

## Chapter 6.5

### CABLE COMMUNICATIONS\*

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\* **Editors Note:** Ord. No. 1994-14, §§ 1--39, adopted Oct. 4, 1994, did not specifically amend the Code; hence, inclusion herein as Ch. 6.5 was at the discretion of the editor.

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#### **Sec. 6.5-1. Short title.**

This chapter shall be known and may be cited as the "Lake County Cable Communications Ordinance."  
(Ord. No. 1994-14, § 1, 10-4-94)

#### **Sec. 6.5-2. Purpose.**

The board of county commissioners finds that the development of cable television and communications systems has the potential of having great benefit and impact upon the residents of Lake County, Florida. Because of the complex and rapidly changing technology associated with cable television, the commission further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the commission or such persons as the commission shall designate. It is the intent of this chapter and subsequent amendments to provide for and specify the means to attain the best possible public interest and public purpose in these matters and any franchise issued pursuant to this chapter shall be deemed to include this finding as an integral part thereof.

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

Many of these services involve county agencies and other public institutions, by providing governmental, educational or health care communications.

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

- (1) Communications services should be made available to all county residents.
- (2) The cable communications system should be capable of accommodating both the present and reasonably foreseeable future communications needs of the county.
- (3) The cable communications system should be improved and upgraded if necessary during the franchise term so that the new facilities necessary for the operation of this system shall be integrated to the maximum extent possible with existing facilities.
- (4) The cable communications system authorized by this chapter shall be responsive to the needs and

interests of the local community, and shall provide a wide diversity of information sources and services to the public.

- (5) That the educational, and governmental needs for access to the cable communications system are met.

(Ord. No. 1994-14, § 2, 10-4-94; Ord. No. 2003-60, § 1, 7-1-03)

### **Sec. 6.5-3. Definitions.**

For the purpose of this chapter the following terms, phrases, words, and their derivations shall have the meaning given herein.

*Act* means the Cable Communications Policy Act of 1984, 47 United States Code, Sections 521, et seq. and the Cable Television Consumer Protection and Competition Act of 1994.

*Basic cable service* means the cable service tier which includes the retransmission of local television broadcast signals. Basic service may be further defined in the franchise agreement to include specific services or types of services to be provided by the grantee. Such definition shall be consistent with any amendment to the Act or other federal law or regulation.

*Cable communications system* means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:

- (1) A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
- (2) A facility that serves only subscribers in one (1) or more multiple-unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right-of-way;
- (3) A facility of a common carrier, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or
- (4) Any facilities of any electric utility used solely for operating its electric utility systems.

*Cable service* means:

- (1) The one-way transmission to subscribers of video programming or other programming service; and
- (2) Subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

*County* means Lake County, Florida, and all territory within its present and future boundaries and

including any area over which the county exercises jurisdiction. The board of county commissioners is authority for the county.

*Commission* means the board of county commissioners.

*Franchise* means an initial authorization or renewal thereof issued by the commission whether such authorization is designated as a franchise, permit, license, resolution, contracts certificate, agreement, or otherwise, which authorizes the construction or operation of a cable communication system.

*Franchise application* means those documents submitted for a new franchise or franchise renewal meeting the minimum application requirements established by the county.

*Franchise service area* shall mean the geographical area within the county for which a franchise is granted.

*Franchise fee* means any tax, fee or assessment of any kind imposed by the franchising authority or other governmental entity on a grantee solely because of its status as such. The term "franchise fee" does not include:

- (1) Any tax, fee, or assessment of general applicability, including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee or assessment which is unduly discriminatory against grantee;
- (2) Capital costs which are required by the grant of the franchise to be incurred by grantee for public, educational or governmental access facilities;
- (3) Requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or
- (4) Any fee imposed under Title 17, United States Code.

*Grantee* shall mean the person or entity granted a franchise, and its agents, employees, lawful successors, transferees or assignees.

*Gross revenues* shall mean all cash, credits, property of any kind or nature or other consideration derived directly or indirectly by a grantee, its affiliates, subsidiaries, parent corporation, and any other person or entity in which the grantee has a financial interest or which has a financial interest in the grantee, arising from or attributable to operation of the cable television system within [the county], including but not limited to:

- (1) Revenue from all charges for services provided to subscribers of entertainment and non-entertainment services, including leased access fees, pay television, and pay-per-view;
- (2) Revenue from all charges for the insertion of commercial advertisements and home shopping/sales programming upon the cable television system (such revenues will be prorated according to the ratio of subscribers within the county to the total subscribers of the franchisee to

which the signal is transmitted);

- (3) Revenue from all charges for the leased use of studios;
- (4) Revenue from all charges for the installation, connection and reinstatement of equipment necessary for the utilization of the cable television system and the provision of subscriber and other services; and
- (5) The sale, exchange or use or cablecast of any programming developed for community use or institutional users.

*Leased access* shall mean the use of a fee-for-service basis of the cable communications system by business enterprises, whether for profit, not for profit, or governmental, to render services to the residents of the county and shall include without limitation all use pursuant to the Act.

*Service tier* means a category of cable service or other services provided by a grantee, and for which a separate rate is charged by the grantee.

*Street* shall mean the surface of and the space above and below any public street, road, highway, freeway, easement, lane, path, alley, court, sidewalk, parkway, or driveway now or hereafter existing as such within the incorporated areas of the county.

*Subscriber* means any person who legally receives any one (1) or more of the services provided by the cable communications system.

(Ord. No. 1994-14, § 3, 10-4-94)

#### **Sec. 6.5-4. Police powers.**

Nothing in this chapter or in any agreement awarding a franchise in accordance herewith shall be construed as an abrogation by the county of any of its police powers.

(Ord. No. 1994-14, § 4, 10-4-94)

#### **Sec. 6.5-5. Grant of franchise.**

(a) *Franchise required.* No cable communication system shall occupy or use the streets in the franchise area or be allowed to operate without a franchise in accordance with the provisions of this chapter.

(b) *Authority to grant franchise.* The commission may grant a franchise for all or any defined portion of the county. The service area shall be the entire area defined in the franchise.

(c) *Grant and conflict provisions.* In the event that the commission shall grant to a grantee a nonexclusive, revocable franchise to construct, operate, maintain, and reconstruct, a cable communication system within a service area, or a renewal of an existing franchise, said franchise shall constitute both a right and an obligation to provide the services of a cable communications system as required by the provision of this chapter and the franchise agreement. The franchise shall include those provisions of the grantee's application for

a franchise that are finally negotiated and accepted by the commission and the grantee.

Any franchise granted under this chapter shall be consistent with applicable federal and state laws and regulations. Where any provision of this chapter conflicts with any provision of state or federal law, this chapter shall control to the full extent permitted by law. In the case of a conflict between a provision in this chapter and either a provision in a franchise agreement executed pursuant to this chapter or a provision in a franchise proposal that is incorporated by reference into such franchise agreement, this chapter shall control, unless the franchise agreement expresses an explicit intent to waive a requirement of this chapter. However, if the waiver is pertaining to the requirements of section 6.5-14(d), the waiver requirements set forth at the end of section 6.5-14, if applicable, shall be met. Nothing in the franchise shall waive the requirements of the other provisions of the County Code, or county ordinances, regulations or rules regarding permits, fees to be paid, or the manner of construction. The franchise shall be granted contingent upon the grantee obtaining applicable zoning approvals.

(d) *Duration.* The term of any new franchise and all rights, privileges, obligations, and restrictions pertaining thereto shall be, negotiated at time of renewal unless terminated sooner as hereinafter provided.

(e) *Franchise nonexclusive.* Any franchise granted shall be nonexclusive. The commission shall not grant any overlapping franchises for cable service within the county on terms or conditions more favorable or less burdensome than those in any existing franchise within the county, except when the area in which the overlapping franchise is being sought is not actually being served by any existing grantee holding a franchise for such area. The term "actually being served" means that cable television service is actually available to subscribers to such extent that the only act remaining in order to provide cable television service is the physical connection to the individual subscriber location. The service must be available at least fifteen (15) days prior to any subsequent application for a franchise. Nothing herein shall be construed to prevent the commission, when considering the approval of an additional cable communication service franchise in all or any part of the county from imposing additional terms and conditions upon the granting of such franchise as the commission shall in its sole discretion deem necessary or appropriate.

(Ord. No. 1994-14, § 5, 10-4-94; Ord. No. 1999-107, § 2, 11-2-99; Ord. No. 2003-60, § 2, 7-1-03)

### **Sec. 6.5-6. Franchise applications.**

The county may establish appropriate minimum application requirements for new franchises or franchise renewals, and may modify these requirements from time to time to reflect changing conditions and state of art in the cable industry. Such requirements shall not be retroactive to franchises then in effect, but shall become applicable when the franchise renewal is requested. An applicant for a franchise or franchise renewal shall submit a written application to the county manager, or a designee, on such application forms provided by the county manager, accompanied by the required exhibits and application fees established by resolution of the commission. The commission reserves the right to revise by resolution application forms, procedures and renewal fees at any time. Application fees received by the county shall be used by the county manager to defray the administrative and other costs of processing the franchise application. In addition to the application fee above, the applicant shall be responsible for paying the reasonable costs of any and all consultants, experts, accountants, attorneys or other persons utilized to assist the commission in the evaluation of the application. The costs shall be paid by the applicant prior to final consideration of the franchise application by the commission.

(Ord. No. 1994-14, § 6, 10-4-94)

### **Sec. 6.5-7. Franchise grant procedure.**

All franchise applications shall be available for public inspection at a place designated by the county manager. No later than ninety (90) days after the date a complete application is filed, one (1) or more public hearings shall be held on the application. At the public hearing or hearings, the commission shall consider and evaluate each franchise application, utilizing the criteria set out in F.S. § 166.046(2) et seq., and such additional criteria as the commission, in its sole discretion, shall determine to be relevant. subject to payment of all costs and fees, a decision shall be made by the commission not later than ninety (90) days after the conclusion of all such public hearings based upon an evaluation of the application, the hearings, and other information which the commission may deem relevant. The commission may grant one (1) or more franchises, or may decline to grant any franchise.

(Ord. No. 1994-14, § 7, 10-4-94)

### **Sec. 6.5-8. Authority for use of streets.**

(a) For the purpose of operating and maintaining a cable communications system in the county, the grantee may erect, install, construct, repair, replace, reconstruct and retain in, or over, under, upon, across and along the streets within the county such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of the cable communications system, provided that the applicant has obtained all applicable permits, has paid all fees required and has complied with all other provisions of the county code, county ordinances and regulations and rules. This chapter is not intended to, and nothing herein shall be construed to, preclude appropriate payments, and arrangements for the use by the grantee of other utility facilities and equipment, including pole attachment agreements.

(b) Prior to construction or alterations, grantee shall file plans with all appropriate county departments, agencies and utility companies and receive written approval of such plans, and grantee shall further apply to and receive from the department of public Works all applicable easements or road right-of-way encroachment permits. Grantee shall provide a monthly written progress report to the county manager, or a designee, until the completion of construction or alterations.

(c) Grantee shall construct and maintain a cable communications system so as not to interfere with other uses of streets. Grantee shall make use of existing poles and other facilities available to grantee. Grantee shall individually notify all residents affected by proposed construction prior to the commencement of that work. Nothing in this chapter shall authorize the installation of cable communication facilities and equipment in exclusive easements owned by public utilities without the prior consent of such utilities. The grantee shall coordinate the installation of. its facilities and equipment with the existing lawful users of any easements in order to prevent damage and disruption to existing utility or cable television facilities or the installation of such facilities where technical limitations make it impossible to install such facilities and equipment.

(d) Notwithstanding the above grant to use streets, no street shall be used by grantee if the director of the department of public works, in his or her sole opinion, determines that such use is inconsistent with the terms, conditions or provisions by which such street was created or dedicated, or presently used.

(Ord. No. 1994-14, § 8, 10-4-94)

### **Sec. 6.5-9. Conditions on street occupancy.**

(a) All transmission and distribution structures, lines, and equipment erected by the grantee within the county shall be located so as to cause minimum interference with the proper use of streets and other public places, and to cause minimum interference with the rights and reasonable convenience of adjoining property owners of the said streets, or other public places.

(b) In case of disturbance of any street, or public place, the grantee shall, at its own cost and expense and in a manner approved by the director of the department of public works, replace and restore such street, in as good a condition as before the work involving such disturbance was done, and maintain for a minimum of two (2) years.

(c) The grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and public ways and places of the county, to prevent the branches of such trees from coming in contact with the wires and cables of the grantee, provided such tree trimming is in accordance with the county tree ordinance. At the option of the county, such trimming may be done by the county or under its supervision and direction, with the expense borne by the grantee.

(Ord. No. 1994-14, § 9, 10-4-94)

### **Sec. 6.5-10. Erection of poles.**

No franchise shall be deemed to expressly or impliedly authorize the grantee to construct or install poles or wire-holding structures within streets for the purpose of placing cables, wires, lines or otherwise, without the written consent of the director of public works. Such consent shall be given upon such terms and conditions as the commission in its sole discretion may prescribe, which shall include a requirement that the grantee perform, at its sole expense, all tree trimming required to maintain the poles clear of obstructions.

With respect to any poles or wire-holding structures which a grantee is authorized to construct and install within streets, a public utility, or public utility district serving the county may, if denied the privilege of utilizing such poles or wire-holding structures by the grantee, apply for such permission to the commission. If the commission finds that such use would enhance the public convenience and would not unduly interfere with the grantee's operations, the commission may authorize such use subject to such terms and conditions as it deems appropriate. Such authorization shall include the condition that the public utility or public utility district pay to the grantee any and all actual and necessary costs incurred by the grantee in permitting such use.

(Ord. No. 1994-14, § 10, 10-4-94)

### **Sec. 6.5-11. Underground placement.**

Except as hereinafter provided, in all of the county where the cables, wires and other like facilities of a public utility or public utility district are placed underground, each grantee shall construct and install its cables, wires and other facilities underground. Amplifier boxes and pedestal mounted terminal boxes may be placed above ground if existing technology reasonably requires, but shall be of such size and design and shall be so located as not to be unsightly or unsafe. In any area of the county where there are certain cables, wires and other like facilities of a public utility or public utility district underground, and at least one (1) operable cable, wire of like facility of a public utility or public utility district suspended above the ground from poles, a grantee may

construct and install its cables, wires and other facilities from the same pole in accordance with any applicable pole attachment agreements.

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

(Ord. No. 1994-14, § 11, 10-4-94)

#### **Sec. 6.5-12. Relocation of cable system.**

If during the term of a franchise, the county, a public utility district, a public water district, a public wastewater district, a public drainage district, a public stormwater district, any other similar special district or municipal service taxing unit or municipal service benefit unit within the county, or any public utility operating electric, gas, water, wastewater or similar utility, elects to alter, repair, realign, abandon, improve, vacate, reroute or change the grade of any street, or elects to replace, repair, install, maintain, or otherwise alter any above ground or underground cable, wire conduit, pipe, line, pole, wire-holding structure, structure, or other facility utilized for the provision of utility or other services or transportation of waste, wastewater, stormwater or drainage, the grantee shall, except as otherwise hereinafter provided, at its sole expense remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and any other facilities which it has installed if such removal or relocation is required. The grantee shall take action to remove or relocate at such time or times as are directed by the agency or company undertaking the work. Reasonable advance written notice shall be mailed to the grantee advising the grantee of the date or dates removal or relocation is to be undertaken.

(Ord. No. 1994-14, § 12, 10-4-94)

#### **Sec. 6.5-13. Movement of buildings.**

Each grantee shall, upon request by any person or legal entity holding a building moving permit, or other approval issued by the county or the State of Florida, temporarily remove, raise or lower its wires to permit the movement of buildings. The expense of such removal, raising or lowering shall be paid by the person or legal entity requesting the same, and a grantee shall be authorized to require such payment in advance. A grantee shall be given not less than forty-eight (48) hours prior written notice to arrange for such temporary wire changes.

(Ord. No. 1994-14, § 3, 10-4-94)

#### **Sec. 6.5-14. Completion of cable system construction.**

(a) *Notice of completion.* A grantee who asserts completion shall file a written notice of completion with the county manager or a designee. The notice of completion shall state:

- (1) The total number of dwelling units available for occupancy within each franchise service area forty-five (45) calendar days prior to the filing of the notice;
- (2) The total number of dwelling units to which cable television service has been made available



within the franchise service area as of the date of filing; and

- (3) Shall otherwise certify completion as set forth in paragraph (d) of this section.

(b) *Inspection.* During the period of construction of the cable communications system and during the sixty-day period following the filing of the notice of completion, all elements and components of the cable communications system and all equipment and studio facilities required by the franchise shall be subject to inspection by the county or authorized agents or representatives thereof, for the purpose of determining whether the cable communications system and related facilities comply with the franchise and the provisions of this chapter. The grantee shall authorize such inspection and provide such information and cooperation as is required in order to permit an adequate investigation to determine the existence or nonexistence of such compliance.

(c) *Installation.* The grantee shall, subject to the provisions of paragraph (g) of this section, offer to install, make operational, and render cable communications services to all dwelling units within the franchise service area in accordance with this chapter and the franchise, within the period of time required by the franchise.

- (d) *Final order of completion.* A final order of completion shall be issued by the commission when:

(1) Construction of the cable communications system has been completed within the entire service area designated in the franchise in compliance with construction standards and the design and other requirements of this chapter;

(2) Cable television service has been made available to one hundred (100) percent of the dwelling units within the franchise service area. The board of county commissioners, for good cause shown, may issue waivers of the requirement that cable television service be made available to one hundred (100) percent of the dwelling units within the franchise service area. Affected persons shall be given notice of the board of county commissioners meeting at which the matter of waiver shall be considered;

(3) Any and all facilities, equipment, channels and other services, resources or benefits required for educational and governmental access purposes pursuant to the provisions of this chapter have been completed and made available;

(4) Complete and accurate "as built" plans pursuant to this section have been filed by the grantee with the director of the department of public works; and

(5) A notice of completion has been filed by the grantee as hereinafter provided.

(6) A map showing the exact areas of the franchise service area currently being served by the grantee and the location identification of major component parts of the cable communications system shall be provided upon the request of the county manager.

(e) *Available service.* For the purpose of this section, cable television service shall be deemed to be made available when cable television service is actually available to subscribers to such an extent that the only

act remaining in order to provide cable television service is the physical connection to the individual subscriber location.

(f) *Total number of dwelling units.* For the purpose of this section, the total number of dwelling units within each franchise service area shall be deemed to be the actual number of dwelling units available for occupancy forty-five (45) calendar days in advance of the date of filing by the grantee of the notice of completion.

(g) *Installation in certain areas.* Nothing herein shall preclude the grantee from charging for the installation of facilities and equipment to provide service to subscribers requesting such, when the requesting subscribers reside in a territory of the franchise service area where there exist twenty (20) or fewer units which have received a certificate of occupancy from the county building official for each strand-mile of cable extension required, or portion thereof, provided that when later subscribers are added by utilizing the facilities and equipment for which the requesting subscribers were charged, the requesting subscribers shall be reimbursed by the grantee, based upon an equitable arrangement made at the time of the original extension for the benefit of the requesting subscribers. Prior to so charging subscribers for installation of facilities and equipment, the grantee shall submit and the commission approve the written proposal outlining the equitable arrangement of the requesting subscribers.

The county, for good cause shown, may issue waivers of the requirement that cable television service be made available to one hundred (100) percent of the dwelling units within the franchise service area. Affected persons shall be given notice of the county commission meeting at which the matter of waiver shall be considered. Notice shall be by publication in a newspaper of general circulation in [the county] and by the posting of signs in the affected area, both at the grantee's expense. The signs shall be furnished by the grantee in a form acceptable to the county manager, or a designee, and shall be posted by the grantee at the direction of the county manager, or a designee.

(Ord. No. 1994-14, § 14, 10-4-94; Ord. No. 2003-60, § 3, 7-1-03)

### **Sec. 6.5-15. General capability.**

Each cable communications system shall, at a minimum:

- (1) Relay to subscriber terminals those broadcast signals required by the Federal Communications Commission or other applicable law or regulation;
- (2) Distribute in color all television signals which it receives in color;
- (3) Make available upon request by any subscribers receiving channels showing premium services and pay per view events, a lockout device which prevents the unauthorized viewing of such channels;
- (4) Make available to subscribers, upon request, an RF switch (an A-B switch) permitting conversion from cable to antenna reception; and
- (5) Have a present, activated capacity of at least four hundred fifty (450) megahertz with all

amplifier cascades designed and spaced to accommodate conversion to at least five hundred fifty (550) megahertz capacity or such other channel capacity system design and technical standards and requirements as set forth in the franchise agreement.

(Ord. No. 1994-14, § 15, 10-4-94)

#### **Sec. 6.5-16. Override capability.**

Each cable communications system shall include an emergency alert capability which shall permit Lake County in times of emergency to override by remote control the audio of all channels simultaneously. Each cable communication system shall include the capability of notification from the Office of Lake County Emergency Management.

(Ord. No. 1994-14, § 16, 10-4-94; Ord. No. 2003-60, § 4, 7-1-03)

#### **Sec. 6.5-17. New developments.**

(a) The county shall have the authority to request the provision of additional channel capacity by grantee or the inclusion in the grantee's cable system of "state of the art" technology or upgraded facilities. Notice of a hearing to consider such an order shall be provided to the grantee and the public not later than thirty (30) days prior to such hearing.

(b) If after such hearing, the commission determines that 1) there exists a reasonable need for additional channel capacity and/or "state of the art" technology or upgraded facilities, and 2) the grantee will receive a fair rate of return on its total investment (including the additional investment required to provide the additional channels and/or the "state of the art" technology or upgraded facilities), the commission may order grantee to provide a specified number of additional channels and/or specified "state of the art" technology or upgraded facilities. In considering the economic feasibility of required cable system improvements, the county may consider the extension of the term of a franchise to permit the recovery of the cost of said improvements (Ord. No. 1994-14, § 17, 10-4-94; Ord. No. 2003-60, § 5, 7-1-03)

#### **Sec. 6.5-18. Standby power.**

Each cable communications system shall include equipment capable of providing under normal conditions standby powering for headend, transportation and trunk amplifiers for a minimum of two (2) hours. The system shall incorporate safeguards necessary to prevent injury to linemen resulting from a standby generator powering a "dead" utility line.

(Ord. No. 1994-14, § 18, 10-4-94)

#### **Sec. 6.5-19. Technical standards.**

(a) Each grantee shall construct, install and maintain its cable communications system in a manner consistent and in compliance with all applicable laws, ordinances, rules, regulations, construction standards, governmental requirements, and technical standards equivalent to those established by the Federal Communications Commission. Each grantee shall provide to the county upon request, written reports of the grantee's annual proof of performance testing conducted pursuant to Federal Communications Commission standards.

(b) Each grantee shall at all times comply with the National Electrical Safety Code, the National Electrical Code, the Act and all Federal Communications Commission rules and regulations promulgated thereunder, and all federal, state and county regulations, laws, rules and ordinances.

(c) The cable communications system shall not endanger or interfere with the safety of persons or property within the county.

(d) All working facilities, conditions, and procedures, used or occurring during construction of the cable communications system shall comply with the standards of the United States Occupational Safety and Health Administration.

(e) Construction, installation and maintenance of the cable communications system shall be performed in an orderly and workmanlike manner, and in close coordination with public and private utilities serving the county.

(f) All cable and wires shall be installed, where possible, parallel with electric and telephone lines, and multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering consideration.

(g) Any antenna structure used in the cable communications system shall comply with the construction and marking and lighting of antennae structures standards required by the county code, the Florida Department of Transportation, the United States Department of Transportation and the Federal Aviation Administration.

(h) RF leakage shall be minimized in accordance with the provisions of 47 CFR 76.609(h) and 76.605(a) (11) et seq.  
(Ord. No. 1994-14, § 19, 10-4-94)

#### **Sec. 6.5-20. Educational, and governmental access.**

(a) The county reserves the right to require that grantees provide educational and governmental access, pursuant to the provisions of the Act.

(b) The grantee shall provide access by the county for countywide access programming to any local television studios and production facilities owned or operated by the grantee. If the grantee does not own or operate television that the grantee provide a grant to the county in an amount to be determined by said resolution to be used by the county for capital cost and support of countywide access programming and for the provision of a television studio and production facility. It is the intent that no grantee shall provide a grant more than once in relation to the same franchise. No grant shall constitute a credit against the franchise fee paid the grantee.

(c) The county shall not engage in any program censorship or other control of the content of the programming on the cable television system, except as otherwise required or permitted by law, provided that the county may exercise editorial control over programming on the government access channel.

(d) The grantee shall provide installation and basic cable television and such other services provided by the grantee except for premium channels free of charge to each county government building, and to each public, private, or parochial school or college within the franchise service area.  
(Ord. No. 1994-14, § 20, 10-4-94; Ord. No. 2003-60, § 6, 7-1-03)

#### **Sec. 6.5-21. Franchise renewal.**

(a) *Renewal procedure.* A franchise may be renewed by the county according to the procedures provided for granting of a new franchise, except as modified by law.

(b) *Renewal fee.* A fee, as determined by resolution of the commission, shall be paid at the time the franchise renewal application is made. These funds shall be used by the county manager to defray the administrative and other costs of processing the franchise renewal application. The commission reserves the right at any time to amend the fee by resolution.

(c) *Payment of county costs.* In addition to the fee established pursuant to paragraph (b) above, the grantee shall be responsible for paying the reasonable cost of any and all consultants, experts, accountants, attorneys or other persons utilized to assist the commission in the evaluation of the application to the extent allowed by law. The costs shall be paid by the applicant prior to final consideration of the franchise renewal application by the commission.

(d) *Notice to subscribers.* Upon the filing of a franchise renewal application, the grantee shall submit to subscribers a written notice of the pending application. The grantee shall also send to subscribers notice of any public hearings or public meetings relating to the renewal application. such notice shall be not be given more than sixty (60) days and not less than ten (10) days, prior to the subject meeting. This notice shall be in addition to other notice requirements of this chapter.

(e) *Issuance of franchise.* The commission shall issue a renewal of the franchise to the grantee contingent upon all conditions precedent to the issuance of the franchise having been met, and the payment by the grantee to the county of all direct and indirect costs related to the renewal.

(f) *Other representations.* All representations made by the grantee in the renewal application and process shall be binding upon the grantee to the same extent as, and for the same reasons as, representations made in an initial application process.

(Ord. No. 1994-14, § 21, 10-4-94; Ord. No. 2003-60, § 7, 7-1-03)

#### **Sec. 6.5-22. Franchise transfers.**

(a) A franchise shall not be sold, assigned or transferred, either in whole or in part, or leased, sublet, or mortgaged in any manner, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person without the prior written consent of the commission.

No such consent shall be required for a transfer in trust, mortgage, or other hypothecation as a whole or in part to secure an indebtedness, except that when such hypothecation shall exceed fifty (50) percent of the market value of the property used by the grantee in conducting the business of the franchise.

The proposed assignee shall show technical ability, financial capability, legal qualifications and general character qualifications as determined by the commission and shall agree to comply with all provisions of the franchise and such conditions as may be prescribed by the commission as expressed by resolution.

(b) The grantee shall promptly notify the county manager, or a designee, of any proposed change in, or transfer of, or control of the grantee. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. Every change, transfer, or acquisition of control of the grantee shall make the franchise subject to cancellation unless and until the commission shall have consented thereto. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the commission may inquire into the qualifications of the prospective controlling party, and the grantee shall assist the commission in any such inquiry. An applicant for a franchise transfer shall submit a written application to the county manager or designee on the appropriate FCC form(s) accompanied by required exhibits and a franchise transfer fee established by resolution by the commission.

(c) A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of ten (10) percent of the voting interest of the grantee.

(d) The consent or approval of the commission to any transfer of the franchise shall not constitute a waiver or release of the rights of the county in and to county streets, and any transfer shall by its terms, be expressly subordinate to the terms and conditions of the franchise.

(e) In addition to the franchise transfer fee the commission may retain the services of necessary consultants, experts, accountants, attorneys or other persons to assist the commission in determining whether it should consent to the proposed transfer. The costs therefor shall be paid by the grantee prior to final consideration of the franchise transfer by the commission.

(f) Unless extraordinary circumstances exist, the commission shall not approve any transfer or assignment of a franchise prior to the issuance of a final order of completion pursuant to section 6.5-14.

(g) The commission reserves the right of "first refusal" to purchase a cable television system at the market value price if and when it is placed on the market for sale. The grantee shall provide written notice to the commission prior to negotiating with any other party for sale of the cable television system. The commission shall have the right, within thirty (30) days of receipt of the grantee's written notice, to transmit to the grantee a letter of intent stating that the commission intends to review the option of purchasing the cable television system. The commission shall have sixty (60) days from the date of the commission's letter of intent to determine whether it shall purchase the cable television system at the market value price. If the commission does not communicate a decision to the grantee within the sixty-day period, or if the commission communicates to the grantee that it does not intend to purchase the cable television system, the grantee may negotiate with prospective purchasers of the cable television system.

(Ord. No. 1994-14, § 22, 10-4-94; Ord. No. 2003-60, § 8, 7-1-03)

### **Sec. 6.5-23. Insurance.**

(a) Within thirty (30) days after the effective date of the franchise, and prior to the commencement

of any construction pursuant to the franchise, the grantee shall provide proof of liability insurance insuring against claims for liability and damages charged against the county and the commission or the grantee as a result of the franchise granted hereunder. Such insurance shall be with an insurance company authorized to do business in the State of Florida and proof thereof shall be provided to the county annually throughout the term of the franchise. The insurance policy or policies shall name the county and its officers, agents, and employees as additional insureds. The policy or policies shall include, at a minimum, the following types of insurance coverage in amounts not less than shown:

- (1) Comprehensive general liability, three million dollars (\$3,000,000.00) combined single limit per occurrence, six million dollars (\$6,000,000.00) aggregate covering:
  - a. Personal injury and bodily injury.
  - b. Broad form property damages without exclusions.
  - c. Products/completed operations.
  - d. Contractual liability to apply to the liability assumed by the grantee under the franchise agreement.
- (2) Comprehensive automobile liability, three million dollars (\$3,000,000.00) combined single limit per occurrence for bodily injury liability and property damage liability, covering owned, leased, hired and non-owned vehicles.
- (3) Broadcasters' errors and omissions, or similar form, one million dollars (\$1, 000,000.00) per occurrence, covering infringement of copyrights, unless such coverage is included in the grantee's comprehensive general liability policy.
- (4) Worker's compensation coverage required by the State of Florida, and employer's liability insurance in the amount of one million dollars (\$1,000,000.00) each accident, and one million dollars (\$1,000,000.00) per employee/one million dollars (\$1,000,000.00) policy limit for disease.

(b) The insurance coverage obtained by the grantee in compliance with this section shall be approved by the county manager and county attorney, and such proof of insurance shall be filed annually and maintained with the county manager, or a designee, during the term of the franchise. The insurance coverage and policy requirements may be changed from time to time at the discretion of the commission upon the recommendation of the county manager to reflect changing liability exposure and limits. The grantee shall immediately advise the county manager of any actual or potential litigation that may develop that would affect this insurance.

(c) All insurance policies except workers, compensation maintained pursuant to the franchise shall contain the following conditions by endorsement:

- (1) The county shall be designated as an additional insured including all authorities, commissions, divisions, departments and offices of the county and the individual members, employees, agents and contractors thereof in their official capacities and while acting on behalf of the county.

- (2) Each policy shall require that thirty (30) days prior to a cancellation of or material change in policies, written notice thereof shall be given to the county manager by certified mail, return receipt requested.
- (3) Insurers shall have no right of subrogation or recovery against the county, it being the intention that the insurance policies shall protect the grantee and the county and shall be primary coverage for all losses covered by the policies. Waivers of subrogation shall be obtained and filed with the county manager.

(d) Acceptance of certificates of insurance, or other documentation of insurance, or policies, or copies of policies, by the county, or by any of its representatives, which indicate less coverage than that which is required herein does not constitute a waiver of the grantee's obligation to fulfill the insurance requirements of this section.

(e) The commission may require increases in the amount or types of coverage no more frequently than once a year as it deems appropriate so as to ensure full protection of the county and the public. The grantee shall have six (6) months from the date of notification from the county manager to comply with any increase. (Ord. No. 1994-14, § 23, 10-4-94)

#### **Sec. 6.5-24. Indemnification.**

The grantee shall, as a condition of the franchise, indemnify, defend and save harmless the county, its officers, employees, agents and contractors, against and from any and all claims by or on behalf of any person, firm, or corporation, arising from the acts or omissions of the grantee, its employees and agents in the performance of any covenant or agreement to be performed pursuant to the requirements of this chapter, or the franchise, or arising from any negligence of the grantee, or any of its agents, contractors or subcontractors, servants, officers, employees, or licensees, or arising out of or alleged to arise out of any claim for damages for invasion of the right of privacy, defamation of any person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark or patent, or of any other right of any person, firm or corporation and from and against all costs, counsel fees, expenses and liabilities incurred in or about any such claim or proceeding brought thereon.

(Ord. No. 1994-14, § 24, 10-4-94)

#### **Sec. 6.5-25. Performance security.**

(a) *Construction performance security.* Each grantee shall file with its application for a franchise, and maintain at all times thereafter until the issuance by the commission of an order of completion, performance security in an amount equal to one hundred ten (110) percent of grantee's reasonable estimate of total cost of the construction of the cable communications system, in one (1) of the following forms:

- (1) An acceptable cash bond issued by a surety authorized to do business in the State of Florida;
- (2) A irrevocable letter of credit issued by an acceptable financial institution located in the State of Florida;



- (3) A cash deposit with a fiduciary, according to the terms of an escrow agreement acceptable to the county.

The performance security shall be conditioned that in the event the grantee shall fail to comply with any one (1) or more of the provisions of the franchise or this chapter, whether or not the franchise is terminated, then there shall be recoverable jointly and severally from the grantee and the surety, the grantor of the letter of credit, or the holder of the escrowed deposit, any damages, delinquent fees, compensation, and costs and expenses of repairing or completing the cable communications system, and compensation, and cost of removal or abandonment of property and repair of streets and other public or private improvements, up to the full amount of the performance security. The existence of the performance security shall not limit any right of action which the county may have against the grantee. The performance bond, letter of credit, or escrow agreement, shall be acceptable to the county attorney. Nothing herein shall be construed to prohibit the county from drawing on the performance security required by this section for a grantee's failure to construct and install facilities and equipment or provide cable communications services.

(b) *Ongoing performance security.* Concurrently with the acceptance of the grant of a franchise under this chapter, the grantee shall deposit with the county manager and maintain in the amounts prescribed herein, performance security, from or with a financial or insurance institution authorized to do business in the State of Florida, in the amount of one hundred thousand dollars (\$100,000.00), except that the performance security shall be in the amount of twenty-five thousand nine hundred dollars (\$25,900.00) for grantees whose cable communication system is reasonably estimated to serve one thousand (1,000) or fewer subscribers. The form and content of such performance security shall be approved by the county attorney. The performance security shall be used to ensure the full and faithful performance by the grantee of all provisions of the franchise and this chapter, compliance with all orders, permits and directions of any agency, commission, department, division or officer of the county having jurisdiction over the grantee's acts or defaults under this chapter and the franchise, and the payment of any damages, fees, claims, liens and penalties due the county which arise by reason of any act or omission from or related to the construction, operation or maintenance of the cable television system or the provision of cable television services.

The ongoing performance security shall be maintained in full force and effect for the entire term of the franchise or any renewal thereof and for one (1) year after the franchise expires or is revoked or terminated.

If the grantee fails to pay the county or the department of revenue any franchise fees due under this chapter within three (3) months after such become due, or fails to pay to the county within two (2) weeks after written demand, any damages, assessments, penalties, costs or expenses which become due under this chapter or which the county is responsible for paying by reason of any act or omission of the grantee in connection with this chapter or the franchise, or if grantee fails, after notice from the commission of such failure, to comply with any provision of this chapter or the franchise which the commission reasonably determines can be remedied by demand on the performance security, then the commission may immediately request payment of, or draw, the amount thereof, with interest and any penalties, from the performance security. Upon such request for payment, the county manager shall notify the grantee of the amount and date thereof.

(c) *Reduction in the performance security.* Upon written application by the grantee, the county may, at its sole option, permit the amount of the performance security to be reduced or waive the requirements for

performance security. Reductions granted or denied upon application by the grantee shall be without prejudice to the grantee's subsequent applications or the county's right, at its sole discretion, to require the restoration of the full performance security at any time thereafter. However, no application shall be made by the grantee within one (1) year of any prior application.

(d) *Replenishment of the performance security.* No later than thirty (30) days after mailing to the grantee by certified mail notification of a withdrawal pursuant to this section, the grantee shall replenish the performance security in an amount equal to the amount so withdrawn. Failure to make timely replenishment of such amount shall constitute a violation of this chapter.

(e) *Increase in ongoing performance security amounts.* To offset the effects of consumer price inflation, the amounts of the ongoing performance security provided for herein are subject to reasonable increases at the end of every three-year period of the franchise, applicable to the next three-year period, at the sole discretion of the county.

(f) *Remedies cumulative.* The rights reserved to the county with respect to the performance security are in addition to all other rights of the county whether reserved by the franchise or authorized by law. No action, proceeding or exercise of a right with respect to such performance security shall affect any other right which the county may have.

(Ord. No. 1994-14, § 25, 10-4-94; Ord. No. 2003-60, § 9, 7-1-03)

#### **Sec. 6.5-26. Franchise violations.**

(a) *Procedure for remedying franchise violations.*

(1) In the event the county manager, or a designee, determines that the grantee has violated any of the terms of this chapter, the franchise agreement, representations made in the application, transfer, or renewal process, or the rules and regulations as may from time to time be lawfully adopted, the county manager shall serve upon the grantee written notice to correct the violation(s) within the number of days set forth in the notice, which time allowed shall be reasonable in light of the nature of the violation and the remedial work to be completed. In the event that the grantee shall fail to correct the violation(s), make any repair, remove or relocate any part of its system, or otherwise perform its obligations, or fails to take necessary corrective action, the commission may cause the necessary work to be completed or services to be provided or other corrective action to be taken. The grantee shall pay the county the reasonable costs thereof within forty-five (45) days of receipt of an itemized account of the same, including a reasonable charge for the necessary administrative expenses incurred by the county.

(2) Prior to effecting any remedy, the county manager, or a designee, shall notify the grantee in writing that the cure will be effected by the county and that the grantee may request a hearing before the commission to contest allegations of violation(s), request relief, or provide evidence relating to the violations. The hearing request shall be in writing and shall specifically and in detail specify all reasons and purposes for the hearing and shall toll the time within which the remedy shall be effected, unless the violation causes imminent threat to the safety of persons or the property of others. The county manager, or a designee, shall inform the grantee if no tolling

shall be permitted. The commission shall hear the matter within twenty-one (21) days of the date the written request is received by the county manager. The county manager, or a designee, shall provide written notice of the hearing to the grantee. The grantee may appear at the hearing and submit evidence in defense of itself. Any affected person shall also be notified in writing of the hearing. Failure of the grantee to submit evidence or participate in the commission hearing shall constitute a waiver of all rights of objection relating to the alleged violation.

- (3) Where the violation poses an immediate threat to the public health or safety, the violation may be cured by the county without prior notice to the grantee and adherence to the procedure set forth in this section. Where the circumstances permit, the county manager, or a designee, shall provide notice to the grantee.
  - (4) No remedy pursuant to this section shall be effected by the county except upon the approval of the commission. Nothing herein, and no action hereunder, shall be deemed a waiver of other remedies available to the county.
- (b) *Penalties for noncompliance.*
- (1) In addition to the procedures outlined above, by acceptance of a franchise, a grantee understands and agrees with the county that failure to comply with any time and performance requirements as stipulated in the franchise agreement and/or this chapter will result in damage to the county, and that it is and will be impractical to determine the actual amount of such damage in the event of delay or nonperformance; therefore, the parties shall agree to the penalties for noncompliance specified in this chapter or the franchise agreement, but without prejudice to any of the remedies available to the parties hereto, including the grantee's right to appeal the assessment of penalties for noncompliance to a court of competent jurisdiction. The following amounts may be chargeable to the performance security for the following concerns:
    - a. Failure to complete system construction or reconstruction in accordance with the franchise agreement, unless the commission specifically approves the delay by motion or resolution due to the occurrence of conditions beyond grantee's control, grantee shall pay five hundred dollars (\$500.00) per day for each day, or part thereof, the delinquency continues;
    - b. Failure to provide, within thirty (30) days after written request, data, documents, reports, or information reasonably related to the accuracy of the franchise fees, performance of the cable communications system, or technical compliance with this chapter or the grantee's franchise agreement, grantee shall pay fifty dollars (\$50.00) per day for each day, or part thereof, that each violation occurs or continues;
    - c. Failure to test, analyze and report on the performance of the system as required by the FCC or failure to test, analyze and report on the performance of the system within thirty (30) days following a written request by the county based upon a possible performance deficiency of the system that remains uncorrected during the thirty-day period, grantee shall pay to the county one hundred dollars (\$100.00) per day for each day, or part

thereof, that such noncompliance continues;

- d. Any unauthorized transfer of the franchise agreement or assignment of control of the grantee. For such violations, grantee shall pay five hundred dollars (\$500.00) per day for each day, or part thereof, that the delinquency continues;
  - e. Failure to provide in a continuing manner the types of services proposed in the accepted application, unless the commission specifically approves grantee a delay or change or the grantee has obtained modification of its obligation under Section 625 of the Cable Communications Policy Act of 1984, the grantee shall pay to the county five hundred dollars (\$500.00) per day for each day, or part thereof, that each noncompliance continues;
  - f. Thirty (30) days following adoption of a resolution by the commission determining a failure of grantee to comply with operational, maintenance or technical standards, grantee shall pay to the county five hundred dollars (\$500.00) for each day, or part thereof, that such noncompliance continues;
  - g. For breach of any service standards, grantee shall pay one hundred dollars (\$100.00) per day for each day or part thereof, that such noncompliance continues. A breach shall be interpreted to mean that the county has evidence of repetitive failure to comply with the service standards;
  - h. For a breach of any requirement of the franchise agreement not listed above, the grantee shall pay to the county one hundred dollars (\$100.00) for each day, or part thereof, that such noncompliance continues.
- (2) If the county manager, following prior reasonable notice to grantee to cure any problem that might result in penalties for noncompliance, concludes that the grantee is in fact liable for penalties for noncompliance pursuant to this section, the county manager shall issue to grantee by certified mail a notice of intention to assess penalties for noncompliance. The notice shall set forth the basis of the assessment, and shall inform the grantee that penalties for noncompliance will be assessed from the date of the notice unless the assessment notice is appealed for hearing before the county commission and the commission rules (a) that the violation has been corrected, or (b) that an extension of time or other relief should be granted. If the grantee desires a hearing before the commission, it shall send a written notice of appeal by certified mail to the county manager within ten (10) days of the date on which the county sent the notice of intention to assess penalties for noncompliance. The hearing on the grantee's appeal shall be within thirty (30) days of the date on which the county sent the notice of intention to assess penalties for noncompliance. After the hearing, if the commission sustains in whole or in part the county manager's assessment of penalties for noncompliance, the county manager may at any time thereafter draw upon the performance security. Unless the commission indicates to the contrary, said penalties for noncompliance shall be assessed beginning with the date on which the county sent the notice of the intention to assess penalties for noncompliance and continuing thereafter until such time as the violation ceases, as determined by the county manager.

(Ord. No. 1994-14, § 26, 10-4-94)

**Sec. 6.5-27. Revocation.**

(a) *Examples and standards.* In addition to all other rights and powers retained by the commission under this chapter or otherwise, the commission shall have the right to revoke the grantee's franchise and all rights and privileges of the grantee thereunder in the event of a recurring or protracted substantial breach of the franchise terms and conditions, or this chapter, which substantially affects the provision or quality of cable television services, the ability of the county to effectively regulate the grantee, or the county's collection of all fees and charges. The power of revocation shall not be used if the breach is a result of force majeure. The breaches appearing on the list set forth below in this section shall be considered substantial breaches. The list is not exhaustive:

- (1) Willful or grossly negligent repeated violations of this chapter, the franchise, or the representations made in the application process, or any rule, order or regulation of the county made pursuant to this chapter.
- (2) An attempt to dispose of any of the facilities or property of the system authorized by the franchise to prevent the county from acquiring it, as provided for herein and in the Act.
- (3) Recurrent failures to restore service on the entire or a substantial portion of the cable television system after ninety-six (96) consecutive hours of interrupted service except upon approval of such interruption by the commission, for good cause shown.
- (4) Recurrent service outages of the entire cable television system or a substantial portion thereof which, in the aggregate, exceed ten (10) days in any thirty-day period.
- (5) Insolvency of the grantee or inability or unwillingness of the grantee to pay its just debts when they accrue, or application of the grantee for adjudication as a bankrupt.
- (6) Recurrent failures after notice by the county manager, or a designee, to provide service to any part of the franchise service area.

(b) *Notice.* Where the circumstances allow, the county manager, or a designee, shall make a written demand that the grantee comply. If a violation by the grantee continues for a period beyond that set forth in the written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the commission may revoke the franchise. The county manager, or a designee, shall provide the grantee at least thirty (30) days prior to the date of such hearing a written notice of intent to institute revocation proceedings and the time and place of the hearing. Public notice shall be given of the hearing and the issue to be considered. The grantee shall provide notice of the hearing in the next available billing to subscribers if time permits.

(c) *Hearing.* No revocation of a franchise shall be effective unless and until the board of county commissioners shall have adopted an order setting forth causes and reasons for the termination and the effective date thereof. Such order shall not be adopted without having afforded the grantee an opportunity to be heard

upon the proposed action, including whether there exists extenuating circumstances resulting solely from force majeure or from circumstances beyond the grantee's reasonable control, provided that the grantee has taken all reasonable or necessary corrective steps, and has been diligent in pursuing its requirements under the franchise. (Ord. No. 1994-14, § 27, 10-4-94)

**Sec. 6.5-28. Alternative remedies.**

No provision of this chapter shall be deemed to bar the right of the county to seek or obtain judicial relief for a violation of any provision of this chapter, the franchise, or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this chapter nor the exercise thereof shall be deemed to bar or otherwise limit the right, of the county to recover monetary damages for such violation by the grantee, or judicial enforcement of the grantee's obligations by means of specific performance, injunctive relief or mandate, or any other judicial remedy at law or in equity. (Ord. No. 1994-14, § 28, 10-4-94)

**Sec. 6.5-29. Nonenforcement.**

A grantee shall not be relieved of any obligation to comply with any of the provisions of the franchise or any rule, regulation, requirement or directive promulgated thereunder by reason of any failure of the county or its officers, agents or employees to enforce prompt compliance. (Ord. No. 1994-14, § 29, 10-4-94)

**Sec. 6.5-30. Customer service standards.**

(a) *Telephone system requirements for grantees with more than one thousand (1,000) subscribers.* The grantee shall have a subscriber service representative employed by the grantee available to handle subscriber calls twenty-four (24) hours a day. Each grantee must have an answering service or call center for messages on repair service telephone lines. Answering machines shall not meet the requirements of this section. The grantee shall maintain a log of calls made to the answering service or call center, which shall be made available to the county manager, or a designee.

(b) *Telephone system requirements for grantees with one thousand (1,000) or fewer subscribers.* The grantee shall have a subscriber service representative employed by the grantee available to handle subscriber calls twenty-four (24) hours a day. Grantee must have an answering service or call center for messages on repair service telephone lines. The grantee shall maintain a log of calls made to the answering service or call center, which shall be made available to the county manager, or a designee upon request.

(c) *Telephone system requirements for all grantees.* Grantees shall meet the following telephone requirements:

- (1) The grantee shall have a telephone system for subscriber service and repair. These numbers shall be listed in the local telephone directory under the categories stated above as well as on the front of all customer bills.
- (2) If the county manager, or a designee, reviews telephone service complaints against a grantee and

finds them to be inordinate, the county manager, or a designee, shall direct the grantee to provide to the county manager, or a designee, a communication traffic study, at the grantee's expense, within sixty (60) days of the notice. The study shall be conducted on all subscriber service trunk lines and shall include information concerning the efficiency of the grantee's telephone communication system measured from the telephone company's central office, as well as other performance information available from the grantee's communication equipment.

- (3) The specific telephone standards which shall be met are:
  - a. Sixty (60) percent of all calls shall be answered within fifteen (15) seconds.
  - b. Eighty (80) percent of all calls shall be answered within thirty (30) seconds.
  - c. Sixty (60) percent of all calls shall not be on hold longer than two (2) minutes.
  - d. Ninety (90) percent of all calls shall not be on hold longer than three (3) minutes.
  - e. The grantee shall attempt to inform a subscriber on hold every sixty (60) seconds that the call is being attended to.
  - f. Grade of service shall be equal to or better than P25, with no more than twenty-five (25) calls out of each one hundred (100) calls receiving a busy signal.
- (4) *Remedy.* In the event that a deficiency is determined by the county to exist within a grantee's telephone communication system, in that the grantee fails to meet the standards set out above, the grantee shall have a three (3) month period from written notification of such deficiency to cure the same.
- (5) *Reservation.* The commission shall have the right to modify the requirements herein by resolution as it deems reasonably necessary to serve the public benefit, after notice to grantees and opportunity to be heard.
- (d) *Continuity of service mandatory.*
- (1) It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the grantee are honored. In the event the grantee elects to replace, rebuild, modify or sell the system, or the county gives notice of intent to revoke, fails to renew the franchise or a transfer is effected, the grantee shall take reasonable measures to ensure that all subscribers receive continuous, uninterrupted service for the duration of the franchise regardless of the circumstances. In the event of a change of franchise, or in the event a new grantee acquires the system, the grantee shall cooperate with the county and the new grantee in maintaining continuous service to all subscribers.
- (2) In the event the grantee abandons reasonable attempts to operate the system for seven (7) consecutive days without prior approval of the commission or without just cause, the commission

may, at its option, operate the cable television system or designate an operator until such time as the grantee restores service under conditions acceptable to the commission, 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 incurred by the county that are the result of the grantee's failure to perform. In addition to such reimbursement, the grantee shall pay to the county all gross revenues assignable to the period for which the county operates the system. The county shall be responsible for paying the direct actual operating expenses incurred during substitute operation hereunder upon its receipt of all gross revenues for the period.

- (3) Maintenance repairs, interruptions. The grantee shall maintain all parts of the system in good, safe and operable condition throughout the entire franchise period. The grantee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use.
- (e) *System compliance tests.*
- (1) *Conformity with Federal Communications Commission rules and regulations.* The grantee shall be responsible for ensuring that its cable television system is designed, installed and operated in a manner that fully conforms with subpart K of Federal Communications Commission rules and regulations governing cable television systems. The grantee shall be fully prepared to demonstrate, on request by an authorized representative of the county, that the system does, in fact, comply with subpart K.
  - (2) *Listing of channels.* The grantee shall maintain at its local office a current listing of the cable television channels which the grantee delivers to its subscribers as well as providing the county with a copy of the listing. Basic cable channels should be listed separately as a group.
  - (3) *Special tests.* The county manager, or a designee, may, at the grantee's expense, require or perform performance tests, including tests involving a specific subscriber's terminal to determine system performance. Requests for such tests shall be made only on the basis of complaints received or other evidence indicating an unresolved controversy or significant noncompliance, and such tests shall be limited to the particular matter in controversy. The county manager, or a designee, shall endeavor to arrange the request for such tests so as to minimize hardship or inconvenience to the grantee.
  - (4) *Subscriber terminal test requests.* The grantee shall, upon reasonable request or complaint by a subscriber, perform such tests without charge to the subscriber as necessary at the subscriber's terminal to establish whether a signal of requisite quality is being delivered to the subscriber's premises.
  - (5) *Record keeping and reports.* All requested system compliance test reports, maintenance and outage logs, subscriber terminal test reports, and all leakage and interference logs, together with all data obtained in connection therewith, shall be preserved in the files of the grantee for three (3) years. Copies of all such tests, reports and test data shall be furnished to the county manager,



or a designee, upon request.

(f) *Subscriber complaints.* Grantees must maintain an office and service center at a convenient location, which may be outside of the county, if approved by the commission. Each office and service center shall be open during all normal business hours, have publicly listed toll free telephone lines, in accordance with this section, and receive complaints and requests for repairs on a twenty-four hour per day, seven-day a week basis. The grantee shall have a sufficient number of qualified technicians on call on a twenty-four hour basis to answer subscriber service complaints. During the hours when a service representative of the grantee is not on duty to receive calls, a qualified technician shall be contacted by grantee's answering service directly upon receipt of a service complaint. Upon receipt of a service complaint involving an outage or other severe reception problem during normal working hours, the grantee shall respond by correcting the service complaint within four (4) hours or by contacting the complaining subscriber and indicating why it cannot be corrected within the time period, and when the complaint will be remedied. The grantee shall respond to service complaints involving an outage or severe reception problem received during other than normal business hours by correcting the service complaint within twelve (12) hours or by contacting the complaining subscriber within the same period to indicate why it cannot be corrected in that time period and when the situation will be remedied. Complaints received not involving an outage or severe reception problem shall be corrected within twenty-four (24) hours except for matters outside of the control of the grantee. The grantee shall schedule service calls with subscribers to the extent reasonably practicable. The scheduling shall, at a minimum, be in time frames of visitation of no more than four (4) hours. If the appointment cannot be kept, the grantee shall provide as much advance notice to the subscriber as possible. In the event service to any subscriber is interrupted for twelve (12) hours or more within any one-month billing period, through the fault of the grantee, the grantee shall provide such subscriber with a pro rata rebate or credit. In calculating the rebate or credit, the time of outage shall be calculated from the time the outage is reported to the grantee. The grantee shall maintain records of the time of complaint, nature of complaint, and any corrective action taken. These records shall be held by the grantee for three (3) years and shall be made available to the county manager, or a designee, upon request. A summary of complaints shall be prepared by the grantee and submitted to the county manager, or a designee, monthly, beginning twelve (12) months after service is provided to the first subscriber. The county manager may establish by rule a format for the monthly summary. The grantee shall notify subscribers at the time of initial subscription to the system of the procedure for reporting and resolving complaints by delivering to each subscriber a written notice in a form approved by the county manager, including a statement that unresolved complaints may be reported to the county manager, or a designee.

(g) *Identification of grantee's employees.* All personnel, agents and representatives of the grantee, including its subcontractors, who have occasion to deal directly with subscribers in the field, shall carry photo identification badges, to be displayed upon request, when acting on behalf of the grantee.

(h) *Discontinuance of service.* The grantee shall provide at least five (5) days written notice prior to discontinuance of service because of nonpayment. When the grantee has improperly discontinued service, it shall provide free reconnection.

(i) *Annual subscriber survey.* The county may request and the grantee shall then cause a subscriber satisfaction survey to be conducted by an independent survey organization at the grantee's expense. The subscriber satisfaction survey shall be in the form of a telephone or mail survey, to be determined by the county manager, or a designee. The content of the subscriber satisfaction survey shall be approved by the county

manager, or a designee, before the subscriber satisfaction survey is conducted. The results of the subscriber satisfaction survey, as well as the raw data upon which the survey is based, shall be made available to the county manager, from the survey organization, within a reasonable time after conclusion of the survey.

(j) *Other customer service standards.* The customer service standards set forth in this section shall apply unless preempted by a more stringent federal customer service standard.  
(Ord. No. 1994-14, § 30, 10-4-94; Ord. No. 2003-60, § 10, 7-1-03)

### **Sec. 6.5-31. Reservations of the county.**

In addition to the specific reservations of the county otherwise set forth herein, the county hereby makes the following reservations.

- (1) *Police powers.* In accepting a franchise, the grantee acknowledges that its rights thereunder are subject to the police powers of the county to adopt and enforce ordinances, resolutions, rules, regulations, policies and practices necessary to the convenience, health, safety and welfare of the public, and grantee thereby agrees to comply with all applicable ordinances, resolutions, rules, regulations, policies and practices by the county pursuant to such power. Any inconsistency between, or ambiguity created by the relationship between, the provisions of this chapter and any other contemporaneous or future lawful exercise of the county's police powers shall be resolved in favor of the latter.
- (2) *Authority to further regulate reserved.* The county shall have all powers not otherwise preempted by the Act, the regulations of the Federal Communications Commission, and any other federal or state law or regulation, and shall have all powers conferred on a franchising authority or allowed by the Act which are not addressed in this chapter.

Should any material amendment be made to the Act, or to the regulations promulgated thereunder by the Federal Communications commission, or should any provision thereof be held invalid or unenforceable by a court of competent jurisdiction which materially affects the county's authority with respect to the regulation of the grantee or the provisions of this chapter, the commission shall have the right to amend this chapter to the extent it deems appropriate, and the then existing franchise shall be subject to such amendment.

- (3) *Nonenforcement not a waiver.* The grantee shall not be excused from complying with any of the requirements of this chapter by any failure of the county on any one (1) or more occasions to insist upon or to seek compliance with any such requirements.
- (4) *Subscriber committees.* The commission may create, establish or appoint such committees and persons to assist it in administering the provisions of this chapter and may establish a procedure for the creation, establishment, appointment or operation of such. The commission may direct such committees to review the grantee cable communication services, costs, channel selections, consumer rights and such other topics as the commission deems appropriate. The grantee, by accepting the franchise, agrees to meet with the subscriber committees at such reasonable times as established by the commission.

(Ord. No. 1994-14, § 31, 10-4-94; Ord. No. 2003-60, § 11, 7-1-03)

**Sec. 6.5-32. Subscriber rate regulation**

(a) Any rate or charge established for cable communication service, equipment, repair and installation shall be reasonable, just and fair to the public. In determining whether a rate or charge is reasonable, just and fair, the county shall apply the cable television rate regulation criteria established by the Federal Communications Commission ("FCC").

(b) Should a franchisee desire to change any rate or charge, it shall submit a written proposal for the amounts and effective date of such change to the county manager or designee who shall evaluate the proposal in a manner consistent with FCC cable television rate regulation standards and take appropriate action. The franchisee shall notify each subscriber, in writing, of the proposed rate change.

(Ord. No. 1994-14, § 33, 10-4-94; Ord. No. 1999-107, § 3, 11-2-99)

**Sec. 6.5-33. Subscriber rights.**

(a) *Privacy.* The grantee shall comply with Section 551 of the Act regarding protection of subscriber privacy.

(b) *Rights of individuals.* The grantee shall not deny cable television service, deny access or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, or sex. The grantee shall comply at all times with all other applicable federal, state and local laws and regulations, and all federal and state executive and administrative orders relating to nondiscrimination.

(c) *Subscriber contract.* Unless a written contract exists between the grantee and the subscriber, cable television service shall be provided on a month-to-month basis. The subscriber may terminate service at any time without penalty.

(d) *Provision of service.* The grantee shall not, without good cause, fail to provide cable television service to individuals or prospective subscribers in the franchise service area, nor shall the grantee terminate service without good cause.

(e) *Public notice.* Minimum public notice of any county commission public meeting relating to the franchise, including franchise transfers, shall be given by the grantee to its subscribers by announcement on at least one (1) basic channel of its cable television system between the hours of 7:00 p.m. and 9:00 p.m. for five (5) consecutive days not less than five (5) days nor more than ten (10) days prior to the date of the public hearing.

(f) *Annual service list.* The grantee shall annually provide customers and the county with a complete list of service offerings, options, prices, and credit policies.

(g) *Subscriber notification.* Before providing initial service to each subscriber and at least annually thereafter, the grantee shall advise each subscriber in writing of:

- (1) The availability of the signal control device required by Section 624(d) (2) of the Cable Act;
- (2) A description of all service offerings and options, the fees, charges, deposits, and associated terms and conditions which apply to all services then being distributed over the system which the subscriber may elect to receive;
- (3) The procedures by which the subscriber will be notified of changes in fees, charges, deposits, or associated terms and conditions for any service;
- (4) The grantee's practices and procedures for protecting against invasions of privacy as required by Section 631 of the Cable Act;
- (5) The grantee's procedures for the receipt and resolution of subscriber complaints; and
- (6) The address and telephone number of the grantee's office in the franchise area to which complaints may be reported.

(h) *Right of rescission.* The grantee shall afford consumers a three-day right of rescission for ordering cable services, except that such right of rescission shall end upon initiation of installation, whether physically or electronically, on the subscriber's premises.

(i) *Notice before entry onto private property.* Except in emergency situations, grantee shall provide owners of private property reasonable advance notice of its need to enter upon such private property. In situations where circumstances permit, reasonable notice shall mean written notice.  
(Ord. No. 1994-14, § 33, 10-4-94; Ord. No. 2003-60, § 12, 7-1-03)

#### **Sec. 6.5-34. Criminal penalties.**

Any person found guilty by a court of competent jurisdiction of intentionally violating the provisions of this chapter relating to the matters set forth in section 6.5-35 shall be punished in accordance with F.S. § 125.69. This criminal provision is hereby declared to be unrelated to the civil remedies of the county set forth in this chapter or otherwise permitted by law or ordinance.  
(Ord. No. 1994-14, § 34, 10-4-94)

#### **Sec. 6.5-35. Prohibited practices.**

(a) A grantee shall not deny cable television service to any group of potential residential subscribers within its franchise service area because of the income of the residents of the local area in which such group resides.

(b) A grantee shall not charge subscribers within a franchise service area different rates for like service. This subsection shall not be deemed to prohibit the imposition of different rates for different classes of service, and further shall not be deemed to prohibit the grantee from offering to non-subscribers for promotional purposes lower rates for basic cable television service for periods not to exceed ninety (90) days. This subsection shall not be construed to prohibit separate rates for residents of apartment or condominium

complexes or a similar multiple unit dwelling where the rates are governed by a contract or bulk rate agreement between the grantee and the owners or operators of nonresidential properties such as hotels, motels, and hospitals. This subsection shall apply retrospectively to grantees holding franchises already in existence at the time of the enactment of this chapter, to the extent that such retrospective application shall not abridge existing contract rights.

(Ord. No. 1994-14, § 35, 10-4-94)

### **Sec. 6.5-36. Franchise fees.**

Franchise fees shall be paid as required by state and federal law. In the absence of state or federal law preempting local imposition of franchise fees, the following franchise fees shall be paid.

For the use of the streets and for the purposes of providing revenue for the purpose of defraying the costs of regulation arising out of the granting of franchises under this chapter, and promoting, assisting and financing, educational, and governmental access programming, each grantee shall pay franchise fees in the amount prescribed in section 6.5-36.

- (1) *Amount and payment of franchise fees.* During the term of each franchise, each grantee shall pay to the county an amount equal to five (5) percent per year of the grantee's annual gross revenue, or such other percentage as adopted by the commission from time to time.

Said fees shall be paid quarterly not later than August 1, November 1, February 1, and May 1 for the preceding three-month period ending, respectively, June 30, September 30, December 31, and March 31. Not later than the date of each payment, each grantee shall file with the county manager, or a designee, a written statement signed under penalty of perjury by an officer of the grantee, which identifies in detail the sources and amounts of gross revenues received by a grantee during the quarter for which payment is made.

No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the county may have for further or additional sums payable under the provisions of this section.

- (2) *Interest on delinquent franchise fees.* Any franchise fees which remain unpaid after the dates specified in this section above shall be delinquent and shall thereafter accrue interest at the maximum legal rate until paid.
- (3) *Accounting standards.* Not less than annually, the grantee shall provide the commission with a certification by an independent certified public accountant or an officer of the grantee certifying the accuracy of the quarterly franchise fee payments paid within the preceding twelve (12) months pursuant to section 6.5-36. Said certification shall be prepared in accordance with generally accepted accounting standards as established by the financial accounting standards commission.
- (4) *Gross revenue calculations.*

- a. For purposes of the gross revenue calculations required by section 6.5-36, the phrase "financial interest" shall include but not be limited to:
1. Any contract in which the grantee or any named owner thereof is to receive a percentage of the net income of the other party to the transaction by reason of the activities encompassed by said contract;
  2. Any debt relationship in which the grantee or any named owner thereof as debtor borrows funds at a rate more advantageous than that generally available to similarly situated entities of similar credit worthiness;
  3. Any debt relationship in which the grantee or any named owner thereof as creditor receives a rate of interest exceeding that which would otherwise be paid by a similarly situated debtor of similar credit worthiness;
  4. Any option or warrant to purchase the stock or other equity interest in an entity or entity related to an entity which generates revenues arising from or attributable to the operation of the system;
  5. Any debt relationship which has conversion privileges to a form of equity of the nature described in subparagraph 4.
- b. For purposes of the gross revenue calculation required by section 6.5-36, the phrase "arising from or attributable to operation of the cable television system" shall include but not be limited to:
1. Any activity, product or service, including rebroadcast of local television station signals, which generates revenue of any type whatsoever and which is offered to the subscribers of the cable television system by means of the system or any related service;
  2. Any activity, product or service which is revenue producing and is offered to the subscribers of the cable television system by any medium other than the system, including but not limited to direct mail and home delivery if the cable television system's subscriber list or any portion thereof is utilized for purposes of solicitation;
  3. Any activity, product or service in the production or provision of which any of the assets of the cable television system, including but not limited to cable, production facilities, and administrative facilities, are included, unless reasonable consideration is paid to the system for such utilization;
  4. Any television programming or other services offered to the citizens of [the county] within the term of the franchise by any means of delivery whatsoever

where such programming or services are or could be offered by means of the cable television system.

- (5) *Auditing and financial records.* The county manager, or a designee, may, from time to time during the term of a franchise prescribe standards governing the nature, extent and type of accounting system and accounting procedures for franchise fee verification. If necessary to promote the efficient administration of the franchise fee requirements of this chapter, the county manager or designee may require changes in accounting standards or procedures utilized by a grantee. Any such standards shall be in writing, shall be filed in the office of the county manager, and shall be mailed to the grantee to whom directed. A grantee shall comply with all such standards within a reasonable time.

During the term of each franchise, the county manager may, not more frequently than once each year, conduct an audit of all of the books, records and accounts of the grantee for the purpose of determining whether the grantee has paid franchise fees in the amounts prescribed by section 6.5-36. The audit may be conducted by the county staff or by an independent certified public accounting firm retained by the county, and shall be conducted at the sole expense of the county. The party conducting the audit shall prepare a written report containing its findings, and the report shall be filed with the county manager, and mailed to the grantee. If the audit demonstrates that the grantee has underpaid the franchise fee which is required to be paid by this chapter by five (5) percent or more, the grantee shall pay to the county all costs of the audit, whether performed by the county staff or by an independent certified public accounting firm. The grantee shall pay to the county all unpaid franchise fees plus interest at the maximum rate permitted by law.

(Ord. No. 1994-14, § 36, 10-4-94; Ord. No. 2003-60, § 13, 7-1-03)

#### **Sec. 6.5-37. Publication costs**

The grantee shall assume the cost of publication of all notices concerning its franchise as such publication is required by law, and such costs are payable to the county upon the grantee's acceptance of a franchise and at such other subsequent times as notice by publication is required.

(Ord. No. 1994-14, § 37, 10-4-94)

#### **Sec. 6.5-38. Performance evaluation.**

(a) *Annual report of compliance.* The grantee shall report to the county annually on its compliance with this chapter and the terms of its franchise agreement. The annual compliance report shall also contain such other information as deemed relevant by the county manager and the grantee.

(b) *Performance evaluation hearings.* The county commission may schedule and hold performance evaluation hearings for grantees as the commission, in its sole discretion, may deem necessary and as may be required by federal and state law.

At least thirty (30) days prior to the performance evaluation session, the grantee shall submit to the county manager, or a designee, a written report, in reasonable detail, covering the significant events related to

the grantee's performance or nonperformance of the terms and conditions of the franchise during the period from the submission of the last such report. The report may, for example, cover significant events related to the following:

- (1) Compliance with, and any modification necessary with respect to, the financial commitments required under a franchise agreement;
- (2) Compliance with requirements regarding system characteristics and technical performance and testing requirements;
- (3) Compliance with construction terms, standards, and schedule's;
- (4) A description of the changes made or contemplated to the mix, level and quality of programming in the broad categories of video programming or other services on the system;
- (5) The current status of the state-of-the art communications facility technology;
- (6) Compliance with, and any modification necessary with respect to, the grantee's privacy protection policies;
- (7) A summary of all significant service interruptions;
- (8) A summary of all significant and representative subscriber complaints and the action taken by the Grantee in response thereto; and
- (9) Other events which the grantee may find significant.

(c) *Request for additional information.* At the scheduled performance evaluation hearing, the board of county commissioners and the county manager, or a designee, may request additional reasonable and appropriate information on specified topics which the grantee shall supply within sixty (60) days of such request. The board of county commissioners may review the grantee's performance to determine whether the grantee has complied with the terms and conditions of the franchise and shall, following completion of such review, if any, keep the grantee's report on file. Nothing in this section shall affect the remedies of the board of county commissioners provided elsewhere in the franchise or in this chapter.

(d) *Special evaluation hearing's.* Special evaluation hearings may be held at any time during the term of a franchise at the request of the board of county commissioners or the grantee.

(e) *Notice of hearing.* All evaluation hearings shall be open to the public and announced in a newspaper of general circulation in the county in accordance with Florida law. Grantee shall notify its subscribers of all evaluation hearings pursuant to the provisions of this chapter.

(f) *Topics.* Topics which may be discussed at any regular or special evaluation hearing may include, but not be limited to, service rate structures; Franchise fee; free or discounted services; application of new technologies; system performance; services provided; programming offered; customer complaints; privacy;



judicial and FCC rulings; line extension policies; and grantee or county rules.

(g) Within thirty (30) days after the conclusion of any evaluation hearing, the county manager, or a designee, may issue a report with respect to the adequacy of the grantee's system performance and quality of service. If inadequacies are found by the commission which result in a violation of any of the material provisions of a franchise, the grantee shall have a minimum of thirty (30) days to respond and propose a plan for implementing any improvement.

(Ord. No. 1994-14, § 38, 10-4-94)

**Sec. 6.5-39. Liberal construction.**

The provisions of this chapter shall be liberally construed in order to effectively carry out the purposes of this chapter in the interest of the public health, welfare, and safety of the citizens and residents of the county, and the State of Florida.

(Ord. No. 1994-14, § 39, 10-4-94)