

Chapter 5.28

CABLE COMMUNICATIONS

Sections:

5.28.2.0	Title.	5.28.7.2	Reservation of Rights.
5.28.2.1	Federal Section.	5.28.7.3	Additional Franchises.
5.28.2.2	Cable System.	5.28.7.4	Rules and Regulations.
5.28.2.3	City.	5.28.7.5	Governmental Power.
5.28.2.4	Council.	5.28.7.6	Use of Poles
5.28.2.5	Franchise.	5.28.8.0	Permits, Installation and Service.
5.28.2.6	Franchise Agreement.	5.28.9.0	Design and Construction Provisions.
5.28.2.7	Franchise Fee.	5.28.9.1	System Design.
5.28.2.8	Franchise Territory.	5.28.9.2	Geographical Coverage.
5.28.2.9	Grantee.	5.28.9.3	System construction Schedule.
5.28.2.10	Gross quarterly Receipts.	5.28.9.4	New Development
5.28.2.11	Property of Grantee.	5.28.9.5	Undergrounding.
5.28.2.12	Street.	5.28.9.6	Undergrounding at Multiple-Dwelling Units.
5.28.3.0	Franchise to Operate.	5.28.9.7	Additional Undergrounding.
5.28.3.1	Grant.	5.28.9.8	Service Connections.
5.28.3.2	Limitation.	5.28.9.9	Line Extensions.
5.28.3.3	Use of Public Streets and Highways.	5.28.10.0	Location of Property of Grantee.
5.28.4.0	Duration of Franchise.	5.28.10.1	Approval of City.
5.28.4.1	Duration.	5.28.10.2	Interference.
5.28.4.2	Effective Date.	5.28.11.0	Removal and Abandonment of Property of Grantee.
5.28.4.3	Termination.	5.28.11.1	Abandonment.
5.28.4.4	Franchise Renewal.	5.28.11.2	Property Abandoned in Place.
5.28.5.0	Franchise Payments.	5.28.12.0	Changes Required by Public Improvements.
5.28.5.1	Franchise Fee.	5.28.13.0	Failure to Perform Street Work.
5.28.5.2	Financial Statement.	5.28.14.0	Liability, Indemnification and Termination.
5.28.5.3	Inspection; Audit.	5.28.14.1	Indemnification.
5.28.5.4	Acceptance by City.	5.28.14.2	Defense Costs.
5.28.6.0	Limitations of Franchise.	5.28.14.3	Insurance.
5.28.6.1	Nonexclusive.	5.28.14.4	Insurance Policy.
5.28.6.2	Exemptions.	5.28.14.5	Performance Bond.
5.28.6.3	Subordination	5.28.14.6	Evidence
5.28.6.4	Transfer.	5.28.14.7	No Excuse.
5.28.6.5	Time of the Essence.	5.28.14.8	Sanctions.
5.28.6.6	City Right to Transfer.	5.28.14.9	Credits to Subscribers.
5.28.6.7	Legal Compliance.	5.28.14.10	Determination of Right to Credit.
5.28.6.8	Pole Attachments.		
5.28.6.9	Private Property.		
5.28.7.0	Rights Reserved to the City.		
5.28.7.1	Eminent Domain.		

- 5.28.14.11 **Termination of Franchise for Cause.**
- 5.28.14.12 **Termination Procedures.**
- 5.28.14.13 **Restoration of Property.**
- 5.28.15.0 **Inspection of Property and Records.**
 - 5.28.15.1 **Inspection.**
 - 5.28.15.2 **Reports.**
 - 5.28.15.3 **Location of Equipment**
- 5.28.16.0 **Operational Standards, Evaluation Sessions.**
- 5.28.17.0 **Miscellaneous Provisions.**
 - 5.28.17.1 **City Clerk.**
 - 5.28.17.2 **Service to Public Facilities/PEG.**
 - 5.28.17.3 **Emergency Service.**
 - 5.28.17.4 **Limitations.**
 - 5.28.17.5 **Refusal of Service.**
 - 5.28.17.6 **Subscription Agreement.**
 - 5.28.17.7 **Right of Grantee.**
- 5.28.18.0 **Use of Utility Poles and Facilities.**
- 5.28.19.0 **Application for Franchise.**
 - 5.28.19.1 **Procedures.**
 - 5.28.19.2 **Grant to Applicant.**
 - 5.28.19.3 **Franchise Agreement.**
- 5.28.20.0 **Franchise Renewal.**
- 5.28.21.0 **Acceptance and Effective Date of Franchise.**
 - 5.28.21.1 **Effective Date.**
 - 5.28.21.2 **Filing**
- 5.28.22.0 **Violations; Penalties.**
 - 5.28.22.1 **Requirement of Franchise.**
 - 5.28.22.2 **Pirating.**
 - 5.28.22.3 **Tampering.**
 - 5.28.22.4 **Penalties.**
- 5.28.23.0 **Severability.**
- 5.28.24.0 **Customer Service Standards.**
 - 5.28.24.1 **Subscriber Complaints**
 - 5.28.24.2 **Phone Service.**
 - 5.28.24.3 **Efficient Service.**
 - 5.28.24.4 **Service Log.**
 - 5.28.24.5 **Service Call Notice.**
 - 5.28.24.6 **Customer Service Representatives.**

5.28.2.0 **Title.**

This ordinance shall be known and cited as the "City of Ripon Cable Television Ordinance" and shall be referred to herein as "this ordinance".

For the purposes of this ordinance, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. (Ord. 486 § 1, 1992)

5.28.2.1 **Federal Section.**

Refers to the Cable Communications Policy Act of 1984, and any amendments thereto as codified in Title 47 of the United States Code, Section 521 et seq.

5.28.2.2 **Cable System.**

Means a facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service, which includes video programming and FM radio service, and which is provided to multiple subscribers within a community, but shall not include (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (b) a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such facility or facilities uses any public right-of-way; (c) a facility of common carrier which is subject, in whole or part, to the provisions of Title II of the Cable Act, except that such facility shall be considered a cable system (other than for purposes of Federal Section 541(c)) to the extent such facility is used in the transmission of video programming directly to subscribers; or (d) any facilities of any electric utility used solely for operating its electric utility systems. (Ord. 486 § 1, 1992)

5.28.2.3 **City.**

Means the City of Ripon, a Municipal Corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated,

enlarged or reincorporated form. (Ord. 486 § 1, 1992)

5.28.2.4 Council.

Shall mean the present highest governing body of the City or any future board constituting the legislative body of the City. (Ord. 486 § 1, 1992)

5.28.2.5 Franchise.

Means and includes any authorization granted pursuant to this ordinance in terms of a franchise, privilege, permit, license or otherwise to construct, operate and maintain a cable system in the City, including any referenced specifications, franchise applications and other related material within such agreement. (Ord. 486 § 1, 1992)

5.28.2.6 Franchise Agreement.

Shall mean an agreement between the City and Grantee, approved by ordinance or resolution of the Council, containing the specific provisions of the franchise granted, including any referenced specifications, franchise applications and other related material within such agreement. (Ord. 486 § 1, 1992)

5.28.2.7 Franchise Fee.

Means the tax, fee or assessment to be paid by Grantee solely because of Grantee's operation of a cable system within the franchise territory. Such fee does not include: (1) any capital costs which are required by the franchise to be incurred by the Grantee for public, educational, or governmental access facilities; (b) any tax, fee or assessment of general applicability; or (c) any franchise application or renewal fees or consulting fee reimbursements payable by the Grantee to the City. (Ord. 486 § 1, 1992)

5.28.2.8 Franchise Territory.

Means that portion of the City defined in the franchise agreement for which a franchise is granted. (Ord. 486 § 1, 1992)

5.28.2.9 Grantee.

Means the person or entity to whom or which a franchise, as defined above, is properly granted by the Council under this ordinance, and the

lawful successor, transferee or assignee of said person or entity, as referenced in Section 5.28.6.4 hereto. (Ord. 486 § 1, 1992)

5.28.2.10 Gross Quarterly Receipts.

Means all amounts which are charged and/or received, directly or indirectly, by the Grantee from or in connection with the operation of its cable system during the first, second, third or fourth three-month period in any year (or portion thereof). Gross quarterly receipts shall include receipts from the distribution of any basic, premium or pay-per-view service over the cable system to any subscriber; installation, reconnection and similar fees; fees paid for channels designated for commercial use; converter rentals or sales; studio and other facility or equipment rentals, other than those not associated with the operation of the system; advertising revenues (based on the percentage of subscribers in the franchise territory); revenue derived from the sale of products advertised or promoted on the system, to the extent such revenue represents payment, in whole or in part, for the use of a channel on the system. Gross quarterly receipts shall also include the gross revenue of any other person which is derived directly or indirectly from or in connection with the operation of the system, but only to the extent that said revenue is derived through a means which has the effect of avoiding the payment of franchise fees to the City that would otherwise be due hereunder and in no event shall it include any amount received by any person for management or consulting services related to the cable system. Gross quarterly receipts shall not include: (1) the revenue of any person, including, without limitation, an affiliated person or supplier of programming to Grantee, to the extent that said revenue is also included in the gross quarterly receipts of Grantee; (2) taxes or other charges imposed by law on subscribers or other persons which Grantee collects and which Grantee passes on, in full, to the applicable authority or authorities; (3) amounts collected by Grantee from subscribers on behalf of commercial use or access channel programmers, to the extent that said amounts are passed on in full by Grantee to said programmers;

(4) any investment income earned by Grantee, or receipts from Grantee's sale of assets; (5) uncollected amounts, provided, however, that any amounts later collected shall be included immediately upon receipt by Grantee; (6) the value of any free service; or (7) the value of any public, educational or governmental services authorized or required by this agreement. (Ord. 486 § 1, 1992)

5.28.2.11 Property of Grantee.

Means all property owned, installed or used by a Grantee in the conduct of a television business in the City under the authority of a franchise. (Ord. 486 § 1, 1992)

5.28.2.12 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, easements, licenses, permits, rights-of-way of any kind or nature whatsoever and public property and areas now or hereafter existing as such within the City. (Ord. 486 § 1, 1992)

5.28.3.0 FRANCHISE TO OPERATE.

5.28.3.1 Grant.

Subject to applicable state and federal law, a nonexclusive franchise to construct, operate and maintain a cable system within all or any portion of the City may be granted by the Council to any person or entity, whether currently operating under an existing franchise or not, who or which offers to furnish and provide such services pursuant to the terms of this ordinance. (Ord. 486 § 1, 1992)

5.28.3.2 Limitation.

No provision of this ordinance may be deemed or construed as to require the granting of a franchise when in the opinion of the Council it is in the public interest to restrict the number of Grantees to one or more. (Ord. 486 § 1, 1992)

5.28.3.3 Use of Public Streets and Highways.

Any such franchise shall authorize and permit the Grantee to engage in the business of operating and providing a cable system in the City,

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 or highway within the area of the franchise, such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property as may be necessary and appurtenant to the cable 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 area of the franchise. (Ord. 486 § 1, 1992)

5.28.4.0 DURATION OF FRANCHISE.

5.28.4.1 Duration.

No franchise granted by the Council under this ordinance shall be for a term longer than fifteen (15) years following the effective date (as herein defined) of such franchise or any renewal thereof. (Ord. 486 § 1, 1992)

5.28.4.2 Effective Date.

The effective date of the franchise shall be as provided in Section 5.28.21.1 hereunder. (Ord. 486 § 1, 1992)

5.28.4.3 Termination.

The franchise shall terminate without further action by the City at the end of the term, retains the exclusive power to grant an extension, or a renewal of the franchise to Grantee. Any termination or revocation of the franchise prior to its term shall be executed in accordance with the Federal Section 547 of the Cable Act. (Ord. 486 § 1, 1992)

5.28.4.4 Franchise Renewal.

The renewal procedure specified in Federal Section 546 shall, if the Grantee requests, be commenced by the City during the six month period which begins three years prior to the expiration of the term of the franchise. Any such renewal shall also be subject to the requirements of Section 5.28.19.0 to 5.28.19.3 hereunder. (Ord. 486 § 1, 1992)

5.28.5.0 FRANCHISE PAYMENTS.**5.28.5.1 Franchise Fee.**

Any Grantee shall pay to the City during the life of the franchise, a sum equal to five percent (5%) of the gross quarterly receipts of the Grantee; provided, however, that in no event shall the franchise fee for any twelve month period ever exceed five percent (5%) of the sum of the Grantee's gross quarterly receipts for such period. Grantee shall also pay to the City when due such other sums as may be provided for in the franchise agreement. In no event shall the fee be more than that authorized by applicable federal and state law. Such fee by the Grantee to the City shall be payable on or before the thirtieth (30th) day following the end of each respective calendar quarter during the term of the franchise, by delivery of the same to the City Clerk of the City. All payments made hereunder shall be made in lieu of any business license, occupation tax or similar levy.

In the event that the above payments and financial statements are not received by the City within ten (10) days of the specified due dates, Grantee shall pay to the City a late charge to cover administrative, bookkeeping and other expenses attendant thereto, of two percent (2%) of the amount due for such calendar quarter plus interest at the rate of ten percent (10%) per annum on any late payment computed from the date due to the date of payment. (Ord. 486 § 1, 1992)

5.28.5.2 Financial Statement.

The Grantee shall file with the City, within sixty (60) days after the expiration of any calendar year (or portion thereof) during which such franchise is in force, a financial statement prepared by an independent Certified Public Accountant who is satisfactory to the Council and certified by the Chief Financial Officer of Grantee, showing in detail and warranting the accuracy of the various categories and amounts of the gross quarterly receipts of Grantee during the calendar quarters (or portion thereof in the case of an initial or final quarter) in the preceding calendar year. (Ord. 486 § 1, 1992)

5.28.5.3. Inspection; Audit.

Upon written request made a least seven (7) days in advance during normal business hours, any

duly authorized representative of the City shall have the right to inspect and audit the Grantee's records showing the gross quarterly receipts from which its franchise fee payments are computed. Any such inspection or audit shall take place within thirty-six (36) months following the respective month and records thereof in question. If an underpayment in excess of five percent (5%) of the franchise fee for any calendar quarter is determined in such inspection or audit conducted by or at the direction of the City, then the cost of such inspection or audit shall be borne by the Grantee. (Ord. 486 § 1, 1992)

5.28.5.4 Acceptance by City.

No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim that the City may have for any sums payable under this ordinance or for the performance of any other obligation hereunder. (Ord. 486 § 1, 1992)

5.28.6.0 LIMITATIONS OF FRANCHISE.**5.28.6.1 Nonexclusive.**

Any franchise granted under this ordinance shall be nonexclusive. (Ord. 486 § 1, 1992)

5.28.6.2 Exemptions.

No privilege or exemption shall be granted or conferred by any franchise except those specifically prescribed herein, in the franchise agreement or as subsequently determined by the Council and expressed by resolution. (Ord. 486 § 1, 1992)

5.28.6.3 Subordination.

Any privilege claimed under any franchise by the Grantee in any public street or other public property shall be subordinate to any prior lawful occupancy of the streets or other public property. (Ord. 486 § 1, 1992)

5.28.6.4 Transfer.

(a) Any franchise granted hereunder shall be a privilege to be held in personal trust by the original Grantee. Neither the franchise, nor any rights or obligations of the Grantee pursuant to the

franchise or cable system shall be transferred in part or as a whole, by assignment, trust, mortgage, lease, sublease, pledge or other hypothecation or by forced or involuntary sale, or by voluntary sale, merger, consolidation or otherwise, not shall the title to the franchise or system, either legal or equitable, or any right or interest therein, pass to or vest in any person or entity, nor shall a change in control (20% or more) of Grantee occur, either by act of the Grantee, by operation of law or otherwise, in each case, without the prior consent of the Council expressed by resolution, and then only under such conditions as may therein be prescribed. The consent of the Council may not be unreasonably withheld; provided, however, that any proposed assignee must show complete financial and technical ability to operate a franchise hereunder and must agree to comply with all provisions of this ordinance and any preexisting agreements between the City and the Grantee.

(b) Nothing contained in this Section 5.28.6.4 shall be deemed to prohibit or require City approval of any assignment, pledge, lease, sublease, mortgage, or other transfer or hypothecation of all or any part of the stock of (or other evidence of ownership in) or assets (not including the franchise) of the company or the system, or any right or interest therein, for securing an indebtedness, provided that each such assignment, pledge, lease, sublease, mortgage, or other transfer or hypothecation shall be subject to the rights of the City pursuant to this agreement, or applicable law, and such rights of the City shall be recognized in each such hypothecation agreement between Grantee and any such creditor.

(c) The restrictions contained in this Section 5.28.6.4 shall not apply to any transfer or hypothecation, assignment, or other disposition, between or among persons in common control with the Grantee, provided that in such instances or any other instances where any change in the ownership of Grantee is to be undertaken, prior written notice of any such change shall be provided to the City.

(d) A Grantee shall file written notice with the City as soon as it acquires knowledge of any impending transaction or other event for which the consent of the City is required under this Section 5.28.6.4. The notice shall state the name and address of the interested parties in the transaction, and enclose a copy of any executed agreement

between the interested parties. Furthermore, the Grantee shall agree to provide any and all information and documentation as may be reasonably requested by the City in connection with its review of any proposed transfer. By its acceptance of the franchise, the Grantee agrees that any such acquisition occurring without prior approval of the City shall constitute a violation of the franchise by the Grantee.

(e) Any such transfer shall be subject and subordinate to the rights of the City under any franchise agreement granted hereunder, and the transferee shall acknowledge in writing such subordination and agreement to comply with and be bound by all of the terms, conditions, and requirements of the franchise agreement, as well as this ordinance. (Ord. 486 § 1, 1992)

5.28.6.5 Time of the Essence.

Time shall be of the essence of any franchise. The Grantee shall not be relieved of its obligation to comply promptly with any of the provisions of this ordinance or the franchise agreement, by any failure of the City to enforce prompt compliance. (Ord. 486 § 1, 1992)

5.28.6.6 City Right to Transfer.

Any right or power in, or duty impressed upon, any officer, employee, department, or board of the City may be transferred at any time by the City to any other officer, employee, department, or board of the City. (Ord. 486 § 1, 1992)

5.28.6.7 Legal Compliance.

The Grantee shall comply with all federal, state, city and local laws as now or hereafter enacted during the term of any franchise. Copies of all petitions and applications concerning the franchise submitted by the Grantee to the Federal Communication Commission, Securities and Exchange Commission or any other federal or state regulatory commission or agency having appropriate jurisdiction shall also be contemporaneously submitted to the City Clerk. (Ord. 486 § 1, 1992)

5.28.6.8 Pole Attachment.

Franchises granted under this ordinance

shall not relieve the Grantee of any obligation involved in obtaining pole space from any department of the City, utility company, or from others maintaining utility poles. (Ord. 486 § 1, 1992)

5.28.6.9 Private Property.

The granting of a franchise shall not be construed as permission or authority to enter on, occupy, or otherwise use any private property without the express consent of the owner or agent in possession thereof. (Ord. 486 § 1, 1992)

5.28.7.0 RIGHTS RESERVED TO THE CITY.

5.28.7.1 Eminent Domain.

Subject to state and federal law, nothing herein shall be deemed or construed to impair or affect, in any way or to any extent, the right of the City to acquire the property of the Grantee, either by purchase or through the exercise of the right of eminent domain, at fair market value as provided by law. Nothing herein contained shall be construed to contract away or to modify or abridge, either for a term or in perpetuity, the City's right of eminent domain. (Ord. 486 § 1, 1992)

5.28.7.2 Reservation of Rights.

There is hereby reserved to the City every right and power which is required to be herein reserved or provided by any ordinance of the City, and the Grantee, by its acceptance of any franchise, agrees to be bound thereby and to comply with any action or requirements of the City in its exercise of such rights or power, heretofore or hereafter enacted or established, except as may limit the Grantee's contractual rights under this ordinance and the franchise agreement or Grantee's constitutional rights.

Notwithstanding anything in this ordinance, the City reserves the right to regulate rates, fees and all charges made by Grantee upon subscribers to the fullest extent permitted by law as of the date of enactment and subsequent thereto. (Ord. 486 § 1, 1992)

5.28.7.3 Additional Franchise.

Neither the granting of any franchise

hereunder nor any of the provisions contained herein shall be construed to prevent the City from granting any identical or similar franchise to any other person or entity within all or any portion of the City. (Ord. 486 § 1, 1992)

5.28.7.4 Rules and Regulations.

The City may, from time to time, in the exercise of its police power, adopt or issue such reasonable rules, regulations, orders or other directives governing Grantee under this ordinance and require full and timely compliance on the part of the Grantee, provided such rules, regulations, orders and directives are equally imposed on all persons operating cable systems in the City, and are reasonably necessary or appropriate in furtherance of the purposes of this ordinance, provided such rules, regulations, orders or directives are not materially in conflict with the provisions of this ordinance or the franchise agreement. (Ord. 486 § 1, 1992)

5.28.7.5 Governmental Power.

Neither the granting of any franchise nor any provision hereof shall constitute a waiver or bar to the exercise of any governmental right or power of the City. (Ord. 486 § 1, 1992)

5.28.7.6 Use of Poles.

The City shall have the right, during the life of any franchise, to install and maintain free of charge upon the poles of the Grantee any wire and pole fixtures necessary for police and fire alarm systems, on the condition that such wire and pole fixtures do not interfere with the operations of the Grantee. The City shall assume, indemnify, defend and hold Grantee harmless from and against all claims and liability for damages caused or occasioned by the construction and maintenance of such police and fire alarm systems. (Ord. 486 § 1, 1992)

5.28.8.0 Permits, Installation and Services.

Within thirty (30) 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 without limitation, 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 systems, or their associates microwave transmission facilities. (Ord. 486 § 1, 1992)

5.28.9.0 DESIGN AND CONSTRUCTION PROVISIONS.

5.28.9.1 System Design.

The cable system shall be constructed in accordance with the design requirements, if any, contained in the franchise agreement. (Ord. 486 § 1, 1992)

5.28.9.2 Geographical Coverage.

Grantee shall design and construct the cable system and any additions thereto in such a manner as to have the capability within a reasonably short period of time to pass by every single dwelling unit, multiple dwelling unit, business establishment, public school, hospital, library, law enforcement station, fire station and all other buildings owned or controlled by the City within the franchise territory. Such service shall be provided to subscribers in accordance with the schedules in the franchise agreement and line extension policies specified in subsection 5.28.9.8 herein. Cable system construction and provision of service shall be non-discriminatory, and shall not delay or defer service to any section of the franchise territory on the grounds of economic preference of the Grantee. (Ord. 486 § 1, 1992)

5.28.9.3 System Construction Schedule.

(a) Grantee shall comply with the requirements of the cable system construction schedule, if any, contained in the franchise agreement and any amendments thereto.

(b) Construction of the cable system and service need not be provided where power and telephone utility services are not available.

(c) In the franchise agreement, Grantee shall provide a detailed construction plan indicating progress schedule, area construction maps, test plan, and dates for offering service. In addition, as long as construction has not been completed, Grantee shall provide to Grantor an update of this information for

Grantor on a monthly basis, showing specifically whether schedules are being met and the reasons for any delay.

(d) Failure to begin construction within six (6) months after award of the franchise shall be grounds for immediate franchise termination, at the option of Grantor. (Ord. 486 § 1, 1992)

5.28.9.4 New Development Undergrounding.

In cases of new construction or property development where utilities are to be placed underground, upon request by Grantee, the developer or property owner shall give Grantee reasonable notice of the particular date on which open trenching will be available for Grantee's installation of conduit, pedestals, or vaults. Grantee shall also timely provide specifications to the developer and property owner as needed for trenching. Costs of trenching, installing conduit, and obtaining easements required to bring service to any development shall be apportioned between Grantee, utility service providers, and the property owner as they may agree among themselves. Developer shall, however, be primarily responsible for all costs unless agreed otherwise. (Ord. 486 § 1, 1992)

5.28.9.5 Undergrounding at Multiple-Dwelling Units.

In cases of utility services delivered aerially to multiple dwelling units, Grantee shall make every effort to minimize the number of individual aerial drop cables, giving preference to undergrounding of multiple drop cables between the pole and dwelling unit. (Ord. 486 § 1, 1992)

5.28.9.6 Additional Undergrounding.

In those areas and portions of the City where the transmissions or distribution facilities of either the public utility providing telephone service or those of the utility providing electric service are already placed or to be placed underground, subject to Section 5.28.9.4 above, the Grantee shall likewise construct, operate and maintain all of its transmission and distribution facilities underground. For the purposes of this subsection, "underground" shall include a partial underground system, e.g.

streamlining. Amplifiers and other equipment in Grantee's transmission and distribution lines may be placed in appropriate housings upon the surface of the ground if approved by the Public Works Supervisor. The City shall not in any manner be responsible for any costs or liabilities incurred by Grantee in placing Grantee's facilities underground or obtaining any easements therefore. (Ord. 486 § 1, 1992)

5.28.9.7 Service Connections.

(a) The Grantee shall extend cable service to any premises located in the service area served by the Grantee's energized distribution cable which requires only the connection of a standard drop or tap to make such service available, including those premises serviced by underground utilities, at a standard rate if the owner or occupant of the premises requests such service.

(b) If the service connection requires no more than a two hundred fifty foot (250') drop line, the Grantee shall provide connection to its service at no charge for the initial two hundred fifty feet (250'), other than the Grantee's standard installation fee. The Grantee may charge any new subscriber for the Grantee's actual cost of all labor, equipment and materials for (1) that portion of any new aerial service connection in excess of two hundred fifty feet (250'), (2) the length of any new service connection installed underground and (3) the entire length of any new service connection to remote or relatively inaccessible subscribers. Prior to installing any service connection for which the Grantee will charge a potential subscriber on a time and materials basis, the Grantee must present the prospective subscriber with a written statement of its estimated costs for the service connection. (Ord. 486 § 1, 1992)

5.28.9.8 Line Extensions.

The Grantee shall be required to extend energized trunk cable from any existing terminus of the cable system to any area within the franchise territory having a density of at least ten (10) existing and completed dwelling units within any one quarter (1/4) linear mile, provided that the dwelling unit nearest to the existing terminus of the cable system in such one quarter (1/4) linear mile area is within one-half (1/2) mile of the existing terminus of the

cable system. Within (30) days after Grantee has confirmed the existence of the density provided above, Grantee shall proceed with due diligence to obtain all necessary permits and authorizations which are required for the extension of such trunk cable, including any utility joint use agreements and any permits, licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of the cable system. Within thirty (30) days following completion of such line extension construction, the Grantee shall proceed to render service, provided, however, that any such subscriber requesting service from the extension of the energized trunk cable shall be subject to the provisions of Section 5.28.9.7 herein with regard to costs of a tap or drop in excess of two hundred fifty feet (250'). (Ord. 486 § 1, 1992)

5.28.10.0 LOCATION OF PROPERTY OF GRANTEE.

5.28.10.1 Approval of City.

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 City. Further, the Grantee shall not install or erect any facilities or apparatus in or on other public property, places or right-of-way, or within any privately owned area within the City 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 City, except those installed or erected upon public utility facilities now existing without obtaining the prior written approval of the City and the owner of any applicable privately owned property. (Ord. 486 § 1, 1992)

5.28.10.2 Interference.

All transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the

said streets, alleys or other public ways and places. In the case of disturbance of any street, sidewalk, alley, public way, or paved area, the Grantee shall, at its own cost and expense and in a manner approved by the Public Works Supervisor replace and restore such street, sidewalk, alley, public way, or paved area in as good a condition as before the work involving such disturbance was done. Any such work shall be completed as soon as is practicable. (Ord. 486 § 1, 1992)

5.28.11.0 REMOVAL AND ABANDONMENT OF PROPERTY OF GRANTEE.

5.28.11.1 Abandonment.

If use of any part of the cable system is discontinued for any reason for a period of ninety (90) consecutive days or if such system or property has been installed in any street or public place without complying with the requirements of the franchise agreement or this ordinance, or the franchise has been terminated, cancelled or has expired, the Grantee shall promptly, upon being given thirty (30) days written notice from the City, remove from the streets or public places all such property and poles of such cable system or, at the option of the City, such property may be abandoned in place. Upon removal of the system, the Grantee shall promptly restore the street or other area from which such property has been removed to a condition reasonably satisfactory to the Public Works Supervisor. (Ord. 486 §1, 1992)

5.28.11.2 Property Abandoned in Place.

Any property of the Grantee to be abandoned in place shall be abandoned in such manner as the City shall prescribe. Upon permanent abandonment of the property of the Grantee in place, the property shall become that of the City. The Grantee shall submit to the City an instrument in writing, to be approved by the City Attorney, transferring to the City the ownership of such property. (Ord. 486 § 1, 1992)

5.28.12.0 Changes Required by Public Improvements.

The Grantee 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 City by reason of traffic conditions, public safety, street vacation, freeway, and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines and tracks or other type of structures or improvements by public agencies at the expense of Grantee. However, the Grantee shall in all such cases have the privileges and be subject to the obligations to abandon any property of the Grantee in place, as provided in Section 5.28.11.0 to 5.28.11.2 above. (Ord. 486 § 1, 1992)

5.28.13.0 Failure to Perform Street Work.

Upon failure of the Grantee to commence, pursue, or complete any work required by law, this ordinance or by the franchise agreement to be done in any street or other public place, within the time prescribed, the City may, at its option, cause such work to be done and the Grantee shall pay to the City one and one-half times the cost thereof in the itemized amounts reported by the Public Works Supervisor to the Grantee within thirty (30) days after receipt of such itemized report. (Ord. 486 § 1, 1992)

5.28.14.0 LIABILITY, INDEMNIFICATION AND TERMINATION.

5.28.14.1 Indemnification.

The Grantee shall indemnify and save harmless and defend the City, its officers and employees from and against any and all injury, loss, damage, costs, expenses, claims, attorneys' fees, demands, actions, suits, judgements, or other proceedings, or liability, including but not limited to any liability for inverse condemnation or for failure to secure consents for programs delivered by the Grantee's system, arising out of or in any way connected with the grant, exercise or enjoyment of Grantee's franchise.

These damages or penalties shall include, without limitation, damages arising out of copyright infringements and all other damages arising out of the installation, operation, or maintenance of the

cable system, whether or not any act or omission complained of is authorized, allowed, or prohibited by the franchise. (Ord. 486 § 1, 1992)

5.28.14.2 Defense Costs.

The Grantee shall pay and by its acceptance of a franchise specifically agrees that it will pay all expenses incurred by the City in defending itself under Section 5.28.14.1 above. These expenses shall include all out-of-pocket expenses, such as reasonable attorney fees, and shall also include the reasonable value of any services rendered by the City Attorney or his assistants or any employees of the City. (Ord. 486 § 1, 1992)

5.28.14.3 Insurance.

The Grantee shall maintain, and by its acceptance of a franchise specifically agrees that it currently possesses and will maintain throughout the term of the franchise a general comprehensive liability insurance policy in protection of the City, its officer, boards, commissions, agents and employees, in a company approved by the City and in a form satisfactory to the City naming the City, its officers, boards, commissions, agents, and employees as additional insured and protecting the City and all persons against liability for loss or damage for personal injury, death or property damage, occasioned by the operations of Grantee under this franchise, in the amounts of (a) One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person, with the limit, however, of One Million Dollars (\$1,000,000.00) for bodily injury or death resulting from any one accident; (b) One Million Dollars (\$1,000,000.00) for property damage resulting from any one occurrence; and (c) One Million Dollars (\$1,000,000.00) for Workers Compensation and Employer's Liability. (Ord. 486 § 1, 1992)

5.28.14.4 Insurance Policy.

The insurance policy mentioned in Section 5.28.14.3 above shall contain an endorsement stating that the policy is extended to cover the liability assumed by the Grantee under the terms of the franchise, and shall contain an endorsement as follows:

"It is hereby understood and agreed that this

policy may not be cancelled nor the amount of any coverage thereof reduced until sixty (60) days after receipt by the City Clerk of the City of Ripon, City Hall, Ripon, California, by registered mail, of a written notice of such proposed cancellation or reduction in coverage."

Additionally, Grantee agrees to comply with all reasonable insurance requirements imposed by the City and agrees that the amount of the insurance required hereunder may be reasonably amended not more often than every three (3) years by the City to take account of inflation and considerations of risk and potential liability. (Ord. 486 § 1, 1992)

5.28.14.5 Performance Bond.

(a) No later than the effective date of any franchise granted hereunder, the Grantee shall establish and provide to the City a corporate surety bond (the "surety bond") in a form reasonably acceptable to the City and its counsel in the sum of Fifteen Thousand Dollars (\$15,000.00) as security for the faithful performance by the Grantee of specified provisions of the franchise agreement. The surety bond shall remain at this level throughout the term of the franchise. The surety bond may be assessed by the City, following fourteen (14) days prior written notice and hearing, for the following purposes:

(1) Payment of franchise fees which the Grantee has failed to pay to the City for any franchise hereunder;

(2) Reimbursement of proper costs borne by the City to correct franchise violations not corrected by the Grantee, provided that the City has first provided Grantee with written notice of such violation and Grantee has not either cured such violation or given the City notice that it disputes that such violation has occurred within a reasonable time after Grantee has received the City's notice of violation;

(3) Payment of liquidated damages assessed against the Grantee due to default or violation of the franchise requirements;

(4) Compensation and costs of completing or repairing the system as provided in the franchise agreement;

(5) Compensation and costs of removal of any abandoned property;

(6) Repair of damage to streets caused by Grantee or any officer, agent, employee, contractor or subcontractor retained by Grantee;

(7) Other public or private improvements made necessary as a result of the failure of Grantee to comply with any provisions of any franchise agreement granted hereunder. Within thirty (30) calendar days after notice is mailed to the Grantee that any amount has been paid to the City by the surety bond pursuant to this Section, the Grantee shall restore the surety bond to its original level.

(b) If the surety bond is assessed in accordance with this Section and the terms of the surety bond, Grantee agrees not to withhold these funds from the City or refuse to restore the surety bond if required by this Section, nor to attempt through litigation to prevent or inhibit the City from taking such funds. If Grantee has been given the required notice and opportunity to be heard, then Grantee's recourse, in the event Grantee believes any taking of funds from the surety bond is improper, shall be through legal action, after the surety bond has been drawn upon.

(c) If the City's action or taking is found to be improper by any court or agency of competent jurisdiction, Grantee shall be entitled to a refund of the funds taken, plus interest thereon and/or any other award which such court or agency shall make. (Ord. 486 § 1, 1992)

5.28.14.6 Evidence.

A copy of the surety bond, and a certificate of insurance evidencing the insurance policy mentioned in Section 5.28.14.3 above and written evidence of payment of required premiums, shall be filed and maintained with the City Clerk during the term of the franchise. (Ord. 486 § 1, 1992)

5.28.14.7 No Excuse.

Neither the provisions of this ordinance, nor any bond accepted by the City pursuant hereto, nor any damages recovered by the City thereunder, shall be construed to excuse faithful performance by the Grantee or limit the liability of the Grantee under any franchise agreement hereunder or for damages, either to the full amount of the surety bond or

otherwise. (Ord. 486 § 1, 1992)

5.28.14.8 Sanctions.

Subject to the provisions of this ordinance and any franchise agreement granted hereunder, the City shall be empowered, following fourteen (14) days prior written notice to Grantee, hearing and reasonable opportunity to cure, to impose the following sanctions:

1. The termination of a franchise in whole or in part as provided in Sections 5.28.14.11 and 5.28.14.12.

2. For failure by the Grantee to complete the system, build or rebuild expanding channel capacity to the required capacity by the date set forth in the franchise agreement, the Grantee shall pay not more than Two Hundred Fifty Dollars (\$250.00) per day for each day the deficiency continues.

3. For failure by the Grantee to provide extension of service in accordance with the franchise agreement unless the City specifically approves a delay due to the occurrence of conditions beyond Grantee's control, Grantee shall pay to the City not more than One Hundred Fifty Dollars (\$150.00) per day for each day the deficiency continues.

4. For failure by the Grantee to provide the City with a copy of the financial statement required by Section 5.28.5.2, a copy of the surety bond required by Section 5.28.14.5, a copy of the certificate of insurance required by Section 5.28.14.4, complaint logs, maps, and permits, Grantee shall pay to the City not more than Twenty Five Dollars (\$25.00) per day for each day that such violation continues.

5. For failure by the Grantee to comply with quality of service or operation or technical standards following the City's written notice directing Grantee to make improvements, Grantee shall pay to the City not more than Fifty Dollars (\$50.00) per day for each day the violations continue.

6. For failure by Grantee to test, analyze, and report on the performance of the system following a request by the City pursuant to the franchise, Grantee shall pay to the City not more than Twenty Dollars (\$20.00) per day for each day that such noncompliance continues.

7. Each of the sanctions above shall commence, if at all, on the day after the City has

satisfied the procedural requirements of this Section. (Ord. 486 § 1, 1992)

5.28.14.9 Credits to Subscribers.

Except as may be otherwise provided in any franchise agreement and except for acts beyond the reasonable control of Grantee or where prior approval has been obtained from the City, in the event that service to any subscriber or user is interrupted (and provided a claim therefor shall have been made to Grantee's local office within thirty (30) days of a subscriber's receipt of a service bill), a Grantee shall credit a percentage of the monthly fee to affected subscribers or users as follows:

- (a) Twenty-four consecutive hours: five percent rebate of the monthly fee;
- (b) Twenty-four to forty-eight consecutive hours: fifteen percent rebate of the monthly fee; and
- (c) Forty-eight to seventy-two consecutive hours: twenty-five percent rebate of the monthly fee. (Ord. 486 § 1, 1992)

5.28.14.10 Determination of Right to Credit.

After fourteen (14) days prior written notice to Grantee and opportunity to be heard, the City shall be empowered to determine whether the subscriber is entitled to a credit in all cases where the Grantee denies such. If the City determines that a subscriber is entitled to a credit, it shall notify Grantee in writing (by delivery to Grantee's local office or by regular mail, neither certified nor registered) of the name of the subscriber, the amount of the credit and his reason therefor. A copy thereof shall be sent to the subscriber. (Ord. 486 § 1, 1992)

5.28.14.11 Termination of Franchise for Cause.

In addition to all other rights and powers of the City, the City reserves the right to terminate any franchise granted hereunder and all rights and privileges of a franchise hereunder in the event that any Grantee:

- (a) Violates any material provision of this ordinance or any rule, order, or determination of the City made pursuant hereto, provided however, a sanction for such violation has been finally imposed on at least one prior occasion within one (1) year of final determination of the sanction and provided,

further, that the City has found that said violation is material to this ordinance or the franchise agreement awarded pursuant to this ordinance:

- (b) Becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt or is subjected to the appointment of a receiver;
- (c) Fails to begin or complete system construction or extension as provided in this ordinance or a franchise granted thereunder; or
- (d) Misrepresents any material fact in any reports required to be filed pursuant to this Chapter. (Ord. 486 § 1, 1992)

5.28.14.12 Termination Procedures.

No such termination shall take place unless and until the following procedures have been followed:

The City shall provide Grantee with written notice of said violation by certified mail. Said notice shall specify the basis for City's determination and shall specify the immediate action required of Grantee to correct said material violation.

If the violation continued for a period of forty-five (45) days following written notification from the City, the City may place request for termination of the franchise on a regularly scheduled City Council meeting agenda. The City shall cause to be served upon the Grantee by certified mail at least fourteen (14) days prior to the day of such City Council meeting, a written notice of the intent to request such a termination and the time and place of the meeting.

After providing franchisee with notice and opportunity to be heard and in the event City determined that Grantee, by its acts or omissions, has given the City cause for termination of the franchise, the City may make written demand upon Grantee for full compliance. If the material violation is not cured to the reasonable satisfaction of the City within thirty (30) days or such additional time as the City may allow, the City may after written notice to Grantee and final opportunity to be heard (in the exercise of its reasonable discretion) declare the franchise terminated and of no further force or effect. (Ord. 486 § 1, 1992)

5.28.14.13 Restoration of Property.

In the event that the City requires Grantee to

dismantle the system, Grantee shall, in an expeditious manner, at its own expense and at the direction of the City, restore any property, public or private, to substantially the same condition in which it existed prior to the erection or construction of the system, including any improvements made to such property subsequent to the construction of the system. (Ord. 486 § 1, 1992)

5.28.15.0 INSPECTION OF PROPERTY AND RECORDS.

5.28.15.1 Inspection.

Upon written request made seven (7) days in advance, during normal business hours, the Grantee shall permit any duly authorized representative to the City to examine the cable system of the Grantee, together with any appurtenant property of the Grantee situated within or without the City and to examine and transcribe any and all maps and other records kept or maintained by the Grantee or under its control which pertain to the operation of the cable system. If any such maps or records are not kept in the City, or upon reasonable request are not made available in the City, and if the Council shall determine that an examination thereof is necessary or appropriate, then all travel and maintenance expense necessarily incurred in making such examination shall be paid by the Grantee. (Ord. 486 § 1, 1992)

5.28.15.2 Reports.

The Grantee shall prepare and furnish to the City at the times and in the form prescribed by the City such reports with respect to its operations, affairs, transactions or property, as may be reasonably necessary or appropriate concerning both the cost to Grantee and the value to the City to the performance of any of the rights, functions or duties of the City or any of its officers in connection with the franchise. The costs of furnishing such reports shall be borne by the Grantee up to a maximum of Two Thousand Dollars (\$2,000.00) per year. (Ord. 486 § 1, 1992)

5.28.15.3 Location of Equipment.

The Grantee shall at all times make and keep in the City full and complete plans and records showing the exact location of all cable system

equipment installed or in use in streets and other public places in the City. The Grantee shall file with the City on or before the first anniversary date of the franchise grant or renewal, as the case may be, a current map or set of maps drawn to scale, showing all cable system equipment installed and in place in streets and other public places of the City. (Ord. 486 § 1, 1992)

5.28.16.0 OPERATIONAL STANDARDS, EVALUATION SESSIONS.

The cable system shall meet all technical and performance standards contained in the franchise agreement. If requested by either party not later than the anniversary dates stated below, within one hundred twenty (120) calendar days following the fifth and tenth years' anniversary dates following the date of filing of the certificate of acceptance of the franchise (in the case of a franchise term extending for more than ten (10) years), the Grantee and the City shall conduct evaluation sessions for the purpose of evaluating the Grantee's performance in meeting the technical and performance standards as set forth in this ordinance and the franchise agreement and for the purpose of evaluating the efficiency and effectiveness of the system to meet community needs and consumer demand.

The evaluation sessions shall be conducted during public hearings held by the City. Any and all technical and performance requirements of this ordinance and the franchise agreement may be reviewed and performance evaluated, and all sections in this ordinance that are subject to revision so long as in accordance with state and federal law, as may be amended from time to time. Topics discussed at such sessions may include, but shall not be limited to, service rate structures, completion of the system, formulae used in system extension, application of new technologies, system technical performance, maintenance procedures, services provided, plans to upgrade the system, new services or additional transmission capacity, broad categories of programming, privacy, customer complaints and informal dispute settlement procedures, customer service rules and penalty schedule, illegal connections, office and field service, community programming facilities and services, public and educational access facilities and programming,

municipal and school building connections, interconnection, emergency override, affirmative action training and employment enterprise programs, Grantee or City rules and regulations; and shall include any topic relating to technical and performance requirements of the ordinance and franchise agreement which the Grantee, City or members of the public request to be discussed.

Should the State of California or any agency thereof, the United States or any federal agency thereof, or any state or federal court legally allow either the City or the Grantee to act in a manner which is inconsistent with any provisions of the ordinance or franchise agreement granted hereunder, the City and the Grantee shall each be authorized to determine whether a material provision of the franchise agreement or ordinance is effected in relation to the rights of benefits conferred by the franchise agreement and ordinance. Upon such determination, the City and the Grantee shall negotiate in good faith to modify or amend the ordinance and franchise agreement to such extent as may be necessary to carry out the full intent and purposes of the change in law in relation to the rights and benefits of the Grantee, the City, or the public. (Ord. 486 § 1, 1992)

5.28.17.0 MISCELLANEOUS PROVISIONS.

5.28.17.1 City Clerk.

When not otherwise prescribed herein, all matters herein required to be filed with the City shall be filed with the City Clerk. (Ord. 486 § 1, 1992)

5.28.17.2 Service to Public Facilities/PEG.

With the City's reasonable cooperation, Grantee shall, without charge, within one hundred eighty (180) days of the grant of any franchise hereunder fully wire with one outlet for existing buildings and up to three outlets for each one thousand (1,000) square feet of any newly constructed buildings and to provide all legally and contractually allowable subscriber services of its system to all public and nonprofit private schools, City Police and fire stations, City recreation centers, library, City Hall, and such other buildings owned or controlled by the City, which shall from time to time

be designated by the City, provided that such buildings shall be located within the franchise territory. Additionally, Grantee shall as a condition of any grant of a franchise hereunder provide a variety of facilities, channel(s) on the system, and equipment for public, educational and governmental ("PEG") purposes as detailed in the franchise agreement. (Ord. 486 § 1, 1992)

5.28.17.3 Emergency Service.

In the case of any emergency or disaster, the Grantee shall upon request of the City Administrator, make available its facilities to the City for emergency use during the emergency or disaster period. The Grantee shall upon the City's request provide advance orientation and guidance regarding the use of its facilities in an emergency or disaster. (Ord. 486 § 1, 1992)

5.28.17.4 Limitations.

The Grantee shall not engage directly or indirectly in the business of selling, leasing, renting, furnishing, providing, repairing or servicing any television, radio or other receiving apparatus or any component part thereof within the City (except those used in connection with the operation of the cable system); and such prohibition shall extend and apply to the officers and directors of Grantee, to all general and limited partners of Grantee, to any person or combination of persons owning, holding or controlling five percent (5%) or more of any corporate stock or other ownership interest of Grantee, or any affiliated or subsidiary entity, owned or controlled by Grantee, or in which any officer, director, stockholder, general or limited partner, or person or group of persons holding, or controlling any ownership interest in Grantee, shall own, hold or control five percent (5%) or more of any corporate stock or other ownership interest; and such prohibition shall likewise apply to any person, firm or corporation acting or serving in the capacity of a holding or controlled company. (Ord. 486 § 1, 1992)

5.28.17.5 Refusal of Service.

Subject to the line extension provisions in the franchise agreement, no person, firm or corporation in the franchise territory shall be arbitrarily refused service; provided, however, that

the Grantee shall not be required to provide service to any subscriber who does not pay the applicable connection fee or monthly service charge, or who does not pay at the time of request for service any amount legally owed to Grantee for connection or monthly service. (Ord. 486 § 1, 1992)

5.28.17.6 Subscription Agreement.

Before Grantee shall provide service to any subscriber, Grantee shall obtain a signed contract from the subscriber containing a provision substantially as follows:

"Subscriber understands that in providing service Grantee is making use of public rights-of-way within the City of Ripon, and that the continued use of these public rights-of-way is in no way guaranteed. If the continued use of such rights-of-way is denied to Grantee for any reason, Grantee will make every reasonable effort to provide service over alternate routes. Subscriber agrees he will make no claim nor undertake any action against the City, its officers, its employees, or Grantee if a service to be provided by Grantee hereunder is interrupted or discontinued because the continued use of such rights-of-way is denied to Grantee for any reason."

The form of Grantee's contract with its subscribers shall be subject to approval of the City with respect to the inclusion of this provision. (Ord. 486 § 1, 1992)

5.28.17.7 Right of Grantee.

Should Grantee become dissatisfied with any material decision or ruling of the City pertaining to any matter in this ordinance, the franchise agreement or other cable communications matters, Grantee may pursue such other remedies as are available, including the bringing of action in any court of competent jurisdiction for breach of contract and damages. (Ord. 486 § 1, 1992)

5.28.18.0 USE OF UTILITY POLES AND FACILITIES.

When any portion of the cable system is to be installed on public utility poles and facilities, certified copies of the agreements for such joint use of poles and facilities shall be filed with the City Clerk. Existing utility poles shall be used wherever possible. (Ord. 486 § 1, 1992)

5.28.19.0 APPLICATION FOR FRANCHISE.

5.28.19.1 Procedures.

Application for a franchise hereunder or any renewal thereof shall be in writing accompanied by an application fee of Ten Thousand Dollars (\$10,000.00), and be filed with the City. Notice of Intent to renew under the Cable Act shall not be deemed to be an application for renewal. The application fee shall be for the ordinary and reasonable costs which the City will incur in connection with the preparation of this ordinance, related agreements or any renewal thereof. Such fee shall be within the exclusion to the term "franchise fee" as defined in Section 17 U.S.C. 542(g)(2) and shall not be deemed to be part of the franchise fee obligations of Grantee pursuant to Section 5.28.5.1 hereof. Application for a franchise hereunder shall contain, at option of the City, the following information:

(a) The name and address of the applicant. If the applicant is a partnership, the name and address of each partner shall also be set forth. If the applicant is a corporation, the application shall also state the names and addresses of its directors, executive officers, major stockholders, and the name and addresses of parent and subsidiary companies.

(b) A statement and description of the cable 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 applicant proposes to construct, install, maintain and operate the same; 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, in detail, of the streets, public places and proposed public streets within which applicant proposes or seeks authority to construct, install or maintain any cable equipment or facilities; a detailed description of the equipment or facilities proposed to be constructed, installed or maintained therein; and the proposed specific location thereof.

(d) A map specifically showing and

delineating the existing and proposed service area or areas within which applicant proposes to provide cable services and for which a franchise is requested.

(e) 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 cable system.

(f) A statement or schedule in a form approved by the City Administrator of proposed rates and charges to subscribers for installation and services, and a copy of proposed subscription agreement between the Grantee and its subscribers shall accompany the application.

(g) 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.

(h) 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 cable 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 shall be deemed void and of no force and effect whatsoever.

(i) A financial statement prepared by a Certified Public Accountant or person otherwise satisfactory to the City, showing applicant's financial status and his financial ability to complete the construction and installation of the proposed cable system.

(j) The City may at any time demand and applicant shall provide such supplementary, additional or other information as the City may deem reasonably necessary to determine whether the requested franchise should be granted. (Ord. 486 § 1, 1992)

5.28.19.2 Grant to Applicant.

Upon consideration of any such application, the Council may refuse to grant the requested franchise or the Council may by ordinance or resolution grant a franchise for a cable system to any such applicant as may appear from said application to be in its opinion best qualified to render proper and efficient cable service to television viewers and

subscribers in the City. The Council's decision in the matter shall be final. If favorably considered, the application submitted shall constitute and form part of the franchise as granted. (Ord. 486 § 1, 1992)

5.28.19.3 Franchise Agreement.

Any franchise agreement granted pursuant to this ordinance shall include the following condition:

"The cable system herein franchised shall be used and operated solely and exclusively for the purpose expressly authorized by ordinance of the City of Ripon and no other purpose whatsoever."

Inclusion of the foregoing statement in any such franchise shall not be deemed to limit the authority of the City 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 this ordinance. (Ord. 486 § 1, 1992)

5.28.20.0 Franchise Renewal.

Any franchise granted under this ordinance may be renewed at the application of the Grantee in accordance with Section 5.28.19.0 to 5.28.19.3 above and the Cable Act, as amended. (Ord. 486 § 1, 1992)

5.28.21.0 ACCEPTANCE AND EFFECTIVE DATE OF FRANCHISE.

5.28.21.1 Effective Date.

No franchise granted pursuant to the provisions of this ordinance shall become effective unless and until the Grantee has executed a franchise agreement and the resolution accepting such franchise agreement on the part of Grantor has become effective and, in addition, unless and until all things required in this Section and in Section 5.28.14.6 above are completed, all of such things being hereby declared to be conditions precedent to the effectiveness of any such franchise granted hereunder. In the event any of such things are not done and completed in the time and manner required, the Council may declare the franchise null and void. (Ord. 486 § 1, 1992)

5.28.21.2 Filing.

Within ten (10) days after the effective date of the resolution accepting a franchise agreement, or within such extended period of time as the Council in its discretion may authorize, the Grantee shall file with the City Clerk its agreement to be bound by and to comply with and to perform all acts required of Grantee by the provisions of this ordinance and the franchise agreement. (Ord. 486 § 1, 1992)

5.28.22.0 VIOLATIONS; PENALTIES.

5.28.22.1 Requirement of Franchise.

From and after the effective date of this ordinance, it shall be unlawful for any person:

(a) To establish, operate or to carry on the business of distributing to any persons in this city any television signals or radio signals by means of a cable system; or

(b) To construct, install or maintain within any street in the City, or within any other public property of the City, or within any privately owned area within the City which has not become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by the City, any equipment or facilities for distributing any television signals or radio signals through a cable system, unless a franchise therefor has first been obtained pursuant to the provisions of this ordinance and unless such franchise is in full force and effect. (Ord. 486 § 1, 1992)

5.28.22.2 Pirating.

It shall be unlawful for any person, or entity to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a franchised cable system within this City for the purpose of (a) taking or receiving television signals, radio signals, pictures, programs or sound, or (b) enabling himself or others to receive any television signal, radio signal, picture, program or sound, without payment to the owner of said system. (Ord. 486 § 1, 1992)

5.28.22.3 Tampering.

It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, remove or injure any cables, wires or equipment

used for distribution of television signals, radio signals, pictures, programs or sounds. (Ord. 486 § 1, 1992)

5.28.22.4 Penalties.

Any person willfully violating any of the provisions of Section 5.28.22.0 to 5.28.22.3 of this ordinance shall be deemed guilty of a misdemeanor and shall be subject to the penalties and relief provided in 47 U.S.C., Subdivisions (b) and (c) of Section 553. (Ord. 486 § 1, 1992)

5.28.23.0 SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held illegal, invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid or unconstitutional. The invalidity of any portion of this ordinance shall not abate, reduce or otherwise affect any consideration or other obligation required of the Grantee of any franchise granted hereunder. (Ord. 486 § 1, 1992)

5.28.24.0 CUSTOMER SERVICE STANDARDS.

5.28.24.1 Subscriber Complaints.

Grantee shall establish procedures for receiving, acting upon, and resolving subscriber complaints to the satisfaction of the City. Grantee shall furnish to subscribers at the time of the initial subscription and not less than every year thereafter a notice of such procedures. (Ord. 486 § 1, 1992)

5.28.24.2 Phone Service.

The Grantee shall maintain a publicly listed telephone with a toll free number and sufficient lines and be so operated that complaints and requests for repairs shall be received on a twenty-four (24) hour basis, seven (7) days per week. Grantee shall

prominently display in each monthly bill such telephone number for subscriber calls.

Any service complaints from a subscriber shall be acted upon as soon as possible consistent with the basis of the complaint. Loss of cable service will be acted upon as soon as possible, but within twenty-four (24) hours. Grantee shall have available repair and service technical personnel capable of responding to normal system outages in cable service on a twenty-four (24) hour basis, seven (7) days per week, including holidays. (Ord. 486 § 1, 1992)

5.28.24.3 Efficient Service.

Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Maintenance and interruption of service shall occur, to the extent possible, during periods of minimum viewing hours. (Ord. 486 § 1, 1992)

5.28.24.4 Service Log.

Licensee shall keep a maintenance service log and summary thereof which indicates the nature of each service complaint, the date it was received, and the disposition of said complaint and the time and date thereof. This log shall be made available for periodic inspection and copying at the Grantee's local office by a representative of the City. (Ord. 486 § 1, 1992)

5.28.24.5 Service Call Notice.

Grantee shall notify subscribers of the expected time of any service visit. At a minimum

such notification shall indicate the four (4) hour period within which the visit will occur. To the extent practicable subscriber preferences for the scheduling of service visits shall be honored. (Ord. 486 § 1, 1992)

5.28.24.6 Customer Service Representative.

Within six (6) months of the date this agreement commences, the Grantee shall employ sufficient customer service representatives and maintain a sufficient number of telephone lines such that:

(1) Incoming callers shall encounter "busy" signals on an average of no more than one (1) out of every three (3) attempted calls placed to Grantee's telephone numbers over a twenty-four (24) hour period as measured over a thirty (30) day period. Calls from the same household made within two (2) minutes of each other (if such can be determined) shall be deemed a single call.

(2) Incoming callers shall encounter "hold" time of no more than two (2) minutes, on the average across all callers over a thirty (30) day period. In computing the average set forth in subparagraphs (1) and (2), Grantee shall have the option to exclude from any such thirty (30) day period either (i) or any (3) days of Grantee's selection or (ii) the actual number of days in which a system failure occurred with affected service to more than one hundred (100) subscribers.

(3) These standards are to be met when Grantee is providing regular service delivery during normal business hours.