not be limited to, the following:

- (1) Rates for the provision of basic service to subscribers;
- (2) Rates of the installation and connection of services, including converters; and
- (3) Rates for the provision of pay television services to subscribers.

In the event of termination of preemption, the county may regulate increases in the rates in effect at the time of adoption of the governmental action eliminating the preemption.

- (b) The grantee shall have the right to conduct promotional campaigns to the general public without discrimination within a class of subscribers which permit subscriptions, connections and installations to the system at a lesser rate than those approved by the board of supervisors.
- (c) Once established, such rates or charges shall not be changed at any time after granting of a franchise, except as provided herein.
- (d) In connection with any proposed change of any rates or charges of grantee to subscribers initiated by grantee, or the approval of rates for additional services, at any time after the granting of a franchise, the grantee shall submit a complete application as described in subsection (f) of this section.

Within forty-five days of receipt of a completed application, the county administrative officer shall prepare and file with the board of supervisors a report of findings and his recommendations and the reasons therefor at the next regular meeting. An incomplete application shall be rejected within five days by the county administrative office. The forty-five-day period shall begin after the application is complete. After the expiration of ten days following receipt of the county administrative officer's report and recommendation and if no objection has been filed thereto, the board of supervisors shall determine by resolution whether to adopt the recommendation or to hold a hearing. If objection has been filed, the board of supervisors shall pass its resolution of intention to hold a hearing describing and stating any rates or charges to be changed, the reasons therefor, fixing and setting forth a day, hour and place certain when and where any persons having any interest therein may appear before the board of supervisors and be heard. Said hearing shall commence within fifteen days of adoption of the resolution and may be continued if necessary to the next regular meeting.

Such resolution shall direct the county clerk to publish the same resolution at least once within ten days of the passage thereof in a newspaper of general circulation within the county. The county clerk also shall cause a copy of such resolution to be mailed to the grantee at least ten days prior to the date specified for hearing thereof.

Within ten days following the holding of a hearing, after the board of supervisors makes a finding that the changing of any rates or charges of grantee to subscribers will be fair to the system operator and not detrimental or injurious to the best interests and welfare of the subscribers and users, and of the county, then the board of supervisors, by resolution, shall authorize the change of rates or charges of grantee to subscribers and users as determined. The changes shall be effective no later than the next billing cycle for the subscriber. Such resolution shall thereupon become and shall be a part of any franchise granted hereunder and affected thereby. The time limit set forth herein may be extended by mutual agreement of grantee and county.

- (e) Neither the board of supervisors nor the grantee shall, as to rates, charges, service facilities, rules, regulations, or in any other respect, make or grant any preference or advantage to any person, nor subject any person to prejudice or disadvantage.
- (f) As part of the application for rate increases or charges, the grantee shall provide to the county financial data and information bearing on the reasonableness of said rate increases or charges. Said data shall include at a minimum the type of data requested to be provided in the reports required to be filed under this article, all supporting data and information showing increases or decreases in costs or expenses of

providing cable television services, and actual and estimated costs for the three past and three future fiscal years.

The grantee's petition for a rate increase shall include, but not be limited to, the following financial reports, which shall reflect the operations of the system subject to the franchise:

- (1) Balance sheet;
- (2) Income statement;
- (3) Statement of sources and applications of funds;
- (4) Detailed supporting schedules of expenses, income, assets and other items as may be required; and
- (5) Statement of current and projected subscribers and penetration.

The grantee's accounting records applicable to the Santa Barbara system shall be available for inspection in Santa Barbara by the county administrator or his designee at all reasonable times. The county shall have access to records of financial transactions for the purpose of verifying allocated or other indirect costs prorated to the Santa Barbara operation, including but not limited to a three-year past and three-year future schedule of the source of capital funds, and projected capital expenditures. The documents listed above shall include sufficient detail and/or footnotes as may be necessary to provide the county with the information needed to make accurate determination as to the financial condition of the system. All financial statements shall be certified as accurate by an officer of grantee.

- (g) All charges and fees by grantee shall be fair and reasonable and calculated to offset all necessary costs for provisions of the service including a fair rate of return on its investment devoted thereto under efficient and economical management.

(Ord. No. 3436, § 1)

Sec. 2-90.51.- Rate review.

After receipt of the first full year financial reports required under this section and each year thereafter, the county shall compute the rate of return on investment for said year of franchise. For each year after the first year, the cumulative average rate of return on investment shall be computed.

Average rate of return on investment shall be computed by dividing the net income over the period by the annual average value of net property, plant and equipment over the same period. The net income shall be determined by subtracting from the total revenue and operating expenses, depreciation and federal income tax and adding back in interest.

The cumulative average rate of return shall be compared to the cumulative average rate of return projected in the pro forma submitted to the county by the grantee at time of franchise approval or rate adjustment.

In the event the cumulative average rate of return on investment differs from the projected cumulative average rate of return on investment by more than two percentage points, the board of supervisors shall schedule a public hearing to determine whether to initiate a rate hearing. The decision to initiate a rate hearing in that event shall be at the sole discretion of the board of supervisors. If a rate hearing is requested, the grantee shall submit the data regarding rates required for rate adjustment within forty-five days thereafter. The county and grantee shall review rates in the manner set forth in section 2-90.50 and the board of supervisors may increase or decrease the maximum rates. The maximum rates, if adjusted, shall be effective the next billing cycle for each subscriber.

(Ord. No. 3436, § 1)

Sec. 2-90.52.- Rights of individuals and subscribers.

- (a) The grantee shall not grant any preference to any person or subject any person within any class of subscribers to any discrimination as to rates, charges, service, service facilities, rules or regulations or in any other respect; provided, however, that this section shall not be deemed to prohibit bona fide promotional activities by the grantee.
- (b) Grantee shall not deny service, deny access or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin or sex. Grantee shall comply at all times with all other applicable federal, state and local laws and regulations, and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this article by reference.
- (c) Grantee shall strictly adhere to the equal employment opportunity requirements of the FCC, state and local regulations, and as amended from time to time.
- (d) No signals of a class IV cable communications channel shall be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission

of the subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one year, which shall be renewable. No penalty shall be invoked for a subscriber's failure to provide or renew such an authorization. The authorization shall be revocable at any time by the subscriber without penalty of any kind whatsoever. Such authorization is required for each type of classification of class IV cable television activity planned; provided, however, that the grantee shall be entitled to conduct system-wide or individually addressed "sweeps" for the purpose of verifying system integrity, controlling return-path transmission, or billing for pay service.

- (e) The grantee, or any of its agents or employees, shall not, without the specific written authorization of the subscriber involved, sell or otherwise make available to any party:
- (1) Lists of the names and addresses of such subscribers; or
 - (2) Any list which identifies the viewing habits of individual subscribers.
- (f) It shall be the right of all subscribers to continue receiving services insofar as their financial and other obligations to the grantee are honored. In the event that the grantee elects to overbuild, rebuild, modify or sell the system, or the county gives notice of intent to terminate or fails to renew this franchise, the grantee shall act so as to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances.

In the event of a change of grantee, or in the event a new operator acquires the system, the grantee shall cooperate with the county, new grantee or operator in maintaining continuity of service to all subscribers. During such period, grantee shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs for its services when it no longer operates the system.

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

(Ord. No. 3436, § 1)

Sec. 2-90.53.- Subscriber service and complaints.

- (a) In addition to other service requirements adopted herein, excepting circumstances beyond grantee's control, such as Acts of God, strikes, riots or civil disturbances, the grantee shall:
- (1) Limit system failures to minimum time duration by locating and correcting system failure malfunctions promptly, but in no event longer than twenty-four hours after occurrence, irrespective of holidays or other nonbusiness hours;
 - (2) Upon complaint by a subscriber, make a demonstration satisfactory to the chief administrative officer that a signal is being delivered which is of sufficient strength and quality to meet the standards set forth in the regulations of the Federal Communications Commission and the standards set forth herein;
 - (3) Render efficient service, making repairs promptly and interrupting service only for good cause and for the shortest time possible. Planned interruptions, insofar as possible, shall be preceded by notice given to subscribers twenty-four hours in advance and shall occur during periods of minimum use of the system;
 - (4) Maintain an office for service and complaints in the county, which office shall be open during all the usual business hours. Its telephone shall be listed in directories of the telephone company service of the county, and be so operated that complaints and requests for repairs may be received at any time, day or night, seven days a week; and
 - (5) Maintain a written record, or "log" listing date of customer complaints, identifying the subscriber and describing the nature of the complaint, and when and what action was taken by grantee in response thereto; said record shall be kept at grantee's office for a period of three years from the date received and shall be available for inspection during regular business hours by the county administrative officer.
- (b) The county does hereby designate the county administrator's office as the county official responsible for receiving complaints or comments from any subscriber or potential subscriber as to the manner in which the grantee is providing cable television service. Grantee shall annually notify each subscriber that the office of the county administrator is available to assist in resolving complaints regarding cable television service.
- (c) The grantee shall limit system failures to a minimum by locating and correcting malfunctions promptly, but in no event longer than twenty-four hours after notice of grantee. Whenever service is interrupted to any subscriber due to system failure for any continuous period of time in excess of twenty-four hours, the subscriber shall upon application receive a rebate of one-thirtieth of the subscriber's monthly service fee

for each day or part thereof between the end of the twenty-four hours and the time service is restored to proper standards.

(Ord. No. 3436, § 1)

Sec. 2-90.54.- Records and reports.

- (a) Annual Financial Reports Required. The grantee shall file annually with the county administrative officer, not later than three months after the end of his fiscal year during which he accepted a franchise hereunder and within three months after the end of each subsequent fiscal year, two copies of:
- (1) The report to his stockholders;
 - (2) An income statement identifying revenues, expenses and income applicable to his operations under said franchise during the fiscal year or fraction thereof; and
 - (3) A listing of his properties devoted to network operations together with an itemization of his investment in each of such properties on the basis of original cost, less depreciation.
- (b) Annual Facilities Report Required. The grantee shall file annually with the county administrative officer, not later than three months after the end of his fiscal year during which he accepted a franchise hereunder and within three months after the end of each subsequent fiscal year, two copies of a total facilities report setting forth the total physical miles of plant installed or in operation during the fiscal year and a map showing the location of same.
- (c) Grantee shall monthly provide to the county administrative officer a service call summary for the previous month showing the type of service call, nature of complaint and resolution of service call.
- (d) County's Access to Records. At all reasonable times grantee shall permit examination by any duly authorized representatives of the county administrator, county director of public works or county auditor-controller of all franchise property located with the county. Grantee shall also permit any duly authorized representatives of the county administrator, county director of public works or the county auditor-controller to examine and transcribe any and all maps and other records kept or maintained by grantee or under its control concerning the operations, affairs, transactions or property of grantee. If any of such maps or records are not kept in the county, or upon reasonable request made available in the county, and if the county manager, county director of public works or the county auditor-controller shall determine that an examination of such maps or records is necessary or appropriate to the performance of any of their duties, then all reasonable travel and maintenance expense necessarily incurred in making such examination shall be paid by grantee.

The county reserves the right during the life of any franchise granted hereunder, and for one year thereafter, to have access, at all normal business hours and upon the giving of reasonable notice, to grantee's contracts, engineering plans, accounting, financial data and service records relating to the property and the operations of the grantee and to all other records required to be kept hereunder.

- (e) The records listed under subsections (a) and (b) of this section will be made available for public inspection and copying.

(Ord. No. 3436, § 1)

Sec. 2-90.55.- Permits and construction.

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

In connection therewith, copies of all petitions, applications and communications submitted by the other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting grantee's cable television operations, shall also be submitted simultaneously to the county administrative officer.

- (b) By acceptance of the franchise granted hereunder, grantee agrees that failure to comply with any time requirements referred to in subsection (a) of this section will result in damage to the county, and that it is and will be impracticable to determine the actual amount of such damage in the event of delay; and grantee therefore agrees that it will pay to county the sum of five hundred dollars per day for each and every day's delay beyond the time prescribed, plus authorized extensions thereof, for completion of any of the acts required to be done by this section.
- (c) Grantee shall utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different or additional poles, conduits, or other facilities on county-owned property without first securing the written approval of the county administrative officer.
- (d) The grantee at his expense shall protect, support, temporarily disconnect, relocate or remove any property of grantee when, in the opinion of the county administrative officer the same is required by

reason of traffic conditions, public safety, street vacation, freeway or street construction, change or establishment of street grade, installation of sewers, drains, waterpipes, powerline, signal line, transportation facilities, tracks, or any other types of structure or improvements by local governmental agencies whether acting in a governmental or a proprietary capacity, or any other structure or public improvement, including but not limited to movement of buildings, urban renewal and redevelopment, and any general program under which the county shall undertake to cause all such properties to be located beneath the surface of the ground. The grantee shall in all cases have the privilege, subject to the corresponding obligations, to abandon any property of grantee in place, as herein provided. Nothing hereunder shall be deemed a taking of the property of grantee, and grantee shall be entitled to no surcharge by reason of anything hereunder.

- (e) Upon the failure, refusal or neglect of grantee to cause any work or other act required by law or hereunder to be properly completed in, on, over, or under any street after reasonable notice within reasonable time prescribed therefor, the county administrative officer may cause such work or other act to be completed in whole or in part, and upon so doing shall submit to grantee an itemized statement of the costs thereof. The grantee shall, within thirty days after receipt of such statement, pay to the county the entire amount thereof.
- (f) In the event that:
 - (1) The use of any part of the system of grantee is discontinued for any reason for a continuous period of thirty days, without prior written notice to and approval by the county; or
 - (2) Any part of such system has been installed in any street or other area without complying with the requirements hereof; or
 - (3) Any franchise shall be terminated, cancelled or shall expire, then the grantee shall, at the option of the county, and at the expense of the grantee and at no expense to the county, and upon demand of the county, promptly remove from any streets or other area all property of grantee, and grantee shall promptly restore the street or other area as close to original condition as possible, normal wear and tear accepted, as required by standards adopted by the county.

The board of supervisors may, upon written application therefor by grantee, approve the abandonment of any of such property in place by grantee and under such terms and conditions as the board of supervisors may prescribe. Upon abandonment of any such property in place, grantee shall cause to be executed, acknowledged and delivered to the county such instruments as the county counsel shall prescribe and approve, transferring and conveying the ownership of such property to the county.

(Ord. No. 3436, § 1)

Sec. 2-90.56.- Franchise—Regulations generally.

- (a) When not otherwise prescribed in this article, all matters required in this article to be filed with the county shall be filed with the county director of public works.
- (b) The grantee, without charge, shall provide all basic subscriber services of its system, including multiple-connection services, except as prohibited by standard controls with producers and distributors of the programming, to all public and nonprofit private schools, county police and fire stations, county recreation centers, and such other buildings utilized by the county, which shall from time to time be designated by the county director of public works; provided, however, such buildings shall be located within the franchise area. The grantee shall install, without charge to the county or such public or private schools, up to one hundred fifty feet of service connection from the transmission cable otherwise maintained or required to be maintained by the grantee for the service of paying subscribers of the grantee. The county or any such public or private schools shall pay to the grantee the costs of all labor and materials supplied by the grantee for the installation of any service connection in excess of the initial one hundred fifty feet.
- (c) In the case of any emergency or disaster, the grantee, upon request of the county emergency services officer, sheriff or fire chief, shall make available its communication facilities to the county for emergency use during the emergency or disaster period.
- (d) The grantee shall maintain an office within the county limits, or at a location which subscribers may call without incurring added message or toll charges, so that CATV maintenance service shall be available promptly to subscribers. The county director of public works, on behalf of the county, shall receive complaints regarding CATV services.
- (e) No person, firm or corporation in the existing service area of the grantee shall be arbitrarily refused service; provided, however, the grantee shall not be required to provide service to any subscriber who does not promptly pay any lawful fees permitted by the franchise or by the board of supervisors.
- (f) Before the grantee provides service to any subscriber, the grantee shall obtain a signed contract from the subscriber containing a provision substantially as follows: "The subscriber understands that in providing service the grantee is making use of public rights-of-way within the County and that the continued use of these public rights-of-way is in no way guaranteed. In the event the continued use of such rights-of-way is denied to the grantee for any reason, the grantee will make every reasonable effort to provide service over alternative routes. The subscriber agrees he will make no claim nor undertake

any action against the county, its officers, its employees, or the grantee if a service to be provided by the grantee hereunder is interrupted or discontinued because the continued use of such rights-of-way is denied to the grantee for any reason."

The form of the grantee's contract with its subscribers shall be subject to approval of the county counsel with respect to the inclusion of this provision. To the extent permitted by law the county agrees to preserve rights-of-way for grantee's lines and equipment upon abandonment of a county street.

(Ord. No. 3436, § 1)

Sec. 2-90.57.- Grantee's property—Location.

- (a) Any poles, wires, cable lines, conduits or other properties of the grantee to be constructed or installed in streets shall be so constructed or installed only at such locations and in such manner as shall be approved by the county director of public works acting in the exercise of his reasonable discretion.
- (b) The grantee shall not install or erect any facilities or apparatus in or on other public property, places or rights-of-way, or within any privately owned area within the county which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by the county, except those installed or erected upon public utility facilities now existing, without obtaining the prior written approval of the county director of public works.
- (c) In those areas and portions of the county where the transmission or distribution facilities of both the public utility providing telephone service and the utility providing electric service are underground or hereafter may be placed underground, the grantee shall construct, operate and maintain all of its transmission and distribution facilities underground. Amplifiers in the grantee's transmission and distribution lines may be in appropriate housings upon the surface of the ground as approved by the county director of public works. The county shall not be responsible in any manner for any costs incurred by the grantee in placing the grantee's facilities underground.

(Ord. No. 3436, § 1)

Sec. 2-90.58.- Grantee's property—Removal and abandonment.

- (a) In the event the use of any part of the CATV system is discontinued for any reason for a continuous period of three months, or in the event such system or property has been installed in any street or public place without complying with the requirements of the grantee's franchise or the provisions of this article, or in the event the franchise has been terminated or cancelled or has expired, the grantee, upon being given ten days' notice, shall promptly begin removal from the streets or public places all such property and poles of such system other than any which the county director of public works may permit to be abandoned in place. In the event of such removal, the grantee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the county director of public works.
- (b) Any property of the grantee remaining in place sixty days after the termination or expiration of the franchise shall be considered permanently abandoned. The county director of public works may extend such time based upon the size of the project and diligent efforts to remove.
- (c) Any property of the grantee to be abandoned in place shall be abandoned in such manner as the county director of public works shall prescribe. Subject to the provisions of any utility joint use attachment agreement, upon permanent abandonment of the property of the grantee in place, the property shall become that of the county, and the grantee shall submit to the county director of public works an instrument in writing, to be approved by the county counsel, transferring to the county the ownership of such property.

(Ord. No. 3436, § 1)

Sec. 2-90.59.- Extension of service.

- (a) Line Extensions. The grantee shall be required to extend its cable communications system within the franchise area pursuant to the following requirements:
 - (1) Grantee must extend and make cable television service available to every dwelling unit within one year of the date any portion of the franchise area attains a density of at least forty dwelling units per street mile, as measured from the existing cable communications system.
 - (2) In the event that an unserved area is being subdivided and platted, and proposes to have at least forty dwelling units planned per street mile, grantee shall extend its cable communications system simultaneously with the installation of utility lines. Initial cost of installation shall be borne by the owner of the subdivision. If within two years of the date final map is approved the density of dwelling units within the subdivision reaches an average of forty dwelling units per street mile, the grantee shall reimburse the owner of the subdivision for the initial costs of installation.
 - (3) Grantee must extend and make cable communications service available to any isolated person requesting connection at the standard connection charge, if the connection to the premises of the

isolated person would require no more than a one hundred fifty foot aerial drop line.

- (b) **Early Extension.** In areas of the franchise area not meeting the requirements for mandatory extension of service, grantee shall provide, upon request of any person desiring cable communications service, an estimate of the costs required to extend such service to said person. Grantee may require advance payment or assurance of payment satisfactory to grantee prior to actually extending such service. The amount paid by any person for early extension shall be refundable, and in the event the area subsequently reaches the density required for mandatory extension, such payments shall be treated as consideration for early extension.
- (c) **New Development Undergrounding.** In cases of new construction or property development within the franchise area where utilities are to be placed underground, the developer or property owner shall give notice to grantee no later than time of notice to public utilities. Said notice of such construction or development shall specify the date on which open trenching will become available for grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at grantees expense. Grantee shall provide specifications as needed for trenching.

Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if grantee fails to install its conduit, pedestals and/or vaults, and laterals within five working days of the date the trenches become available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five-day period, the cost of new trenching is to be borne by grantee. Except for the notice of the particular date on which trenching will become available to grantee, any notice provided to grantee by county of a pending plat shall satisfy the requirement of reasonable notice if sent to the local general manager or system engineer of grantee prior to the approval of the plat.

- (d) **Special Agreements.** Nothing herein shall be construed to prevent grantee from serving areas within the franchise area, not covered under this section upon agreement with developers, property owners or residents.

(Ord. No. 3436, § 1)

Sec. 2-90.60.- Penalties.

Actual and precise damages are not possible to be precisely determined for failure to comply with certain provisions of the franchise issued under this article. Penalties in the amounts set forth in the franchise pursuant to this section shall be paid by the grantee as civil penalties. Nothing in this section shall diminish or reduce the power of the county to terminate the franchise as set forth in section 2-90.39.

Each franchise shall:

- (a) Set the completion dates for construction;
- (b) Specify services subject to penalty for noncompliance; and
- (c) The dollar amount of the penalty for each item.

Penalty shall be imposed after ten-day notice and hearing by county director of public works after finding as follows:

- (a) The requirement of this article or the franchise has not been completed; and
- (b) The failure to complete the item by the prescribed date or not to provide the service is not excusable under any provisions of this article or the franchise.

The amount assessed shall be paid within five days of written notice after the written findings and determinations are presented to grantee.

(Ord. No. 3436, § 1)

Sec. 2-90.61.- Acceptance and effective date of franchise.

- (a) Within thirty days after the effective date of the resolution awarding a franchise, or within such extended period of time as the board in its discretion may authorize, the grantee shall file with the county director of public works its written acceptance of the franchise, together with the bond and insurance policies (the last to be forwarded to the county counsel) required by section 2-90.44 and its agreement to be bound by and to comply with and to do all things required of it by the provisions of this article and the franchise. Signature of such acceptance and agreement shall be acknowledged by the grantee before a notary public, and in form and content shall be satisfactory to and approved by the county counsel.

(Ord. No. 3436, § 1)

Sec. 2-90.62.- Administration and enforcement.

Except as expressly otherwise provided herein, this article XIA and any franchises granted hereunder

shall be administered and enforced by the director of public works of the county. Furthermore, all notices, correspondence and other documents and communications pertaining to or required by this article XIB from any grantee hereunder, unless expressly otherwise provided herein or in any franchise granted hereunder, shall be made to the county department of public works.

(Ord. No. 3436, § 1)

Sec. 2-90.63.- Violations.

- (a) From and after the effective date of this article, it is unlawful for any person to establish, operate or carry on the business of distributing to any person in the unincorporated territory of the county, other than on lands under federal or state jurisdiction, any television signal or radio signal by means of a CATV system unless a franchise therefor has first been obtained pursuant to the provisions of this article or a predecessor ordinance and unless such franchise is in full force and effect. All major franchises shall be granted pursuant to this article.
- (b) From and after the effective date of this article, it is unlawful for any person to construct, install, maintain or operate within any public street in the county, or within any other public property of the county, or within any privately owned area within the county which has not yet become a public street, but is designated or delineated as a proposed public street on any tentative subdivision map approved by the county, any equipment or facilities for distributing any television signal or radio signal by means of a CATV system unless a franchise authorizing such use of such street or property or area has first been obtained pursuant to the provisions of this chapter and unless such franchise is in full force and effect.
- (c) It is unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of a franchised CATV system within the county for the purpose of taking or receiving any television signal, radio signal, picture, program or sound.
- (d) It is unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of a franchised CATV system within the county for the purpose of enabling himself or others to receive any television signal, radio signal, picture, program or sound without payment to the owner of such system.
- (e) It is unlawful for any person, without the consent of the owner, to willfully tamper with, remove or injure any cables, wires or equipment used for the distribution of any television signal, radio signal, picture, program or sound.

(Ord. No. 3436, § 1)

Sec. 2-90.64.- Penalties.

Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding five hundred dollars or be imprisoned in the county jail for a period not exceeding six months or be both so fined and imprisoned. Each day said violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

(Ord. No. 3436, § 1)

Sec. 2-90.65.- Replacement ordinance.

The foregoing article XIB shall remain in force and be effective as to all franchises which may have been granted under the authority of said article until such franchise is renewed. It shall be of no effect for any franchises granted or renewed after the enactment of this ordinance section, the provisions of said article XIB having been replaced by a new chapter 43 of the County Code. Said article XIB shall be repealed effective December 31, 2004 unless this section is earlier amended.

(Ord. No. 4371, § 1)