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Cable

CITY OF COHOES
DEPARTMENT OF LAW

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Via 1st Class Mail and e-mail (secretary@dps.state.ny.us)

Ms. Jaclyn A. Brillling
Secretary
New York State Public Service Commission
Empire State Plaza
Agency Building 3
Albany, NY 12223-1350

**Re: Case 00-V-2091 - Order Approving Renewal TWE Cable Television
Franchise for the City of Cohoes**

Dear Ms. Brillling:

Pursuant to the above referenced Order of the NYS Public Service Commission, I am writing on behalf of the City of Cohoes, as franchisor, in order to provide you and the Commission with the name of the person responsible for the administration of the subject franchise. The Comptroller of the City of Cohoes is the person responsible for the administration of the subject franchise. Presently, the Comptroller is Michael J. Durocher.

I am also enclosing a copy of Chapter 130 of the Cohoes City Code, CABLE SYSTEMS AND OPEN VIDEO SYSTEMS. I am not sure if the Commission has a copy of this, but it is relevant as the subject franchise makes mention of said chapter several times.

Feel free to contact me or Mr. Durocher with any questions or concerns. Thank you.

Very truly yours,

Darrin B. Derosia

Chapter 130, CABLE SYSTEMS AND OPEN VIDEO SYSTEMS

[HISTORY: Adopted by the Common Council of the City of Cohoes 3-23-2004 by Ord. No. 1-2004. Amendments noted where applicable.]

GENERAL REFERENCES

Cable Television Commission -- See Ch. 11.
Utility excavations -- See Ch. 244, Art. II.

ARTICLE I, Legislative Purpose

§ 130-1. Purpose.

The purpose of this chapter is to:

- A. Establish a local policy concerning cable systems, open video systems, and private communication systems that use the public rights-of-way;
- B. Promote the availability of diverse, multimedia information resources to the community, which provides for enhancing educational opportunities throughout the community and building a stronger community;
- C. Encourage the provision of advanced and competitive cable or open video system services on the widest possible basis to the businesses, institutions and residents of the City; and
- D. Encourage economic development while preserving aesthetic and other community values and preventing proliferation of aboveground facilities.
- E. Universal access to video-programming services is encouraged for all residents and businesses.

ARTICLE II, General Provisions

§ 130-2. Definitions.

For the purposes of this chapter, the following terms, phrases, words, and abbreviations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number and words in the singular number include the plural number; and the masculine gender includes the feminine gender. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined in this chapter shall have the same meaning as in Title VI of the Communications Act of 1934, as amended, 47 USC § 521 et seq., and, if not defined therein, their common and ordinary meaning. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered,

then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

ACCESS, PEG ACCESS, or PEG USE -- Refers to the availability of a cable system or open video system for public, education or government use (including institutional network use) by various agencies, institutions, organizations, groups, and individuals, including the City of Cohoes and its designated access providers, to acquire, create, and distribute programming not under a franchisee's editorial control, including but not limited to:

- A. **PUBLIC ACCESS or PUBLIC USE** -- Access where organizations, groups, or individual members of the general public, on a nondiscriminatory basis, are the primary or designated programmers or users having editorial control over their communications;
- B. **EDUCATION ACCESS or EDUCATION USE** -- Access where accredited educational institutions are the primary or designated programmers or users having editorial control over their communications;
- C. **GOVERNMENT ACCESS or GOVERNMENT USE** -- Access where government institutions or their designees are the primary or designated programmers or users having editorial control over their communications.

AFFILIATE -- A person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person.

APPLICATION -- Any application, proposal, submission, or request filed pursuant to the requirements of this chapter to a) obtain a new franchise; b) transfer a franchise; c) extend a franchise; or otherwise modify a franchise. A proposal includes an applicant's initial proposal, submission or request, as well as any and all amendments or supplements to the proposal and relevant correspondence.

APPLICATION FEE -- A charge to recover the City of Cohoes' actual costs of processing applications hereunder.

BASIC SERVICE -- Any service tier regularly provided to all subscribers which includes the retransmission of local television broadcast signals.

CABLE ACT -- The Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996, as further amended from time to time.

CABLE COMMUNICATIONS SYSTEM -- Refers to open video systems (OVS) and cable systems.

CABLE SYSTEM -- A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include: a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; b) a facility that serves subscribers without using, or connecting to a facility that uses, any public right-of-way within the City of Cohoes; c) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II (Common Carriers) of the Communications Act of 1934, as amended, except that such facility shall be considered a

cable system to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; d) any facilities of any electric utility used solely for operating its electric utility systems; or e) an OVS that is certified by the FCC. Any reference to a cable system includes the cable system as a whole, or any part thereof, including all pedestals, equipment cabinets, electronic equipment and devices appurtenant to the system.

CABLE SERVICE

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

CHANNEL -- A portion of the electromagnetic frequency spectrum which is used in a cable system or OVS and which is capable of delivering a television signal whether in an analog or digital format. The definition does not restrict the use of any channel to the transmission of analog television signals.

CITY -- The City of Cohoes and all departments, divisions, and agencies thereof.

CONSTRUCTION, OPERATION or REPAIR (and similar formulations of that term) -- The named actions interpreted broadly, encompassing, among other things, installation, extension, maintenance, replacement of components, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, and excavation.

DOWNSTREAM CHANNEL -- A channel designed and activated to carry a transmission from the head end to other points on a cable communications system, including interconnections.

FACILITIES -- Includes any physical element used in connection with, or designed to be used in connection with, the provision of services, whether or not located in the public rights-of-way, including, without limitation, pedestals, cabinets, ducts and conduits (whether empty or occupied), transformers, equipment, drains, handholds, lines, line extensions, service drops, manholes, poles, power supplies and generators, splice boxes, surface location markers, vaults, tunnels, amplifiers, power guards, nodes, cables, and fiber optics (whether active or dark).

FCC -- The Federal Communications Commission.

FRANCHISE -- Refers to an authorization granted by the City of Cohoes to the operator of a cable communications system giving the operator the nonexclusive right to occupy the space or use facilities upon, across, beneath, or over public rights-of-way in the City of Cohoes to provide specified services within a franchise area.

FRANCHISE AREA -- The area of the City of Cohoes that a franchisee is authorized to serve by the terms of its franchise or by operation of law.

FRANCHISEE or GRANTEE -- Refers to a person holding a cable communications system franchise granted by the City of Cohoes.

FRANCHISE FEE

- A. In consideration of the grant and exercise of a franchise to construct, install, operate, or provide services using facilities in the public rights-of-way, a grantee shall pay to the City of Cohoes a franchise fee expressed as a percentage of gross revenues or some other measure. The franchise shall specify the fee to be paid, and the gross revenues to be included in the fee calculation. If a franchise granted pursuant to this

chapter specifies a franchise fee established as the result of limiting applicable law, the City of Cohoes shall have the option to renegotiate the amount of the franchise fee upon a change in applicable law. Nothing herein requires a person to pay amounts in excess of any limits that may be established by state or federal law.

B. UVPP fees.

GROSS REVENUES -- All cash, credits, property, or other consideration of any kind or nature received directly or indirectly by a grantee or its affiliates from any source whatsoever arising from, attributable to, or in any way derived from a grantee's operation of a cable system within the franchise area. Gross revenues include, but are not limited to, fees charged to subscribers for basic service; fees charged to subscribers for any optional, premium, per-channel, or per-program service; monthly fees charged to subscribers for any tier of service other than basic service; installation, disconnection, reconnection, and change-in-service fees; leased channel fees; fees, payments, or other payment received as consideration from programmers for carriage of programming on the cable system; converter rentals or sales; studio rental, production equipment, and personnel fees; advertising revenues, including a per-capita share of advertising revenues for advertising carried on more than one cable system; revenues from home shopping channels; sales of programming guides; and such other revenue sources as may now exist or hereafter develop. The definition shall be interpreted in a manner which permits the City of Cohoes to collect the maximum franchise fee permitted by law, irrespective of the source of revenue. Gross revenues, however, shall not include any bad debt (defined as unpaid subscriber or advertiser accounts), any taxes on services furnished to a grantee and imposed directly upon any subscriber or user by the state, City, or other governmental unit and collected by a grantee on behalf of said governmental unit. The amount paid as a franchise fee shall not be deducted from gross revenues unless required to be deducted under federal law.

LICENSE -- Refers to the legal authorization, terminable at will, to use a particular, discrete, and limited portion of the public rights-of-way to construct, operate, or repair a communications facility.

MAYOR -- The Mayor of the City of Cohoes or the Mayor's designee.

OPERATOR -- When used with reference to a system, refers to a person 1) who directly or through one or more affiliates provides service over a cable communications system and directly or through one or more affiliates owns a significant interest in such facility; or 2) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a facility.

OVS -- Open video system. A reference to an OVS includes pedestals, equipment enclosures (such as equipment cabinets), amplifiers, power guards, nodes, cables, fiber optics and other equipment necessary to operate the OVS or installed in conjunction with the OVS.

PERSON -- Includes any individual, corporation, partnership, association, joint-stock company, trust, or any other legal entity, but not the City of Cohoes.

PUBLIC PROPERTY -- Any property that is owned or under the control of the City of Cohoes that is not a public right-of-way, including for purposes of this chapter, but not limited to, buildings, parks, poles, structures in the public rights-of-way such as utility poles and light poles, or similar facilities or property owned by or leased to the City of Cohoes.

PUBLIC RIGHTS-OF-WAY -- The surface of and the space above and below any street, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, drive, or right-of-way or easement primarily dedicated to travel, now or hereafter existing within the City of Cohoes, which may be properly used for the purpose of installing, maintaining, and operating a cable communications system, and any other property that a franchisee is entitled by state or federal law to use by virtue of the grant of a franchise.

REVOCATION -- The City of Cohoes' affirmative act of terminating a franchise.

SCHOOL -- Any accredited primary school, secondary school, college, and university.

SUBSCRIBER -- The City of Cohoes or any person who is lawfully receiving, for any purpose or reason, any cable service via a cable communications system, whether or not a fee is paid for such service.

TERMINATION -- The conclusion of a franchise by any means, including but not limited to by expiration of its term, abandonment, or revocation.

UNAFFILIATED VIDEO PROGRAMMING PROVIDER or UVPP -- Any person who uses capacity on a franchised cable system to deliver cable service or other communications service [as that term is used in 47 U.S.C. Section 542(h)] to subscribers and who is not an affiliate of the grantee.

UPSTREAM CHANNEL -- A channel designed and activated to carry transmissions from a point on the cable system, other than the head-end, to the head-end or another point on the cable system.

USER -- A person or the City of Cohoes utilizing a channel, capacity or equipment and facilities for purposes of producing or transmitting material, as contrasted with the receipt thereof in the capacity of a subscriber.

§ 130-3. Franchise required.

No person may construct or operate a cable communications system in the City of Cohoes without first obtaining a City of Cohoes franchise therefor.

§ 130-4. Failure to obtain a franchise.

Consistent with the requirements of due process, a person's failure to obtain a franchise as required by this chapter may, in the City's discretion, result in:

- A. Forfeiture, by operation of law, of the person's facilities located in the public rights-of-way that are not authorized by an existing franchise; and/or
- B. A requirement that the facilities be removed and that penalties and damages be paid. Failure to remove facilities upon the lawful demand of the City shall be deemed a violation, punishable pursuant to § C3-14 of the City Charter. In the event of a continuing violation, each day shall be deemed a separated violation. This shall be in addition to any civil remedies at law or equity that are available to the City.

§ 130-5. Existing franchises.

Grantees of franchises existing as of the effective date of this chapter shall, in addition to all the obligations and duties prescribed by the terms of their existing franchises, be subject to the substantive and procedural requirements herein, except as prohibited by applicable law. Nothing herein is intended to invalidate a lawful, existing franchise or to

waive any obligations imposed by such a franchise. Notwithstanding the foregoing, provisions of this chapter that expressly refer to a "franchise granted pursuant to this chapter" shall not apply to franchises initially granted prior to the effective date of this chapter.

§ 130-6. Form of franchise.

Any franchise shall be issued in the form of an ordinance and must be accepted by the franchisee to become effective.

§ 130-7. Filing an application.

Any person seeking to obtain a franchise; transfer a franchise; extend the term of an existing franchise; renew a franchise; or modify an existing franchise to add new services that are required to be authorized by a franchise pursuant to this chapter shall submit a signed original of its application and six copies to the City Clerk. The Clerk shall make a proposal available for public inspection. The application must conform to all of the requirements of this chapter. Requests for other types of franchise modifications may be processed by the City of Cohoes without an application, and submitted for approval. However, nothing herein shall prevent the City of Cohoes from requiring an application in the event the City of Cohoes determines, based on the nature of the requested modification, that the public interest would best be served by the submission of an application pursuant to this chapter.

§ 130-8. Nature of franchise.

- A. **Scope.** A franchise granted pursuant to this chapter shall authorize and permit a franchisee to construct, operate and repair a cable system or an OVS (as applicable) to provide cable service in the City of Cohoes, and for that purpose to erect, install, construct, repair, replace, reconstruct and maintain facilities appurtenant to such system in, on, over, under, upon, across, and along those public rights-of-way that the City of Cohoes may authorize a franchisee to use.
- B. **Nothing passes by implication.** A franchise shall not convey rights other than as specified in this chapter or in a franchise agreement; no rights shall pass by implication.
- C. **Franchise not in lieu of other authorizations.** A franchise shall not include or be a substitute for:
 - (1) Compliance with requirements for the privilege of transacting and carrying on a business within the City of Cohoes, including but not limited to complying with the conditions the City of Cohoes may establish before constructing facilities for, or providing, non-cable services;
 - (2) Any permit, agreement or authorization required in connection with operations on or in public rights-of-way or public property, including by way of example and not limitation encroachment permits for street construction; or
 - (3) Any permits or agreements for occupying any other property of the City of Cohoes or private entities to which access is not specifically granted by the franchise.

- D. Franchisee must comply with other laws. A franchise does not relieve a franchisee of its duty to comply with all City of Cohoes ordinances and regulations, and every franchisee must comply with the same. Likewise, the rights granted under a franchise are subject to the exercise of police and other powers the City of Cohoes now has or may later obtain, including but not limited to the power of eminent domain. Every franchise shall be deemed to incorporate all the requirements of the City of Cohoes Charter.
- E. Franchise not a grant of property rights. A franchise does not convey title, equitable or legal, in the public rights-of-way. Rights granted may not be subdivided or subleased.
- F. Franchise nonexclusive. No franchise shall be exclusive, or prevent the City of Cohoes from issuing other franchises or authorizations, or prevent the City of Cohoes from itself constructing, operating, or repairing its own cable communications system, with or without a franchise.
- G. Franchise term. Every franchise shall be for a term of years, which term shall be eight years, unless a franchise specifies otherwise.
- H. Costs borne by franchisee. Unless otherwise specifically stated in a franchise or required by law, all acts which a franchisee is required to perform under the franchise or applicable law must be performed at the franchisee's expense.
- I. Failures to perform. If a cable communications system operator fails to perform work that it is required to perform within the time provided for performance, the City of Cohoes may perform the work and bill the operator therefor. The operator shall pay the amounts billed within 30 days.

§ 130-9. Administration of chapter; adoption of regulations.

- A. Adoption of regulations. The City of Cohoes, through its Board of Managers, may from time to time adopt regulations to implement the provisions of this chapter. This chapter, and any regulations adopted pursuant to this chapter are not contracts with any franchisee, and may be amended at any time.
- B. Delegation. The Mayor of the City of Cohoes or his/her designee (hereafter referred to as the "Cable Administrator") is hereby authorized to administer the provisions of this chapter and any franchise issued pursuant thereto, and to provide any notices (including noncompliance notices) and to take any action on the City of Cohoes' behalf that may be required hereunder or under applicable law.
- C. No waiver. The failure of the City of Cohoes, upon one or more occasions, to exercise a right or to require compliance or performance under a franchise or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing.
- D. Administration of public, educational and government access. The City of Cohoes may designate one or more entities, including itself, to control and manage the use of public, educational and government access channels, facilities and equipment.

§ 130-10. Transfers.

- A. Prior approval required. Every franchise shall be deemed to be held in trust and to be personal to the franchisee. Any transfer that is made without the prior approval of the

City of Cohoes shall be deemed to impair that trust. A transfer is any transaction pursuant to which:

- (1) A cable communications system is sold or assigned (except the term does not include sale of portions of the cable system that are removed);
 - (2) There is any change, acquisition, or transfer of control of the franchisee or its direct or indirect parents, whether by merger, consolidation, sale of assets or ownership interests, or by any other means. A transfer will be deemed to have occurred whenever there is a change, acquisition or transfer of control of more than a ten-percent ownership in the franchisee or its direct or indirect parents by any entity or a group of entities acting in concert. However, a transfer also occurs whenever there is a change in actual working control, in whatever manner exercised, over the affairs of a franchisee or its direct or indirect parents. Without limiting the above, any change in the general partners of a franchisee will be presumed a change in control;
 - (3) The rights and/or obligations held by the franchisee under the franchise are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly, to another party.
- B. Exception for mortgages. Notwithstanding any other provision of this chapter, pledges in trust or mortgages of the assets of a cable communications system to secure the construction, operation, or repair of the system may be made without application and without the City of Cohoes prior consent. However, no such arrangement may be made if it would in any respect under any condition: 1) prevent the cable communications system operator or any successor from complying with the franchise or applicable law; or 2) permit a third party to succeed to the interest of the operator, or to own or control the system, without the prior consent of the City of Cohoes. Any mortgage, pledge or lease shall be subject to and subordinate to the rights of the City of Cohoes under any franchise, this chapter, or other applicable law.

§ 130-11. General conditions upon construction, operation and repair.

- A. Franchisee must follow local rules. The construction, operation, and repair of cable communications systems shall be performed in compliance with all laws, ordinances, departmental rules, regulations, and practices affecting such system. By way of example and not limitation, this includes zoning and safety codes, construction standards, regulations for providing notice to persons that may be affected by system construction, and directives governing the time, place and manner in which facilities may be installed in the rights-of-way. Persons engaged in the construction, operation, or repair of communications facilities shall exercise reasonable care in the performance of all their activities and shall use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.
- B. No permit without franchise. A franchise is required before a permit may be issued for work associated with the construction of a cable communications system. Any permit issued for such work to a person who does not hold a franchise shall vest no rights in the permittee; the permit may be revoked at will, and the permittee shall remove all facilities installed under the permit upon the City of Cohoes demand.
- C. Permits must be obtained. Construction, operation, or repair of a cable

communications system shall not commence until all required permits have been obtained from the proper City of Cohoes officials and all required fees have been paid. All work performed will be performed in strict accordance with the conditions of the permit. Upon order of the City of Cohoes, any work and/or construction undertaken that is not in complete compliance with the City of Cohoes requirements, or which is installed without obtaining necessary permits and approvals, shall be removed.

- D. No interference. Interference with the use of the public rights-of-way by others, including others that may be installing cable communications systems, must be minimized. The City of Cohoes may require a person using the rights-of-way to cooperate with others through joint trenching and other arrangements to minimize adverse impacts on the rights-of-way.
- E. Plans for and publicizing work. Work shall be publicized as the City of Cohoes may direct from time to time. The publication of work may be used to notify the public and operators of other communications systems of the impending work, in order to minimize inconvenience and disruption to the public.
 - (1) Each communications system owner shall provide the City of Cohoes a plan for any initial system construction, or for any substantial rebuild, upgrade or extension of its facility, which shall show its timetable for construction of each phase of the project and the areas of the City that will be affected.
 - (2) The Mayor and/or his designee may from time to time, when the City receives application for a permit to use a particular route or upon the Mayor's and/or his designee's own initiative, designate by published order a route or proposed route for installation of communications facilities and may a) require all persons who wish to emplace underground facilities along that route or any part thereof to install them during a specified period and b) otherwise prohibit emplacement of such facilities along the route or any part thereof for 24 months or after such other longer period as is necessary to protect the public.
- F. Existing poles to be used. To the extent possible, operators of cable communications systems shall use existing poles and conduit.
 - (1) Additional poles may not be installed in the right-of-way, nor may pole capacity be increased by vertical or horizontal extenders, without the permission of the City of Cohoes' Mayor or his/her designee.
 - (2) To minimize disruption of public passage or infrastructure, to forestall or relieve exhaustion of rights-of-way capacity, or to protect environmentally sensitive areas, the Mayor and/or his designee may require, as a condition of issuing any rights-of-way permit for erection of new poles or construction of underground conduit the installation of which requires excavation of or along any traveled way, that the franchisee, licensee, or holder of the rights-of-way permit emplace pole space or empty conduits in excess of its own present and reasonably foreseeable requirements for the purpose of accommodating the City and/or other franchisees and licensees.
- G. Undergrounding:
 - (1) Whenever all existing utilities are located underground in an area in the City of Cohoes, every cable communications system operator in the same area must locate its cable communications system underground.

- (2) Whenever the owner of a pole locates or relocates underground within an area of the City of Cohoes, every cable communications system operator in the same area shall concurrently relocate its facilities underground.
 - (3) The City of Cohoes' Mayor or his/her designee may, for good cause shown, exempt a particular system or facility or group of facilities from the obligation to locate or relocate facilities underground, where relocation is impractical or where the interest in protecting against visual blight can be protected in another manner. Nothing in this section prevents the City of Cohoes from ordering communications facilities to be located or relocated underground under other provisions of the City of Cohoes Code.
- H. Prompt repairs. Any and all public rights-of-way, other public property, or private property that is disturbed or damaged during the construction, operation or repair of a cable communications system, shall be promptly repaired by the operator. Public property and public rights-of-way must be restored to the satisfaction of the City of Cohoes or to a condition as good or better than before the disturbance or damage occurred.
- I. Movement of facilities for government.
- (1) A cable communications system operator shall, by a time specified by the City of Cohoes, protect, support, temporarily disconnect, relocate, or remove any of its property when required by the City of Cohoes by reason of traffic conditions; public safety; public right-of-way construction and repair (including regrading, resurfacing or widening); public right-of-way vacation; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned system or utility, public work, public facility, or improvement; or for any other purpose where the work involved would be aided by the removal or relocation of the cable communications system. Collectively, such matters are referred to below as the "public work."
 - (2) The City of Cohoes shall provide written notice describing where the public work is to be performed at least one week prior to the deadline by which a cable communications system operator must protect, support, temporarily disconnect, relocate or remove its facilities; provided that, in an emergency or where a cable communications system creates or is contributing to an imminent danger to health, safety, or property, the City of Cohoes may protect, support, temporarily disconnect, remove, or relocate any or all parts of the cable communications system without prior notice and charge the cable communications system operator for costs incurred.
- J. Movement for others.
- (1) To accommodate the construction, operation, or repair of the facilities of another person authorized to use the streets or public property, a franchisee shall, by a time specified by such person, protect, support, temporarily disconnect, relocate or remove its facilities. The franchisee must be given written notice describing where the construction, operation or repair is to be performed at least 15 days prior to the time by which its work must be completed. The City of Cohoes will resolve disputes as to responsibility for costs associated with removal, relaying, or relocation of facilities among entities authorized to install facilities in the streets or on public property, if such entities are unable to do so themselves.

- (2) A cable communications system operator shall, on the request of any person holding a valid permit issued by a governmental authority, temporarily raise or lower its wires by a time specified to permit the moving of buildings or other objects. A cable communications system operator shall be given not less than seven days' advance notice to arrange for such temporary wire changes. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same.
- K. Abandonment in place.
- (1) A cable communications system operator may abandon any property in place in the public rights-of-way upon written notice to the City of Cohoes. However, if, within 90 days of the receipt of written notice of abandonment, the City of Cohoes determines that the safety, appearance, functioning or use of the public right-of-way and facilities in the public right-of-way will be adversely affected, the property must be removed by a date specified by the City of Cohoes.
 - (2) A cable communications system operator that abandons its property must, upon request, transfer ownership of the properties to the City of Cohoes at no cost and execute necessary quitclaim deeds and indemnify the City of Cohoes against future costs associated with mitigating or eliminating any environmental hazard associated with the abandoned property.
- L. System subject to inspection. Every cable communications facility shall be subject to inspection and testing by the City of Cohoes. Each operator must respond to requests for information regarding its system and plans for the system as the City of Cohoes may from time to time issue, including requests for information regarding its plans for construction, operation and repair and the purposes for which the plant is being constructed, operated, or repaired.
- M. Underground services alert. Each operator of a cable communications system that places facilities underground shall be a member of the regional notification center for subsurface installations (Underground Services Alert) and shall field mark the locations of its underground communications facilities upon request. The operator shall identify the location of its facilities for the City of Cohoes at no charge
- N. Plan for construction. Each cable communications system operator shall provide the City of Cohoes a plan for any initial system construction, or for any substantial rebuild, upgrade or extension of its facility, which shall show its timetable for construction of each phase of the project, and the areas of the City of Cohoes that will be affected. The City of Cohoes shall have the right to impose penalties on the operator for a failure to meet the accepted timetable and benchmarks. Failure to comply with this section shall be deemed a violation, punishable pursuant to § C3-14 of the City Charter and any other applicable provision of the City Code or general law. For a continuing violation, each day shall be deemed a separate violation.
- O. Use of facilities by the City of Cohoes. The City of Cohoes shall have the right to install and maintain, free of charge, upon any poles or in any conduit owned by a franchisee any wire and pole fixtures that do not unreasonably interfere with the cable service operations of the franchisee.

§ 130-12. Protection of the City of Cohoes and residents.

- A. Indemnity required. No franchise shall be valid or effective until and unless the City

of Cohoes obtains an adequate indemnity from the franchisee. The indemnity must:

- (1) Release the City of Cohoes from and against any and all liability and responsibility in or arising out of the construction, operation or maintenance of the cable communications system. Each cable communications system must further agree not to sue or seek any money or damages from the City of Cohoes in connection with the above-mentioned matters.
 - (2) Indemnify and hold harmless the City of Cohoes, its trustees, elected and appointed officers, agents, and employees, from and against any and all claims, demands, or causes of action of any kind or nature and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees sustained by the City of Cohoes or any third party arising out of, or by reason of, or resulting from or of, the acts, errors, or omissions of the cable communications system operator, or its agents, independent contractors or employees, related to or in any way arising out of the construction, operation or repair of the system.
- B. Insurance required. A franchisee (or those acting on its behalf) shall not commence construction or operation of the system without obtaining insurance in amounts and of a type satisfactory to the City of Cohoes. The required insurance must be obtained and maintained for the entire period the franchisee has facilities in the rights-of-way. If the franchisee, its contractors, or subcontractors do not have the required insurance, the City of Cohoes may order such entities to stop operations until the insurance is obtained and approved.
- C. Proof. Certificates of insurance, reflecting evidence of the required insurance and naming the City of Cohoes as an additional insured, and other proofs as the City of Cohoes may find necessary, shall be filed with the City of Cohoes. For persons issued franchises after the effective date of this chapter, certificates and other required proofs shall be filed within 30 days of the issuance of a franchise, once a year thereafter, and whenever there is any change in coverage. For entities that have facilities in the rights-of-way as of the effective date of this chapter, the certificate shall be filed within 60 days of the effective date of this chapter, annually thereafter, and whenever there is any change in coverage, unless a preexisting franchise provides for filing of certificates in a different manner.
- D. Certificate contents. Certificates shall contain a provision that coverages afforded under these policies will not be canceled until at least 30 days' prior written notice has been given to the City of Cohoes. Policies shall be issued by companies authorized to do business under the laws of the State of New York. Financial ratings must be no less than "A" in the latest edition of "Best's Key Rating Guide," published by A.M. Best Guide.
- E. Insurance amounts. A cable communications system operator (and those acting on its behalf to construct or operate the system) shall maintain the following minimum insurance. The City of Cohoes shall be named as an additional insured on the general liability and automotive policies; those insurance policies shall be primary and contain a cross-liability clause.
- (1) Comprehensive general liability insurance to cover liability, bodily injury and property damage. Exposures to be covered are: premises, operations, products/completed operations, and certain contracts.

- (a) Coverage must be written on an occurrence basis, with the following limits of liability:

Coverage Limits

Bodily injury

Each
occurrence \$1,000,
000

Annual aggregate
3,000,000

**Property
damage**

Each
occurrence \$1,000,
000

Annual
aggregate 3,000,0
00

**Personal
injury**

Annual aggregate
\$3,000,
000

- (b) Completed operations and products liability shall be maintained for two years after the termination of the franchise or license (in the case of the cable communications system owner or operator) or completion of the work for the cable communications system owner or operator (in the case of a contractor or subcontractor).
- (c) Property damage liability insurance shall include coverage for the following hazards: X - explosion; C - Collapse; U - underground.
- (2) Workers' compensation insurance shall be maintained during the life of this contract to comply with statutory limits for all employees, and, in the case any work is sublet, each cable communications system operator shall require the subcontractors similarly to provide workers' compensation insurance for all the latter's employees unless such employees are covered by the protection afforded by each cable communications system operator. Each cable communications system operator and its contractors and subcontractors shall maintain during the

life of this policy employer's liability insurance. The following minimum limits must be maintained:

- (a) Workers' compensation: statutory.
- (b) Employer's liability: \$500,000 per occurrence.
- (3) Comprehensive auto liability: Coverage shall include owned, hired, and nonowned vehicles.

Coverage Limits
Bodily injury

Each
occurrence \$1,000,000

Annual aggregate
\$3,000,000

Property
damage

Each
occurrence \$1,000,000

Annual aggregate
\$3,000,000

- F. Performance bond. Every operator of a cable communications system shall obtain and maintain a performance bond to ensure the faithful performance of its responsibilities under this chapter and any franchise. The amount of the performance bonds shall be set by the City of Cohoes' Mayor or his/her designee and may be set in a franchise ordinance in light of the nature of the work to be performed, but shall not be less than 10% of the estimated cost of constructing or (in the case of existing systems) upgrading the system and including a sufficient amount to include the removal of facilities and/or restoration of City facilities within the right-of-way. The bond is not in lieu of any additional bonds that may be required through the permitting process. The bond shall be in a form acceptable to the City of Cohoes' Corporation Counsel. Bonds must be obtained prior to the effective date of any franchise, transfer or franchise renewal, unless a franchise specifically provides otherwise.
- G. Security fund. Every cable communications system operator shall establish and maintain a cash security fund or provide the City of Cohoes an irrevocable letter of credit in the amount of \$50,000 to secure the payment of fees owed, to secure any other performance promised in a franchise, and to pay any taxes, fees or liens owed to the City of Cohoes. The letter of credit shall be in a form and with an institution

acceptable to the City of Cohoes' Comptroller and in a form acceptable to the City of Cohoes' Corporation Counsel. Should the City of Cohoes draw upon the cash security fund or letter of credit, the cable communications system operator shall, within 14 days, restore the fund or the letter of credit to the full required amount. This security fund/letter of credit may be waived or reduced by the City of Cohoes for a franchisee where the City of Cohoes determines in its discretion that a particular franchisee's operations are sufficiently limited that a security fund/letter of credit is not necessary to secure the required performance. The City of Cohoes may from time to time require a franchisee to change the amount of the required security fund/letter of credit to reflect changed risks to the City of Cohoes and to the public, including delinquencies in taxes or other payments to the City of Cohoes. The cash security fund or letter of credit must be obtained prior to the effective date of any franchise, transfer or franchise renewal, unless a franchise specifically provides otherwise.

§ 130-13. Enforcement and remedies.

- A. Revocation and termination. The City of Cohoes Council may revoke a franchise or reduce the term of a franchise if it finds, after a hearing, that a cable communications system operator has violated this chapter or its franchise, has defrauded or attempted to defraud the City of Cohoes or subscribers, or has attempted to evade the requirements of this chapter or its franchise. Except as to violations that are impossible to cure, and as provided in Subsections B and C, the franchise may only be revoked if the franchisee was given notice of the default; and 30 days to cure the default; and the franchisee failed to cure the default or to propose a schedule for curing the default acceptable to the City of Cohoes where it is impossible to cure the default in 30 days.
- B. Exception for certain acts. No opportunity to cure is required for repeated violations; and fraud and attempted fraud shall be deemed incurable. Further, the City of Cohoes may declare a franchise forfeited without opportunity to cure where a franchisee 1) voluntarily stops providing service it is required to provide; 2) transfers the franchise without the prior consent of the City of Cohoes.
- C. Exception for bankruptcy. A franchise will terminate automatically by force of law 120 calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding. However, the franchise may be reinstated within that one-hundred-twenty-day period, if: 1) such assignment, receivership or trusteeship has been vacated; or 2) such assignee, receiver or trustee has fully complied with the terms and conditions of this chapter and the franchise and has executed an agreement, approved by any court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of this chapter and the franchise. In the event of foreclosure or other judicial sale of any of the facilities, equipment or property of a franchisee, the City of Cohoes may revoke the franchise following a public hearing before the City of Cohoes Common Council, by serving notice upon the franchisee and the successful bidder at the sale, in which event the franchise and all rights and privileges thereunder will be revoked and will terminate 30 calendar days after serving such notice, unless: 1) the City of Cohoes has approved the transfer of the franchise to the successful

- bidder; and 2) the successful bidder has covenanted and agreed with the City of Cohoes to assume and be bound by the terms and conditions of the franchise and this chapter.
- D. **Effect of termination or forfeiture.** Upon termination or forfeiture of a franchise, whether by action of the City of Cohoes, as provided above, or by passage of time, the franchisee must stop using the cable communications system for the purposes authorized by the franchise. The City of Cohoes may take possession of some or all of the franchisee's facilities, or require the franchisee or its bonding company to remove some or all of the franchisee's facilities from the City of Cohoes, and restore affected property to its same or better condition. This provision does not permit the City of Cohoes to remove facilities that are used to provide another service for which the franchisee holds a valid franchise issued by the City of Cohoes.
- E. **Remedies cumulative.** Remedies provided for under this chapter or under a franchise shall be cumulative. Recovery by the City of Cohoes of any amounts, under insurance, the performance bond, the security fund or letter of credit, does not limit a franchisee's duty to indemnify the City of Cohoes or relieve a franchisee of its franchise obligations or limit the amounts owed to the City of Cohoes.
- F. **Penalties.** Failure to comply with the provisions of this article shall be deemed a violation punishable pursuant to § C3-14 of the City Charter. For a continuing violation, each day shall be deemed a separated violation.
- G. **Liquidated damages required in franchise.** A franchise granted pursuant to this chapter may require liquidated damages, in an amount to be specified in the franchise, for specified breaches of the franchise, including but not limited to failure to commence construction, failure to meet construction plan benchmarks, failure to comply with rebuild plan benchmarks, failure to commence service, and material breach of franchise obligation(s). The franchise shall also provide that the City of Cohoes may withdraw liquidated damages owed from the grantee's security deposit, if the grantee has failed to secure such breach after 10 business days' notice from the City of Cohoes. Liquidated damages shall commence on that date that performance was due and/or failed and continue until the grantee demonstrates to the satisfaction of the City of Cohoes that the grantee has fully performed its obligations giving rise to the payment of liquidated damages. Grantee acknowledges that any obligation to pay liquidated damages does not in any way affect its obligation to pay franchise fees or perform other obligations in the franchise and that such liquidated damages do not constitute franchise fees and are not subject to any limitations on franchise fees contained in 47 U.S.C. § 542(b). Grantee acknowledges that any obligation to pay liquidated damages are not costs of satisfying franchise requirements as provided in 47 C.F.R. § 76.925. Grantee agrees it will not pass the cost of any liquidated damages to subscribers through subscriber rates or itemize or otherwise identify on subscriber bills any obligation grantee may have to pay liquidated damages.

§ 130-14. Books and records.

- A. **Generally.** Each cable communications system operator shall provide the City of Cohoes access to books and records related in whole or in part to the construction, operation, or repair of the cable communications system, or a group of systems of which the system is a part, so that the City of Cohoes may inspect and copy those

books and records. The records include, but are not limited to, revenue records and other records related to compliance with any provision of this chapter or a franchise. A franchisee is responsible for obtaining or maintaining the necessary possession or control of all such books and records so that it can produce the documents upon request. Books and records must be maintained for a period of five years, except that a franchise may specify a shorter period for certain categories of voluminous books and records where the information contained therein can be derived simply from other materials. The phrase "books and records" shall be read expansively to include information in whatever format stored.

- B. **Production.** Books and records requested shall be produced to the City of Cohoes by a time and at a location in the City of Cohoes designated by the City of Cohoes' Mayor or his/her designee. However, if the requested books and records are too voluminous, or for security reasons cannot be copied and moved, then the franchisee may request that the inspection take place at some other location mutually agreed to by the City of Cohoes and the franchisee, provided that 1) the franchisee must make necessary arrangements for copying documents selected by the City of Cohoes after its review; and 2) the franchisee must pay all travel and additional copying expenses incurred by the City of Cohoes (above those that would have been incurred had the documents been produced in the City of Cohoes) in inspecting those documents or having those documents inspected by its designee.

§ 130-15. Reports.

- A. **Obligation to submit.** The City of Cohoes' Mayor or his/her designee may from time to time direct a franchisee to prepare reports and to submit those reports by a date certain, in a format prescribed by the Mayor or his/her designee, in addition to those required by this chapter.
- B. **Quarterly reports.** Unless an exemption is granted by the City of Cohoes' Mayor or his/her designee, within 45 days of the end of each calendar quarter, a franchisee shall submit a report to the City of Cohoes containing the following information:
- (1) The number of service calls (calls requiring a truck roll) received during the prior quarter and the percentage of service calls compared to the subscriber base; and
 - (2) The total estimated hours of known outages as a percentage of total hours of operation. An outage is a loss of sound or video on any signal or a significant deterioration of any signal affecting two or more subscribers.
- C. **Annual reports.** Unless an exemption is granted by the City of Cohoes' Mayor or his/her designee, no later than 90 days after the end of its fiscal year, a franchisee shall submit the following information, except that the information required by § 130-15C(3) need only be provided where there has been a change from the preceding year:
- (1) A fully audited or certified revenue report from the previous calendar year for the cable communications system, and a certified statement setting forth the computation of gross revenues used to calculate the franchise fee for the preceding year, and a detailed explanation of the method of computation, showing gross revenues by category (e.g., basic, pay, pay-per-view, advertising, installation, equipment, late charges, miscellaneous, other) and what, if any, deductions were made from gross revenues in calculating the franchise fee (e.g.,

- bad debt, credits and refunds), and the amount of each deduction.
- (2) A report showing, for each applicable customer service standard, the franchisee's performance with respect to that standard for each quarter of the preceding year. In each case where the franchisee concludes it did not comply fully, the franchisee will describe the corrective actions it is taking to assure future compliance. In addition, the report should identify the number and nature of the customer service complaints received and an explanation of their dispositions.
 - (3) An ownership report, indicating all persons who at the time of filing control or own an interest in the franchisee of 10% or more.
- D. Contemporaneous reports. Within 10 days of their receipt or (in the case of documents created by the operator or its affiliate) filing, a franchisee shall provide the City of Cohoes:
- (1) Notices of deficiency or forfeiture related to the operation of the system; and
 - (2) **Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the franchisee or by any partnership or corporation that owns or controls the franchisee directly or indirectly.**

§ 130-16. Maps required.

Each franchisee shall maintain complete accurate maps and improvement plans which show the location, size, and a general description of all facilities installed in the public rights-of-way and any power supply sources (including voltages and connections). Maps shall be based upon postconstruction inspection to verify location. Each franchisee shall provide such maps to the City of Cohoes showing the location of its facilities, in such detail and scale as may be directed by the City of Cohoes' Engineer, and update the maps at least annually and whenever the facility expands or is relocated. Copies of maps shall be provided on disk, and in hard copy, in a commercially available electronic format specified by the City of Cohoes' Engineer.

§ 130-17. Other records required.

Unless the City of Cohoes' Mayor or his/her designee waives the requirement, a franchisee shall at all times maintain:

- A. Complaint records. Records of all complaints received, their nature and resolution. The term "complaints" refers to complaints about any aspect of the franchisee's operations.
- B. Outage records. Records of outages known to the franchisee, their cause and duration.
- C. Complaint response. Records of service calls for repair and maintenance indicating the date and time service was requested, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was solved;
- D. Installation records. Records of installation/reconnection and requests for service extension, indicating date of request, date of acknowledgment, and the date and time service was extended.
- E. Customer service. Records sufficient to show whether the franchisee has complied with each customer service standard that applies to it.

§ 130-18. Exemptions.

The City of Cohoes' Mayor or his/her designee may temporarily exempt any franchisee from its obligations under §§ 130-14 through 130-17 if the Cable Administrator determines that the requirement would be unduly burdensome or unnecessary and that the City of Cohoes and subscriber interests may be adequately protected in some other manner. Notwithstanding the foregoing, any such exception of the franchisee from obligations under §§ 130-14 through 130-17 shall not exempt the franchisee from complying with all relevant and applicable state requirements and rules.

§ 130-19. Privacy.

A franchisee shall take all reasonable steps required so that it is able to provide reports, books and records to the City of Cohoes, including by providing appropriate subscriber privacy notices. Each franchisee shall be responsible for redacting data that applicable law prevents it from providing to the City of Cohoes. Nothing in this section shall be read to require a franchisee to violate state or federal subscriber privacy laws.

§ 130-20. Procedures for paying franchise fees and fees in lieu of franchise fees.

- A. Fees paid quarterly. The franchise fee or fee in lieu of franchise fee paid pursuant to this chapter shall be paid quarterly unless otherwise specified in a franchise. Payment for each quarter shall be made to the City of Cohoes not later than 45 days after the end of each calendar quarter.
- B. Quarterly statement. Unless a franchise provides otherwise, a franchisee or other entity subject to a fee under this chapter shall file with the City of Cohoes within 45 days of the end of each calendar quarter a statement showing gross revenues during the preceding quarter and the number of subscribers served.
- C. Acceptance of payment not a release. No acceptance by the City of Cohoes of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such payment be construed as a release of any claim the City of Cohoes may have for additional sums payable.
- D. Fee not in lieu of taxes. Neither the franchise fee under Article III, nor the fee paid in lieu of the franchise fee under Article IV, is a payment in lieu of any tax, fee or other 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 cable operators or cable subscribers).
- E. Failure to pay franchise fee. In the event that a fee payment is not received by the City of Cohoes on or before the due date set forth in this section or in a franchise, or the fee owed is not fully paid, the person subject to the fee will be charged interest from the due date at an interest rate equal to 3% above the rate for three-month Federal Treasury Bills at the most recent United States Treasury Department sale of such Treasury Bills occurring prior to the due date of the franchise fee payment.
- F. Final statement of gross revenues. Within 90 days of the date a franchisee ceases operations under a franchise (whether because of franchise termination, transfer, bankruptcy or for any other reason), the franchisee shall file a final statement of gross

revenues covering the period from the beginning of the calendar year in which the operations ceased to the date operations ceased. The statement shall contain the information and be certified as required by § 130-15C.

ARTICLE III, Special Rules Applicable to Cable Systems

§ 130-21. Applications.

- A. Application required. An application must be filed for an initial and renewal cable system franchise or for approval of a transfer. A request for renewal filed under 47 U.S.C. § 546(h) need not contain the information required by § 130-21B(1) and B(2).
- B. Application contents.
 - (1) The City of Cohoes' Mayor or his/her designee may specify the information that must be provided in connection with an application, and the form in which the information is to be provided.
 - (2) At a minimum, each application must identify the applicant, show that the applicant is financially, technically and legally qualified to construct, maintain and operate the cable system, contain a pro forma showing capital expenditures and expected income and expenses for the first five years the applicant is to hold the franchise, and show that the applicant is willing to comply unconditionally with its franchise obligations. In addition, any application for an initial or renewal franchise must describe in detail the cable system that the applicant proposes to build, show where it will be located, set out the system construction schedule, and show that the applicant will provide adequate channels, facilities and other support for public, educational and government use (including institutional network use) of the cable system. To be accepted for filing, an original and six copies of a complete application must be submitted. All applications shall include the names and addresses of persons authorized to act on behalf of the applicant with respect to the application.
 - (3) An applicant (and the transferor and transferee, in the case of a transfer) shall respond to any request for information from the City of Cohoes by the time specified by the City of Cohoes.
- C. Incomplete applications. An application may be rejected if it is incomplete or if the response to requests for information is not timely and complete.

§ 130-22. Application for an initial franchise or renewal franchise.

- A. Scope. This section establishes additional provisions that apply to an application for an initial franchise or a renewal franchise application that is not governed by 47 U.S.C. § 546(a)-(h) and other applicable law.
- B. Process. Any person may apply for an initial or renewal franchise by submitting an application therefor on that person's own initiative or in response to a request for proposals issued by the City of Cohoes. If the City of Cohoes receives an unsolicited application, it may choose to issue a request for additional proposals and require the applicant to amend its proposal to respond thereto. The City of Cohoes shall promptly

- conduct such investigations as are necessary to act on an application.
- C. Consideration of application. In determining whether to grant a franchise, the City of Cohoes may consider:
- (1) The extent to which an applicant for renewal has substantially complied with the applicable law and the material terms of any existing cable franchise;
 - (2) Whether an applicant for renewal's quality of service under its existing franchise, including signal quality, response to customer complaints, billing practices, and the like, has been reasonable in light of the needs of the community;
 - (3) Where the applicant has not previously held a cable system franchise in the City of Cohoes, whether the applicant's record in other communities indicates that it can be relied upon to provide high-quality service throughout any franchise term;
 - (4) Whether the applicant has the financial, legal, and technical ability to provide the services, facilities, and equipment set forth in an application, and to satisfy any minimum requirements established by the City of Cohoes;
 - (5) Whether the applicant's application is reasonable to meet the future cable-related needs and interests of the City of Cohoes, taking into account the cost of meeting such needs and interests;
 - (6) Whether issuance of a franchise is warranted in the public interest considering the immediate and future effect on streets, public property, and private property that will be used by the applicants cable system;
 - (7) Whether issuance of the franchise would reduce competition in the provision of cable service in the City of Cohoes; and
 - (8) Such other matters as the City of Cohoes is authorized or required to consider.
- D. Issuance of franchise. If the City of Cohoes determines that issuance of a franchise would be in the public interest considering the factors described above, it may proffer a franchise agreement to the applicant. No franchise shall become effective until the franchise is unconditionally accepted and signed by the applicant and, as necessary, approved by the State of New York Public Service Commission.

§ 130-23. Application for renewal franchise filed pursuant to 47 U.S.C. § 546.

- A. Scope. This section establishes additional provisions that apply to applications for renewal governed by 47 U.S.C. § 546(a)-(g) and other applicable law.
- B. Process. A franchisee which intends to exercise rights under 47 U.S.C. § 546(a)-(g) shall submit a notice in writing to the City of Cohoes in a timely manner clearly stating that it is activating the procedures set forth in those sections. The City of Cohoes shall thereafter commence any proceedings that may be required under federal law and, upon completion of those proceedings, the City of Cohoes may issue a request for proposals and an application may be submitted for renewal. The City of Cohoes may preliminarily deny the application by resolution and, if the application is preliminarily denied, the City of Cohoes may conduct such proceedings and, by resolution, establish such procedures and appoint such individuals as may be necessary to conduct any proceedings to review the application.

§ 130-24. Application for transfer.

- A. Scope. This section establishes additional provisions that apply to applications for

transfer approval.

- B. Information. An application for transfer must contain all the information required by the City of Cohoes' Mayor or his/her designee by § 130-21B and all information required by any FCC transfer form.
- C. Consideration of application. In determining whether a transfer application should be granted, denied, or granted subject to conditions, the City of Cohoes may consider the legal, financial, and technical qualifications of the transferee to operate the cable system; any potential impact of the transfer on subscriber rates or services; whether the incumbent cable operator is in compliance with its franchise; whether the transferee owns or controls any other cable system in the City of Cohoes; whether operation by the transferee may eliminate or reduce competition in the delivery of cable service in the City of Cohoes; and whether operation by the transferee or approval of the transfer would otherwise adversely affect subscribers, the public, or the City of Cohoes' interest under this chapter, the franchise, or other applicable law. The proposed transferee shall pay all reasonable costs incurred by the City of Cohoes in reviewing and evaluating the applications.
- D. Minimum conditions. In order to obtain approval of a transfer, an applicant must show at a minimum that: the transferee is qualified; the transfer will not adversely affect the interests of subscribers, the public, or the City of Cohoes; and that noncompliance issues have been resolved. No application shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of this chapter and the franchise, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous franchisee for all purposes.

§ 130-25. Legal qualifications.

A. Standards.

- (1) The applicant must be willing to comply with the provisions of this chapter and applicable laws, and to comply with such requirements of a franchise as the City of Cohoes may lawfully require.
- (2) The applicant must not have had any cable system or OVS franchise validly revoked (including any appeals) by the City of Cohoes within three years preceding the submission of the application.
- (3) The applicant may not have had an application to the City of Cohoes for an initial or renewal cable system franchise denied on the ground that the applicant failed to propose a cable system meeting the cable-related needs and interests of the community or as to which any challenges to such franchising decision were finally resolved (including any appeals) adversely to the applicant within three years preceding the submission of the application, and may not have had an application for an initial or renewal OVS franchise denied on any grounds within three years of the application.
- (4) The applicant shall not be issued a franchise if, at any time during the 10 years preceding the submission of the application, the applicant was convicted of fraud, racketeering, anticompetitive actions, unfair trade practices or other conduct of such character that the applicant cannot be relied upon to deal truthfully with the City of Cohoes and the subscribers or to substantially comply

with its obligations.

- (5) The applicant must have the necessary authority under New York and federal law to operate a cable system, or show that it is in a position to obtain that authority.
 - (6) The applicant shall not be issued a franchise if it files materially misleading information in its application or intentionally withholds information that the applicant lawfully is required to provide.
 - (7) For purposes of § 130-25(A)(2) through A(4), the term "applicant" includes any affiliate of applicant.
- B. Exception. Notwithstanding § 130-25A, an applicant shall be provided a reasonable opportunity to show that a franchise should issue even if the requirements of § 130-25A(3) through A(4) are not satisfied, by virtue of the circumstances surrounding the matter and the steps taken by the applicant to cure all harms flowing therefrom and prevent their recurrence, the lack of involvement of the applicant's principals, or the remoteness of the matter from the operation of a cable system.

§ 130-26. Franchise fee.

- A. A cable operator shall pay to the City of Cohoes a franchise fee in an amount equal to 5% of gross revenues, or such other amount as may be specified in the franchise; provided, however, that if the franchise specifies an amount that amount shall be subject to increase should federal limits on fee payments be eliminated or changed and other cable operators are subject to a higher fee.
- B. Bundled services. For purposes of calculating the franchise fee, gross revenues shall include a fair proportion of all revenues attributable to franchised cable services which are delivered by the franchisee, regardless of method. If a franchisee bundles, ties or combines the sale of some or all of its services, whether or not authorized by this franchise, and assesses its subscribers only one charge, the combined revenue therefrom shall be allocated to gross revenues to the full extent which would have been charged by the franchisee if the subscriber had received only franchised cable services. In no event shall the amount allocated to franchised cable services under the foregoing calculation exceed the total amount of combined revenue actually received by a franchisee [in which case Subsection B(1) shall apply] or the net revenue derived when mandatory tariff rates (if any) imposed by a governmental authority for components of the bundled, tied or combined services are deducted from the combined revenue. A franchisee may not alter or change any payments or amounts of compensation to the City which may be dictated by another franchise, ordinance, agreement or by applicable law and are related to use of the public rights-of-way in the provision of nonfranchised cable services in the City.
 - (1) In the event that a franchisee bundles services that are included in the definition of gross revenue with other services not included, the unbundled amount of gross revenue will be based on the published rate for any service provided for in a cable communications system franchise. Exception can be made with a clear showing by the franchisee that services offered pursuant to a franchise were discounted along with an accounting of the amount of said discount.
 - (2) If a franchisee offers its subscribers any kind of discount for receipt of both franchised cable and non-cable services, which are not included in the definition

of gross revenues, the discount may be applied proportionately to franchised cable services and non-cable services upon notification to the City of such discount methodology. Such notification shall include the amount of the discount being applied to each service and documentation demonstrating the promotion and billing of such discount.

- (3) The definition of gross revenue is to be as inclusive as possible consistent with existing applicable law. If a change in federal law occurs subsequent to the effective date of this chapter, such change shall not impact the gross revenues definition in such a way to reduce gross revenues, unless the change specifically preempts the affected portion of the definition above.

§ 130-27. No exclusivity.

A franchisee may not require a subscriber or a building owner or manager to enter into an exclusive contract as a condition of providing or continuing service. However, nothing herein prevents a franchisee from entering into an otherwise lawful, mutually desired, exclusive arrangement with a building owner or manager of a multiple dwelling unit or commercial subscriber.

§ 130-28. Minimum franchise conditions.

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

- A. System design. Each franchisee shall provide a cable system which uses at least 750MHz equipment of high quality and reliability. Each franchisee shall install and activate the return portion of the cable system in the sub-low frequency spectrum of 5 MHz to 30 MHz.
- B. Public, educational and government use of the system.
 - (1) A franchisee shall provide a minimum of three channels for PEG access to each subscriber.
 - (2) Each franchisee shall install, maintain, and replace as necessary, a dedicated, bi-directional fiber-optic link between its head-end and a location designated by the City of Cohoes as the primary access center.
 - (3) Each franchisee shall install, maintain, and replace activated two-way cable plant and all head-end, cable plant, and node equipment required to make it operable so that the City of Cohoes, schools, and all designated PEG access centers and access facilities located within the franchise area will be able to send and receive signals (video, audio, and data) using the activated two-way cable plant.
 - (4) Each franchisee shall ensure that technically adequate signal quality, routing systems, and switching and/or processing equipment are initially and continuously provided for all access interconnections both within the franchisee's cable system and with other cable systems throughout the duration of its franchise.
 - (5) In the event a franchisee makes any change in the cable system and related equipment and facilities or in the franchisee's signal delivery technology which directly or indirectly substantially affects the signal quality or transmission of

access programming, the franchisee shall at its expense take necessary steps or provide necessary technical assistance, including the acquisition of all necessary equipment, to ensure that the capabilities of access programmers are not diminished or adversely affected by such change.

- (6) A franchisee shall maintain all access channels (both upstream channels and downstream channels) and all interconnections of access channels at the same level of technical quality and reliability as the best commercial channels carried on the system.
- C. Service to franchise area. It is the policy of the City of Cohoes to ensure that every cable system provides service in its franchise area upon request to any person or any government building. Each franchisee shall extend service upon request within its franchise area, provided that a franchise may permit a franchisee to require a potential subscriber to contribute a fair share of the capital costs of installation or extension as a condition of extension or installation in cases where such extension or installation may be unduly expensive. Service must be provided within time limits specified in Subsection D.
- D. Time for extension. Except as a franchise otherwise provides, service must be extended upon request to any person or to any government building in a franchisee's franchise area within seven days of the request, where service can be provided by activating or installing a drop; within 90 days of the request where an extension of 1/2 mile or less is required; or within six months where an extension of 1/2 mile or more is required.
- E. Technical standards. A cable system within the City of Cohoes shall meet or exceed the technical standards set forth in 47 C.F.R. § 76.601 and any other applicable technical standards.
- F. Testing. Each cable operator shall perform at its expense such tests as may be necessary to show whether or not the franchisee is in compliance with its obligations under applicable FCC standards, this chapter or a franchise.
- G. Interconnection. Upon request of the City of Cohoes, every cable system shall be required to interconnect with every other cable system within the City of Cohoes or adjacent to the City of Cohoes on fair and reasonable terms for purposes of providing PEG and I-Net services.
- H. Continuity of service. Each franchisee shall, during the term of the franchise, ensure that subscribers are able to receive continuous service. In the event the franchise is revoked or terminated, the franchisee shall be required to continue to provide service for a reasonable period to assure an orderly transition of service from the franchisee to another entity. A franchise may establish more particular requirements under which these obligations will be satisfied.

§ 130-29. Rate regulation and consumer protection.

- A. All rates subject to regulation. The City of Cohoes may regulate any of the cable operator's rates and charges, except to the extent it is prohibited from doing so by law. The City of Cohoes will regulate rates in accordance with FCC and State of New York rules and regulations, where applicable. Except to the extent FCC or State of New York rules provide otherwise, all rates and charges that are subject to regulation and changes in those rates or charges must be approved in advance. The City of

Cohoes' Mayor or his/her designee may take any required steps to file complaints, toll rates, issue accounting orders or take any other steps required to comply with FCC or State of New York regulations. The Common Council of the City of Cohoes shall be responsible for issuing rate orders that establish rates or order refunds.

- B. No rate discrimination. Except to the extent the City of Cohoes may not enforce such a requirement, a cable operator is prohibited from discriminating in its rates or charges or from granting undue preferences to any subscriber, potential subscriber, or group of subscribers or potential subscribers; provided, however, that a franchisee may offer temporary, bona fide promotional discounts in order to attract or maintain subscribers, so long as such discounts are offered on a nondiscriminatory basis to similar classes of subscribers throughout the franchise area; and a franchisee may offer discounts for the elderly, the disabled, or the economically disadvantaged and such other discounts as it is expressly entitled to provide under federal law, if such discounts are applied in a uniform and consistent manner.
- C. Redlining prohibited. A cable operator shall not deny access or charge different rates to any group of subscribers or potential subscribers because of the income of the residents of the local area in which such group resides.
- D. Customer service.
 - (1) Each cable operator must satisfy FCC, New York State, and City of Cohoes cable customer service standards or consumer protection standards. City of Cohoes cable customer service standards shall be approved by resolution of the Board of Managers of the City of Cohoes and attached as part of any franchise. In the case of a conflict among standards, the stricter standard shall apply.
 - (2) For violation of cable customer service standards, penalties will be imposed as follows:
 - (a) Two hundred dollars for each day of each material breach, not to exceed \$600 for each occurrence of material breach.
 - (b) If there is a subsequent material breach of the same provision within 12 months, \$400 for each day of each material breach, not to exceed \$1,200 for each occurrence of the material breach.
 - (c) If there is a third or additional material breach of the same provision within 12 months of the first, \$1,000 for each day of each material breach, not to exceed \$3,000 for each occurrence of the material breach.
 - (3) Any penalty assessed under this section will be reduced dollar for dollar to the extent any liquidated damage provision of a franchise imposes a monetary obligation on a franchisee for the same customer service failures, and no other monetary damages may be assessed.

ARTICLE IV, Open Video Systems

§ 130-30. Additional definitions.

OVS AGREEMENT -- A contract entered into in accordance with the provisions of this chapter between the City of Cohoes and an OVS franchisee, setting forth the terms and

conditions under which the franchise will be exercised.

§ 130-31. Applications for grant or renewal of franchises.

- A. Initial and renewal franchise: application.
- (1) A written application shall be filed with the City of Cohoes for grant of an initial or renewal franchise.
 - (2) To be acceptable for filing, a signed original of the application shall be submitted together with six copies. The application must conform to any applicable request for proposals and contain all information required under § 130-31B. All applications shall include the names and addresses of persons authorized to act on behalf of the applicant with respect to the application.
- B. Contents of applications. The City of Cohoes' Mayor or his/her designee may specify the information that must be provided in connection with a request for proposals or an application for an initial or renewal franchise. At a minimum, each application must identify the applicant, where it plans to construct its system, and the system construction schedule; show that the applicant will provide adequate channels, facilities and other support for public, educational and government use (including institutional network use) of the OVS; and show that the applicant is financially, technically and legally qualified to construct and operate the OVS.
- C. Procedure for applying for grant of a franchise:
- (1) A person may apply for an initial or renewal franchise on his/her own initiative or in response to a request for proposals. Upon receipt of an application, the City of Cohoes shall promptly proffer the applicant a proposed OVS agreement, which shall be mailed to the person requesting its issuance and made available to any other interested party. The City of Cohoes may request such additional information as it deems appropriate.
 - (2) An applicant shall respond to requests for information completely, and within the time directed by the City of Cohoes, and must strictly comply with procedures, instructions, and requirements the City of Cohoes may establish.
 - (3) An application may be rejected if it is incomplete or the applicant fails to follow procedures or respond fully to information requests.
- D. Evaluation. In evaluating a franchise application, the City of Cohoes may consider the following:
- (1) The extent to which the applicant has substantially complied with the applicable law and the material terms of any existing City of Cohoes OVS franchise;
 - (2) Whether the applicant has the financial, technical, and legal qualifications to hold an OVS franchise;
 - (3) Whether the application satisfies any minimum requirements established by the City of Cohoes for, or will otherwise provide, adequate public, educational, and governmental use capacity, facilities, or financial support (including with respect to institutional networks);
 - (4) Whether issuance of a franchise would require replacement of property or involve disruption of property, public services, or use of the public rights-of-way; and
 - (5) Whether the approval of the application may eliminate or reduce competition in the delivery of cable service in the City of Cohoes.

- E. Issuance. If the City of Cohoes finds that it is in the public interest to issue a franchise considering the factors above and such other matters as it is required or entitled to consider, and subject to the applicant's entry into an appropriate OVS agreement, it shall issue a franchise. Prior to deciding whether or not to issue a franchise, the City of Cohoes may hold one or more public hearings or implement other procedures under which comments from the public on an application may be received.
- F. Legal qualifications. In order to be legally qualified:
- (1) The applicant must be willing to comply with the provisions of this chapter and applicable laws and to comply with such requirements of an OVS agreement as the City of Cohoes may lawfully require.
 - (2) The applicant must not hold a cable system franchise or have pending an application for a cable system franchise.
 - (3) The applicant must not have had any cable system or OVS franchise validly revoked (including any appeals) by the City of Cohoes within three years preceding the submission of the application.
 - (4) The applicant may not have had an application for an initial or renewal cable system franchise to the City of Cohoes denied on the ground that the applicant failed to propose a cable system meeting the cable-related needs and interests of the community, or as to which any challenges to such franchising decision were finally resolved (including any appeals) adversely to the applicant, within three years preceding the submission of the application.
 - (5) The applicant may not have had an application for an initial or renewal OVS franchise denied on any grounds within three years of the applications; and
 - (6) The applicant shall not be issued a franchise if, at any time during the 10 years preceding the submission of the application, the applicant was convicted of fraud, racketeering, anticompetitive actions, unfair trade practices or other conduct of such character that the applicant cannot be relied upon to deal truthfully with the City of Cohoes and the subscribers or to substantially comply with its obligations.
 - (7) The applicant must have the necessary authority under New York and federal law to operate an OVS and must be certified by the FCC under Section 653 of the Cable Act.
 - (8) The applicant shall not be issued a franchise if it files materially misleading information in its application or intentionally withholds information that the applicant lawfully is required to provide.
 - (9) For purposes of § 130-31F(2) through F(5), the term "applicant" includes any affiliate of applicant.
- G. Exception. Notwithstanding § 130-31F, an applicant shall be provided a reasonable opportunity to show that a franchise should issue even if the requirements of § 130-31F(4) through F(5) are not satisfied by virtue of the circumstances surrounding the matter and the steps taken by the applicant to cure all harms flowing therefrom and prevent their recurrence, the lack of involvement of the applicant's principals, or the remoteness of the matter from the operation of a cable system.

§ 130-32. Transfers.

- A. City of Cohoes approval required. No transfer shall occur without prior written notice

to and approval of the City of Cohoes Council.

B. Application.

- (1) A franchisee shall promptly notify the City of Cohoes of any proposed transfer and submit an application for its approval.
- (2) The City of Cohoes' Mayor or his/her designee may specify information that must be provided in connection with a transfer application. At a minimum, an application must describe the entities involved in the transaction and the entity that will hold the franchise; describe the chain of ownership before and after the proposed transaction; show that the entity that will hold the franchise will be legally, financially, and technically qualified to do so; attach complete information on the proposed transaction, including the contracts or other documents that relate to the proposed transaction and all documents, schedules, exhibits, or the like referred to therein; and attach any shareholder reports or filings with the Securities and Exchange Commission (SEC) that discuss the transaction.
- (3) For the purposes of determining whether it shall consent to a transfer, the City of Cohoes or its agents may inquire into all qualifications of the prospective transferee and such other matters as the City of Cohoes may deem necessary to determine whether the transfer is in the public interest and should be approved, denied, or conditioned. If the transferee or franchisee refuse to provide information, or provide incomplete information, the request for transfer may be denied.

C. Determination by City of Cohoes.

- (1) In deciding whether a transfer application should be granted, denied or granted subject to conditions, the City of Cohoes may consider the legal, financial, and technical qualifications of the transferee to operate the OVS; whether the incumbent OVS operator is in compliance with its OVS agreement and this chapter and, if not, the proposed transferee's commitment to cure such noncompliance; whether the transferee owns or controls any other OVS or cable system in the City of Cohoes and whether operation by the transferee may eliminate or reduce competition in the delivery of cable service in the City of Cohoes; and whether operation by the transferee or approval of the transfer would adversely affect subscribers, the public, or the City of Cohoes' interest under this chapter, the OVS agreement, or other applicable law.
- (2) In order to obtain approval of a transfer, an applicant must show, at a minimum, that the transferee is qualified; the transfer will not adversely affect the interests of subscribers, the public, or the City of Cohoes; and that noncompliance issues have been resolved. No application shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of this chapter and the franchise and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous franchisee for all purposes. The proposed transferee shall pay all reasonable costs incurred by the City of Cohoes in reviewing and evaluating the applications.

§ 130-33. Minimum requirements.

A. PEG access. No OVS operator shall be issued a franchise, or may commence

- construction of an OVS system, until 1) it agrees to match in all respects the highest PEG obligations borne by any cable operator in the City of Cohoes; or 2) it agrees to PEG obligations acceptable to the City of Cohoes.
- B. Institutional network. Any OVS operator that constructs an I-Net must match in all respects the highest I-Net obligations borne by any cable operator in the City of Cohoes, unless it agrees to alternative I-Net obligations acceptable to the City of Cohoes.
 - C. Construction provisions. Every OVS agreement shall specify the construction schedule that will apply to any required construction, upgrade, or rebuild of the OVS. The schedule shall provide for prompt completion of the project, considering the amount and type of construction required.
 - D. Testing. Each OVS operator shall perform at its expense such tests as may be necessary to show whether or not the franchisee is in compliance with its obligations under this chapter or a franchise.
 - E. Consumer protection provisions. Every franchisee must satisfy customer service consumer protection requirements established from time to time under state or local law and applicable to OVS.

§ 130-34. Special termination rules.

If a franchisee's FCC certification is revoked or otherwise terminates as a result of the passage of time or as a matter of law, the City of Cohoes may revoke the OVS franchise after a hearing. The OVS franchise may also be revoked if federal regulations or statutory provisions governing OVS are declared invalid or unenforceable or are repealed.

§ 130-35. Rate regulation.

The City of Cohoes may regulate a franchisee's rates and charges except as prohibited by law, and may do so by amendment to this chapter, separate ordinance, by amendment to an OVS agreement, or in any other lawful manner.

§ 130-36. Fee in lieu of franchise fee.

- A. OVS operators. In lieu of the franchise fee required by Article III, an OVS franchisee shall pay a fee of 5% of the gross revenues of the franchisee, its affiliates or any OVS operator of the OVS.
- B. Persons leasing OVS capacity.
 - (1) A person leasing capacity from an OVS operator, other than a person whose revenues are included in the payment made pursuant to this chapter, shall pay the City of Cohoes a fee in lieu of the franchise fee required by § 130-26 of 5% of the gross revenues of such person.
 - (2) Notwithstanding the foregoing, where the franchisee charges a person, other than an affiliate, to use its OVS (the "use payments"); and that person recovers those use payments through charges to its subscribers that are included in that person's gross revenues; and that person fully recovers the use payments through the charges to its subscribers and pays a fee on those charges; then the franchisee may deduct from its gross revenues the use payments it receives from that

person.

§ 130-37. Exclusive contracts.

A franchisee may not require a subscriber or a building owner or manager to enter into an exclusive contract as a condition of providing or continuing service, nor may a franchisee enter into any arrangement that would effectively prevent other persons from using the OVS to compete in the delivery of cable services with a franchisee or its affiliates.

ARTICLE V, Miscellaneous

§ 130-38. Captions.

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

§ 130-39. Calculation of time.

Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this chapter or any franchise, and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time.

§ 130-40. Severability.

If any term, condition, or provision of this chapter shall, to any extent, be held to be invalid or unenforceable by a valid order of any court or regulatory agency, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City of Cohoes and shall thereafter be binding on the franchisee and the City of Cohoes.

§ 130-41. Connections to cable system; use of antennae.

- A. Subscriber right to attach. To the extent consistent with federal law, subscribers shall have the right to attach VCRs, receivers, and other terminal equipment to a franchisee's cable system. Subscribers also shall have the right to use their own remote-control devices and converters and other similar equipment.
- B. Removal of existing antennae. A franchisee shall not, as a condition of providing service, require a subscriber or potential subscriber to remove any existing antenna, or disconnect an antenna except at the express direction of the subscriber or potential subscriber, or prohibit installation of a new antenna, provided that such antenna is

connected with an appropriate device and complies with applicable law.

§ 130-42. Discrimination prohibited.

- A. No retaliatory actions. A cable communications system operator shall not discriminate among persons or the City of Cohoes or take any retaliatory action against a person or the City of Cohoes because of that entity's exercise of any right it may have under federal, state, or local law, nor may the operator require a person or the City of Cohoes to waive such rights as a condition of taking service.
- B. Employment and hiring practices. A cable communications system operator shall not refuse to employ, discharge from employment, or discriminate against any person in compensation or in terms, conditions, or privileges of employment because of race, color, creed, national origin, sex, age, disability, religion, ethnic background, or marital status. A cable system operator shall comply with all federal, state, and local laws and regulations governing equal employment opportunities and hiring practices, as the same may be amended from time to time.

§ 130-43. Transitional provisions.

- A. Persons operating without a franchise. The operator of any facility installed as of the effective date of this chapter. for which a franchise is required under this chapter, shall have three months from the effective date of this chapter to file one or more applications for a franchise. Any operator timely filing such an application under this section shall not be subject to a penalty for failure to have such a franchise so long as said application remains pending; provided, however, nothing herein shall relieve any cable communications system operator of any liability for its failure to obtain any permit or other authorization required under other provisions of the City of Cohoes' Charter or Code, and nothing herein shall prevent the City of Cohoes from requiring removal of any facilities installed in violation of the City of Cohoes' Charter or Code.
- B. Persons holding franchises. Any person holding an existing franchise for a cable communications system may continue to operate under the existing franchise to the conclusion of its present term (but not any renewal or extension thereof) with respect to those activities expressly authorized by the franchise; and provided further that such person shall be subject to the other provisions of this chapter to the extent permitted by law.
- C. Persons with pending applications. Pending applications shall be subject to this chapter. A person with a pending application shall have 30 days from the effective date of this chapter to submit additional information to comply with the requirements of this chapter governing applications.

ARTICLE VI, Customer Service Standards [Added 1-25-2005 by Res. No. 3-2005]

§ 130-44. Office availability.

- A. Each franchisee will maintain offices at convenient locations within 10 miles of, or no more than 15 minutes' travel time from, the City of Cohoes that will be open for walk-in traffic at least 10 hours per day (except legal holidays), Monday through Friday, with some evening hours, and at least five hours on Saturday to allow subscribers to pay bills, to drop off equipment and to pick up equipment.
- B. Each franchisee will perform service calls, installations, and disconnects at least 10 hours per day, Monday through Saturday, except legal holidays, provided that a franchisee will respond to outages 24 hours a day, seven days a week.

§ 130-45. Telephones.

- A. Each franchisee will establish a publicly listed local toll-free telephone number. Customer service representatives must answer the phone at least 10 hours per day, Monday through Saturday, except legal holidays, for the purpose of receiving requests for service, inquiries, and complaints from subscribers. After such business hours the phone will be answered so that customers can register complaints and report service problems on a twenty-four-hour-per-day, seven-day-per-week basis, and so that the franchisee can respond to service outages as required herein.
- B. Telephone answering time will not exceed 30 seconds or four rings, and the time to transfer the call to a customer service representative (including hold time) will not exceed an additional 30 seconds.
- C. Under normal operating conditions customers will receive a busy signal less than 3% of the time.
- D. Under normal operating conditions, the standards set out in Subsections B and C will be met 95% of the time, measured quarterly.

§ 130-46. Scheduling work.

- A. All appointments for service, installation, or disconnection will be specified by date. Each franchisee will specify a specific time at which the work will be done, or offer a choice of time blocks which will not exceed four hours in length. A franchisee may also, upon request, schedule service installation calls outside normal business hours for the express convenience of the customer.
- B. If at any time an installer or technician is late for an appointment and believes a scheduled appointment time will be missed, no less than four attempts to contact the customer will be made before the time of appointment and the appointment will be rescheduled at a time convenient to the customer, if rescheduling is necessary. It is the operator's burden to prove it met the appointment.
- C. The franchisee will offer and fully describe to subscribers who have experienced a missed appointment (where the missed appointment was not the subscriber's fault) that the subscriber may choose between the following options:
 - (1) Installation or service call free of charge, if the appointment was for an installation or service call for which a fee was to be charged; and
 - (2) One month of the most widely subscribed to service tier free of charge for other appointments.

§ 130-47. Service standards.

- A. Under normal operating conditions, requests for service, repair, and maintenance must be acknowledged by a trained customer service representative within 24 hours or before the end of the next business day, whichever is earlier.
- B. A franchisee will respond to all other inquiries (including billing inquiries) within five business days of the inquiry or complaint.
- C. Under normal operating conditions, repairs and maintenance for outages or service interruptions must be completed within 24 hours after the outage or interruption becomes known to the franchisee, where the franchisee has adequate access to facilities to which it must have access in order to remedy the problem.
- D. Under normal operating conditions, work to correct all other service problems must be begun by the next business day after notification of the service problem and must be completed within five business days from the date of the initial request.
- E. When normal operating conditions do not exist, a franchisee will complete the work in the shortest time possible and must demonstrate to the satisfaction of the City why it was not operating under normal operating conditions.
- F. A franchisee will not cancel a service or installation appointment with a customer after the close of business on the business day preceding the scheduled appointment.
- G. Requests for additional outlets, service upgrades or other connections (e.g., DMX, VCR, A/B switch) separate from the initial installation will be performed within seven business days after an order has been placed.
- H. Under normal operating conditions, the service standards set out in Subsections A through D will be met at least 95% of the time, measured on a quarterly basis.
- I. The failure of the franchisee to hire sufficient staff or to properly train its staff will not justify a franchisee's failure to comply with this provision.

§ 130-48. Disabled services.

With regard to subscribers with disabilities, upon subscriber request, each franchisee will arrange for pickup and/or replacement of converters or other franchisee equipment at the subscriber's address or by a satisfactory equivalent (such as the provision of a postage-prepaid mailer).

§ 130-49. Notice to subscribers regarding service.

A franchisee will provide each subscriber, at the time service is installed and annually thereafter, with clear and accurate written information:

- A. On placing a service call, filing a complaint, or requesting an adjustment (including when a subscriber is entitled to refunds for outages and how to obtain them); and
- B. Showing the telephone number of the City of Cohoes office responsible for administering the cable television franchise; and
- C. Providing a schedule of rates and charges (which listing must identify any discounts offered), channel positions, services provided, a copy of the service contract, delinquent subscriber disconnect and reconnect procedures; notifying subscribers of the availability of parental control devices, and the conditions under which they will be provided and the cost (if any) charged; and

- D. Describing conditions that must be met to qualify for discounts; and
- E. Describing any other of the franchisee's policies in connection with its subscribers; and
- F. Describing any discounts, services, or specialized equipment available to subscribers with disabilities; explaining how to obtain them; and explaining how to use any accessibility features.

§ 130-50. Notices to City of Cohoes.

A franchisee will provide to the City of Cohoes, in advance, copies of all notices provided to its subscribers pursuant to this article.

§ 130-51. Changes in notice information.

A franchisee will provide the Mayor of the City of Cohoes or his/her designee at least 60 days' written notice and all subscribers at least 30 days' written notice of any material changes in the information required to be provided under this article, except that, if federal law establishes a shorter notice period and preempts this requirement, the federal requirement will apply.

§ 130-52. Truth in advertising.

- A. Each franchisee will take appropriate steps to ensure that all written franchisee promotional materials, announcements, and advertising of residential cable service to subscribers and the general public, where price information is listed in any manner, clearly and accurately discloses price terms. In the case of telephone orders, a franchisee will take appropriate steps to ensure that price terms are clearly and accurately disclosed to potential customers in advance of taking the order.
- B. Each franchisee will maintain a file, open for public inspection, containing all notices provided to subscribers under these customer service standards, as well as all promotional offers made to subscribers. The notices and offers will be kept in the file for at least one (1) year from the date of such notice or promotional offer.

§ 130-53. Interruptions of service.

A franchisee will provide 48 hours' prior notice to subscribers and the City of Cohoes before interrupting service for planned maintenance or construction; provided, however, that planned maintenance that does not require more than two hours' interruption of service and that occurs between the hours of 12:00 midnight and 6:00 a.m. will not require such notice to subscribers, and notice to the City of Cohoes must be given no less than 24 hours before the anticipated service interruption.

§ 130-54. Prorated billing.

A franchisee's first billing statement after a new installation or service change will be prorated as appropriate and will reflect any security deposit.

§ 130-55. Billing statement.

- A. A franchisee's billing statement must be clear, concise, and understandable; it must itemize each category of service and equipment provided to the subscriber; and it must state clearly the charges therefor.
- B. A franchisee's billing statement must show a specific payment due date not earlier than the later of:
 - (1) Fifteen days after the date the statement is mailed; or
 - (2) The 10th day of the service period for which the bill is rendered.
- C. A late fee or administrative fee (collectively referred to below as a "late fee") may not be imposed for payments earlier than 27 days after the due date specified in the bill.
- D. A late fee may not be imposed unless the subscriber is provided written notice, at least 10 days prior to the date the fee is imposed, that a fee will be imposed, the date the fee will be imposed and the amount of the fee that will be imposed if the delinquency is not paid. A late fee may not be imposed unless the outstanding balance exceeds \$10.
- E. Subscribers will not be charged a late fee or otherwise penalized for any failure by a franchisee, including failure to timely or correctly bill the subscriber, or failure to properly credit the subscriber for a payment timely made. Payments will be considered timely if postmarked on the due date.
- F. A franchisee's bill must permit a subscriber to remit payment by mail or in person at the franchisee's local office.

§ 130-56. Credit for service impairment.

- A. A subscriber's account will be credited a prorated share of the monthly charge for the service, upon subscriber request if a subscriber is without service or if service is substantially impaired for any reason for a period exceeding four hours during any twenty-four-hour period, or automatically if the loss of service or impairment is for 24 hours or longer.
- B. A franchisee need not credit a subscriber where it establishes that a subscriber will obtain a refund for a loss of service or impairment caused by the subscriber or by subscriber-owned equipment (not including, for purposes of this section, in-home wiring installed by the franchisee).

§ 130-57. Billing complaints.

A franchisee will respond to, resolve, and conform with applicable law all written billing complaints from subscribers within 30 days.

§ 130-58. Billing refunds.

Refunds to subscribers will be issued no later than:

- A. The earlier of the subscriber's next billing cycle following resolution of the refund request or 30 days; or
- B. The date of return of all equipment to the franchisee if cable service has been terminated.

§ 130-59. Credits for cable service.

Credits for cable service will be issued no later than the subscriber's next billing cycle after the determination that the credit is warranted.

§ 130-60. Disconnection/downgrades.

- A. A subscriber may terminate service at any time.
- B. A franchisee will promptly disconnect from the franchisee's cable system or downgrade any subscriber who so requests. No charges for service may be made after the subscriber requests disconnection. No period of notice before voluntary termination or downgrade of cable service may be required of subscribers by any franchisee. There will no charge for disconnection, except for the collection fee authorized by state law, and any downgrade charges will conform to applicable law.

§ 130-61. Security deposit.

Any security deposit and/or other funds due to a subscriber that disconnects or downgrades service will be returned to the subscriber within 30 days or in the next billing cycle, whichever is later, from the date the disconnection or downgrade was requested, except in cases where the subscriber does not permit the franchisee to recover its equipment, in which case the amounts owed will be paid to subscribers within 30 days of the date the equipment was recovered or in the next billing cycle, whichever is later.

§ 130-62. Disconnection due to nonpayment.

- A. A franchisee may not disconnect a subscriber's cable service for nonpayment unless:
 - (1) The subscriber is delinquent in payment for cable service by at least 45 days; and
 - (2) A separate, written notice of impending disconnection, postage prepaid, has been sent to the subscriber at least 20 days before the date on which service may be disconnected, at the premises where the subscriber requests billing, which notice must identify the names and address of the subscriber whose account is delinquent and state the date by which disconnection may occur if payment is not made, the amount the subscriber must pay to avoid disconnection, and a telephone number of a representative of the franchisee who can provide additional information and handle complaints or initiate an investigation concerning the services and charges in question; and
 - (3) The subscriber fails to pay the amounts owed to avoid disconnection by the date of disconnection; and
 - (4) No pending inquiry exists regarding the bill to which the franchisee has not responded in writing.
- B. If the subscriber pays all amounts due, including late charges, before the date scheduled for disconnection, the franchisee will not disconnect service. Service may only be terminated on days in which the customer can reach a representative of the cable/video provider either in person or by telephone.
- C. After disconnection (except as noted below), upon payment by the subscriber in full of all proper fees or charges, including the payment of the reconnection charge, if

any, the franchisee will promptly reinstate service.

§ 130-63. Immediate disconnection.

- A. A franchisee may immediately disconnect a subscriber if:
- (1) The subscriber is damaging, destroying, or unlawfully tampering with or has damaged or destroyed or unlawfully tampered with the franchisee's cable system; or
 - (2) The subscriber is not authorized to receive a service and is facilitating, aiding or abetting the unauthorized receipt of service by others; or
 - (3) Subscriber-installed or -attached equipment is resulting in signal leakage that is in violation of FCC rules.
- B. After disconnection, the franchisee will restore service after the subscriber provides adequate assurance that it has ceased the practices that led to disconnection and has paid all proper fees and charges, including any reconnect fees and all amounts owed to the franchisee for damage to its cable system or equipment; provided that, no reconnection fee may be imposed on a subscriber disconnected pursuant to this article if the leakage was the result of the franchisee's acts or omissions; or in any case, unless the franchisee notifies the subscriber of the leakage at least three business days in advance of disconnection and the subscriber has failed to correct the leakage within that time.

§ 130-64. Removal of franchisee's property.

Except as applicable law may otherwise provide, a franchisee may remove its property from a subscriber's premises within 30 days of the termination of service. If a franchisee fails to remove its property in that period, the property will be deemed abandoned unless the franchisee has been denied access to the subscriber's premises or the franchisee has a continuing right to occupy the premises under applicable law.

§ 130-65. Deposits.

A franchisee may require a reasonable, nondiscriminatory deposit on equipment provided to subscribers. Deposits will be placed in an interest-bearing account, and the franchisee will return the deposit, plus interest earned to the date the deposit is returned to the subscriber, less any amount the franchisee can demonstrate should be deducted for damage to such equipment.

§ 130-66. Parental control option.

Without limiting a franchisee's obligations under federal law, after March 1, 1999, a franchisee must provide parental control devices, at no charge to all subscribers who request them, that enable the subscriber to block the video and audio portion of any channel or channels of programming.

§ 130-67. Relief of franchisee's obligations.

Notwithstanding the requirements of this article, the Mayor of the City of Cohoes or his/her designee is authorized to relieve a franchisee of its obligations under this article if:

- A. The franchisee shows that there is an alternative standard that is substantially similar to that established by this article; or
- B. The Mayor of the City of Cohoes or his/her designee determines that there is sufficient competition among cable operators that renders application of these standards unnecessary; or
- C. In light of the number of customers served by a cable operator, the requirements of this article are, in the Mayor of the City of Cohoes or his/her designee's sole discretion, unduly burdensome and there is an alternative way to serve the same interest.