

P 8129

CITY COUNCIL MEETING
DECEMBER 18, 1986

ORDINANCES

COMMUNITY CABLE
TELEVISION SYSTEM
FRANCHISES

ORDINANCE NO.
1370 ADOPTED

12-22/86

Ordinance No. 1370 entitled, "An Ordinance of the City of Lodi City Council Repealing Lodi Municipal Code Chapter 5.16 Community Antenna Television System Franchises and Enacting a New Chapter 5.16 - Community Cable Television System Franchises having been introduced at a Regular Meeting of the Lodi City Council held December 4, 1985, was brought up for passage on motion of Council Member Snider, Olson second. Second reading of the Ordinance was omitted after reading by title and the Ordinance was then adopted and ordered to print by the following vote:

- Ayes: Council Members - Olson, Pinkerton, Reid,
Snider, & Hinchman (Mayor)
- Noes: Council Members - None
- Absent: Council Members - None
- Abstain: Council Members - None

COUNCIL COMMUNICATION

TO: THE CITY COUNCIL

DATE

NO.

FROM: THE CITY MANAGER'S OFFICE

December 12, 1985

SUBJECT:

CABLE TELEVISION ORDINANCE

RECOMMENDED ACTION: That the City Council adopt Ordinance No. 1370 an ordinance repealing Lodi Municipal Code Chapter 5.16 concerning Community Antenna Television System Franchises and enacting a new Chapter 5.16.

BACKGROUND INFORMATION: At its regular meeting of December 4, 1985, the City Council introduced Ordinance No. 1370 concerning the City's cable television franchise. This ordinance is now ready for adoption with the one revision discussed in the attached memo prepared by the City Attorney and previously distributed to Councilmembers.

Respectfully submitted,



Thomas A. Peterson
City Manager

TAP/lh

COUNCIL COMMUNICATION

TO: THE CITY COUNCIL	DATE	NO.
FROM: THE CITY MANAGER'S OFFICE	DECEMBER 10, 1985	
SUBJECT: CABLE ORDINANCE		

I had an opportunity to speak with Mayor Hinchman on Friday and he has suggested that we add to the Cable TV Ordinance at Section 5.16.140(C), the following language:

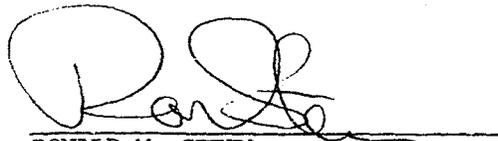
A Grantee shall maintain a repair and maintenance crew to be available 7 days per week on a 24-hours per day basis, which ...

Mayor Hinchman feels that this amendment is necessary to provide for a situation where you have two people in the home working and there is no possible way they can meet with repair people during the week. This would allow for repairs on Saturday, Sunday and evenings.

Further, it should be noted that Section 5.16.140(D) requires the Grantee to submit their written proposal for receiving, acting upon, and resolving subscriber complaints, to the City Manager for his approval.

At the time of the Request For Proposal, it is the intention of the City Manager's office to have the Cable Company submit their complaint procedures for his approval. This will give the City Manager an opportunity to make any requests and suggestions to improve the complaint procedure.

The Mayor is also very concerned that the subscriber be given proper notice of the complaint procedure and, it should be noted that pursuant to Section 5.16.140(D), at the time of the initial subscription to the system and annually thereafter, each subscriber will be given a copy of the complaint procedures.



RONALD M. STEIN
CITY ATTORNEY

RMS:vc

COUNCIL COMMUNICATION

TO: THE CITY COUNCIL	DATE	NO.
FROM: THE CITY MANAGER'S OFFICE	DECEMBER 3, 1985	
SUBJECT: DRAFT ORDINANCE COMMUNITY CABLE TELEVISION SYSTEM FRANCHISES		

BACKGROUND INFORMATION

Attached hereto is the 6th Draft of the above-referenced ordinance. All interested parties have reviewed the ordinance and have mutually agreed to the contents thereof. Further, the ordinance has been discussed by Council, staff and Cable Company representatives at the December 3, 1985 shirtsleeves session.

RECOMMENDATION

That Council introduce the attached ordinance repealing Lodi Municipal Code Chapter 5.16 and enacting a new chapter 5.16 relating to Community Cable Television System Franchises.



RONALD M. STEIN
CITY ATTORNEY

RMS:vc

ORDINANCE NO. _____

AN ORDINANCE OF THE LODI CITY COUNCIL
REPEALING LODI MUNICIPAL CODE CHAPTER 5.16
COMMUNITY ANTENNA TELEVISION SYSTEM FRANCHISES
AND ENACTING A NEW CHAPTER 5.16 -
COMMUNITY CABLE TELEVISION SYSTEM FRANCHISES

BE IT ORDAINED BY THE LODI CITY COUNCIL.

SECTION 1. Chapter 5.16 - Community Antenna Television System Franchises, of Title 5 of the Lodi Municipal Code is hereby repealed in its entirety, and a new Chapter 5.16 - Community Cable Television System Franchises is hereby enacted, as follows:

Chapter 5.16

COMMUNITY CABLE TELEVISION SYSTEM FRANCHISES

SECTIONS:

- 5.16.010 Definitions.
- 5.16.020 Franchise required.
- 5.16.030 Grant of Authority.
- 5.16.040 Application.
- 5.16.050 Grant or refusal.

- 5.16.060 Acceptance.
- 5.16.070 Conditions.
- 5.16.080 Duration/Renewal of franchise.
- 5.16.090 Payment.
- 5.16.100 Financial statement--Audit--Minimum payment.
- 5.16.110 Rates for service.
- 5.16.120 Limitations.
- 5.16.130 Rights reserved by city.
- 5.16.140 Complaint procedure.
- 5.16.150 Refunds.
- 5.16.160 Liquidated damages.
- 5.16.170 Commencement of construction and service.
- 5.16.180 Forfeiture and termination.
- 5.16.190 Security fund.
- 5.16.200 Construction bond.
- 5.16.210 Construction practices.
- 5.16.220 Removal or abandonment of facilities.
- 5.16.230 Changes required by public improvements.
- 5.16.240 Failure to complete work.
- 5.16.250 Insurance.
- 5.16.260 Right of inspection--Plans and records.
- 5.16.270 Service standards.
- 5.16.280 Continuity of service mandatory.
- 5.16.290 Performance evaluation sessions.
- 5.16.300 New developments.
- 5.16.310 Filings with city.
- 5.16.320 Fiscal report.

- 5.16.330 Refusal of service.
- 5.16.340 Service contract.
- 5.16.350 Television sale or repair.
- 5.16.360 Free service.
- 5.16.370 Moving of buildings.
- 5.16.380 Unauthorized connections--Tampering.
- 5.16.390 Transfers and assignments.
- 5.16.400 Access channels.
- 5.16.410 Waivers
- 5.16.420 Required services and facilities.
- 5.16.430 Construction and technical standards

5.16.010 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

a. "Access channel" shall mean a single channel dedicated in whole or in part for local programming which is not originated by a cable company.

b. "Basic Service" shall mean any service tier which include the retransmission of local television broadcast signals and Public, Educational and Government Access Channels.

c. "Cable Services" are defined as the one-way transmission to subscribers of video programming and other programming services together with subscriber interaction, if any, which is required for the selection of such programming and programming services that the cable operator makes available to all subscribers generally. Examples of cable services include: video programming, pay-per-view, voter preference polls in the context of a video program, teletexts, one-way transmission of any computer software, and one-way videotex services such as news services, stock market information, etc. Non-cable services would include: shop-at-home, bank-at-home services, electronic mail, one-way and two-way transmission of non-video data and information not offered to all subscribers, data processing, video conferencing and voice communication.

d. "Cablecasting" is programming carried on a cable system, exclusive of broadcast signals, whether originated by the cable operator or any other party.

e. "Cable System" shall mean 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 only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right-of-way; (C) a facility of a common carrier which is subject in whole or in part, to the provisions of Title II of the Communications Act of 1984, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or (D) any facilities of any electric utility used solely for operating its electric utility systems.

f. "Local Origination Programming" shall mean programming locally produced by the Company.

g. "Franchise" means any nonexclusive authority granted pursuant to this chapter in terms of franchise or franchise renewal or otherwise to construct, operate and maintain a cable system in the incorporated area of the city. The term "franchise" shall include the term "franchise renewal" herein.

h. "Franchise area" means all or any portions of the incorporated area of the city for which a franchise has been granted under this chapter.

i. "Grantee" means the person to whom a franchise under this chapter is granted by the council and any lawful successor or assignee of such a person.

j. "Gross annual receipts" means any and all compensation or receipts obtained from and as a result of the operation of a cable system by a grantee within the franchised area; except that such term shall not include receipts or compensation for:

1. Installation, reconnection or any other nonrecurring charges;
2. The amount of any refunds, credits or other payments made to subscribers

or users;

3. Any taxes on services furnished by the grantee imposed directly or indirectly on any subscriber or user by any municipal corporation, political subdivision, state or other governmental unit and collected by the grantee for the governmental unit; and

4. The sale or transfer of tangible property;

5. The sale or transfer of the franchise;

6. The issuance, sale or transfer of corporation stocks, bonds or other securities; and

7. Loans or gifts to the grantee.

k. "Person" means any person, firm, association, organization, partnership, business trust, joint venture, corporation or company.

l. "Property of grantee" means any property constructed, installed, operated or maintained by a grantee under the authority of a nonexclusive franchise issued pursuant to this chapter.

m. "Street" means the surface of, and the space above and below, any public street, road, highway, freeway, lane, alley, court, sidewalk, parkway, drive, public utility easement or other public place as may be authorized by the council, existing as such as of or after the effective date of the ordinance codified in this chapter within the incorporated area of the city.

n. "Subscriber" means any person or entity receiving for any purpose the cable service of a grantee.

5.16.020 Franchise required.

No person shall extend, operate or carry on the business of distributing to any persons in this city any television signals or radio signals by means of a cable system unless a franchise or renewal of franchise therefor has first been

obtained pursuant to the provisions of this chapter, and unless such franchise or renewal of franchise is in full force and effect. No person shall construct, install or maintain within any street in the city or within any other public property of the city or within any privately owned area within the city which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by the city, any equipment or facilities for distributing any television signals or radio signals through a cable system, unless a franchise authorizing such use of such street or property or area has first been obtained pursuant to the provisions of this chapter, and unless such franchise is in full force and effect.

5.16.030 Grant of authority.

a. A nonexclusive franchise to construct, operate and maintain a cable system within any franchise area may be granted by the council to any person, whether operating under an existing franchise or not, offering to furnish and provide a system pursuant to the terms and provisions of this chapter. No provision of this chapter shall be construed as to require the granting of a franchise when in the opinion of the council it is in the public interest to restrict the number of grantees to one or more. Neither the granting of any nonexclusive franchise under this chapter nor any of the provisions contained in this chapter shall be construed to prevent the city from granting any identical, or similar, nonexclusive franchise to any person within the city.

b. Successful applicants chosen by the City Council will be granted the right and privilege to construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places

now laid out or dedicated and all extensions thereof and additions thereto in the City poles, wires, cables, underground conduits, manholes, and other cable conductors and fixtures necessary for the maintenance and operation in the City of Lodi of a cable system to be used for the sale and distribution of cable services to the residents of the City.

c. Any privilege claimed under any such franchise by the Grantee in any street or other public property shall be subordinate to any prior lawful occupancy of the streets or other public property.

d. Insofar as it is not inconsistent with or otherwise preempted by Federal or State regulations, the City Council also grants the right and privilege to successful Grantees to provide non-cable communications services. The City Council retains all authority, not otherwise preempted, to regulate non-cable communications services to the extent necessary to assure the delivery of proposed non-cable services, if any, and that they are in compliance with all regulatory provisions of this ordinance.

e. The construction, maintenance, and operation of Grantee's cable system and all property of Grantee subject to the provisions of this ordinance shall be subject to all lawful police powers, rules, and regulations of the City. The City shall have the power at any time to order and require Grantee to remove or abate any pole, line, tower, wire, cable, guy, conduit, electric conductor, or any other structure or facility that is dangerous to life or property. In the event Grantee, after written notice, fails or refuses to act, the City shall have the power to remove or abate the same at the expense of the Grantee, all without compensation or liability for damages to Grantee.

5.16.040 Application.

A. An application for a franchise or franchise renewal under this chapter shall be in writing and accompanied by a payment to the city in an amount to be established and amended from time to time by resolution of the City Council. An application shall contain the following information:

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

2. A description of the manner in which the applicant proposes to construct, install, maintain and operate the cable system and the extent and manner in which existing or future poles or other public utilities will be used for the system;

3. A detailed description of the proposed plan of operation of the applicant which shall include, but not be limited to the following:

a) A detailed map indicating all areas to be served, how they are to be served and a proposed time schedule for the installation of all equipment necessary to become 100 percent operational, throughout the entire area to be served;

b) A detailed, informative, and referenced statement describing the actual equipment and the operational and technical standards proposed by the applicants.

4. A statement of the estimated costs of the installation of the proposed system described in paragraphs 2 and 3 of this subsection.

5. All applicants are required to clearly delineate the initial service area being proposed on a map of sufficient detail (see No. 3 above). Said map shall also indicate any and all areas that will not receive services.

6. All applicants shall agree to extend cable system upon request of any contiguous area not designated for initial service in the plan when potential subscribers can be served by extension of the cable system past dwelling units equivalent to a density of forty (40) homes per mile of street. Extension shall be at Grantee's cost. If undergrounding is required by regulation, Grantee must make installation at Grantee's expense. Where aerial extension is allowed by regulation but underground installation is requested by benefitted subscribers, the cost of undergrounding that exceeds the estimated aerial extension cost may be charged to benefitted subscribers.

7. A statement or schedule in a form approved by the city manager of proposed rates and charges to subscribers for installation and services, and a copy of the proposed service agreement between the grantee and its subscribers shall accompany the application;

8. A statement setting forth all agreements and understandings, whether written, oral or implied existing between the applicant and any person who is a party in interest with respect to the proposed franchise or the proposed cable operation. If a franchise is granted to a person posing as a front or as the representative of another person, and such information is not disclosed in the original application, such franchise is void and of no force and effect;

9. A financial statement prepared by a certified public accountant or public accountant satisfactory to the council, demonstrating applicant's financial status and its financial ability to complete the construction or reconstruction, installation, and operation of the proposed system.

10. An original application for a franchise shall include a detailed financial plan (pro forma) describing for each year of the franchise, projected number of subscribers, rates, all revenues, operating expenses, capital expenditures, depreciation schedule, income statements and a sources and uses of funds statement. All information is to be presented in the format to be prescribed by the City.

B. The council may at any time demand, and applicant shall then provide, such supplementary, additional or other information as the council deems reasonably necessary to determine whether the requested franchise should be granted.

5.16.050 Grant or refusal.

Upon consideration of any application, the council may refuse to grant the requested franchise or the council may by resolution grant a franchise for a cable system to any applicant as may appear from its application to be in the opinion of the council best qualified to render good and efficient cable service to subscribers in the proposed franchise area. The application submitted, together with any amendments, and this chapter shall constitute and form part of the franchise if granted.

5.16.060 Acceptance.

Within thirty days after the date of a resolution awarding a franchise, or within such extended period of time as the council may authorize, the grantee shall file with the city manager his written acceptance in forms satisfactory to the city attorney, of the franchise, together with the required bond and insurance policies, and his agreement to be bound by and to comply with and to do all things required of him by the provisions of this chapter and the franchise. Such acceptance and agreement shall be acknowledged by the grantee before a notary public and shall be in form and content satisfactory to, and approved by, the city attorney.

5.16.070 Conditions.

A. Any franchise granted pursuant to this chapter shall include, among other things, the following condition:

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

B. Inclusion of the statement set out in subsection A of this section in any such franchise does not limit the authority of the city to include any other reasonable condition, limitation or restriction which it deems necessary to impose in connection with a franchise granted pursuant to the authority conferred by this chapter.

5.16.080 Duration/Renewal of franchise.

A. The duration of the rights, privileges and authorizations granted in a franchise agreement shall be not to exceed twenty years from the date a franchise is awarded. A franchise may be renewed by the City upon application of the Grantee pursuant to the procedure established in sub-section b of this section and in accordance with the then applicable law.

B. Renewal.

(1) During the six-month period which begins with the 36th month before the Franchise expiration, the City may on its own initiative, and shall at the request of the Grantee, commence proceedings which afford the public appropriate notice and participation for the purpose of:

(a) Identifying the future cable-related community needs and interests;
and

(b) Reviewing the performance of the Grantee under the franchise during the then current franchise term.

(2)

(a) Upon completion of a proceeding under subsection (1), the Grantee seeking renewal of a franchise may, on its own initiative or at the request of the City, submit a proposal for renewal.

(b) Any such proposal shall contain such material as the City may require, including proposals for an upgrade of the cable system.

(c) The City may establish a date by which such proposal shall be submitted.

(3)

(a) Upon submittal by the Grantee of a proposal to the City for the

renewal of the franchise, the City shall provide public notice of such proposal and, during the 4-month period which begins on the completion of any proceedings under subsection (1), renew the franchise or, issue a preliminary assessment that the franchise should not be renewed and, at the request of the Grantee or on its own initiative, commence an administrative proceeding, after providing prompt public notice of such proceeding, in accordance with paragraph (3) (b) to consider whether--

(i) the Grantee has substantially complied with the material terms of the existing franchise and with applicable law;

(ii) the quality of the Grantee's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix, quality, or level of cable services or other services provided over the system, has been reasonable in light of community needs;

(iii) the Grantee has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the Grantee's proposal; and

(iv) the Grantee's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

- (b) In any proceeding under paragraph (3) (a), the Grantee shall be afforded notice and the Grantee and the City, or its designee, shall be afforded fair opportunity for full participation, including the right to introduce evidence (including evidence related to issues raised in the proceeding under subsection (1)) to require the production of evidence and to question witnesses. A transcript

shall be made of any such proceeding.

(c) At the completion of a proceeding under this subsection, the City shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding, and transmit a copy of such decision to the Grantee. Such decision shall state the reasons therefor.

(4) Any denial of a proposal for renewal shall be based on one or more adverse findings made with respect to the factors described in subparagraphs (i) through (iv) of subsection (3) (a), pursuant to the record of the proceeding under subsection (3).

(5) If the Grantee's proposal for renewal has been denied by a final decision of the City made pursuant to this section, or has been adversely affected by a failure of the City to act in accordance with the procedural requirements of this section, the Grantee may appeal such final decision or failure pursuant to the provisions of section 635 of the Federal Cable Communications Policy Act of 1984.

(6) Notwithstanding the provisions of subsections (1) through (5) of this section, the Grantee may submit a proposal for the renewal of the franchise pursuant to this subsection at any time, and the City may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time (including after proceedings pursuant to this section have commenced). The provisions of subsections (1) through (5) of this section shall not apply to a decision to grant or deny a proposal under this subsection. The denial of a renewal pursuant to this subsection shall not affect action on a renewal proposal that is submitted in accordance with subsections (1) through (5).

5.16.090 Payment.

Any grantee granted a franchise under this chapter shall pay to the city during the life of such franchise, a sum equal to three percent of the annual gross receipts of the grantee, payable quarterly.

5.16.100 Financial statement--Audit--Minimum payment.

A. The grantee shall file with the council within ninety days after the expiration of any fiscal year or portion thereof during which a franchise is in force, a financial statement prepared by a certified public accountant or public accountant showing in detail gross annual receipts, as defined in this chapter, of the grantee during the preceding calendar year or portion thereof. It shall be the duty of the grantee to pay to the city within fifteen days after the time of filing such statements the sum prescribed by the franchise, or any unpaid balance thereof, for the calendar year or the portion thereof covered by the statement.

B. The right is reserved to the city of audit and recomputation of any and all amounts paid under this chapter and acceptance until expiration of a period of five years following payment shall not be construed as a release or as an acknowledgment and satisfaction of any claim the city may have for further or additional amounts payable under this chapter or for the performance of any other obligations under this chapter.

C. In any year, commencing with the first full calendar year of service during which the franchise payments amount to less than twelve hundred dollars, the grantee shall pay to the city for such a year a minimum total amount of two hundred dollars.

D. In the event of any holding over after expiration or any termination of a franchise issued under this chapter, whether with or without

consent of the city, the grantee shall pay to city a compensation twice the percent of its gross annual receipts during such period as it would be required to pay under its franchise if there were no holding over.

5.16.110 Rates for service.

The grantee shall file with the city council a true and correct schedule of rates to be charged for installation and connection to its cable system and a monthly charge for cable service. Such rates shall not be changed or modified in any manner without first filing the changed or modified rates with the city council thirty days prior to the effective date of such change or modification.

The City Council shall have the authority to regulate the rates to the extent the Council is permitted to by Federal, State or local law.

5.16.120 Limitations.

A. Any franchise granted under this chapter shall be nonexclusive.

B. No privilege or exemption shall be authorized or conferred by any franchise granted under this chapter except those specifically prescribed in this chapter.

C. Any privilege claimed under a franchise by the grantee in any street, or other public property, shall be subordinate to any prior occupancy thereof for public purposes.

D. A franchise granted under this chapter shall be a privilege to be held in personal trust by the original grantee. It cannot be sold, transferred, leased, assigned or disposed of, in whole or in part, either by forced or involuntary sale, sale, merger, consolidation or otherwise, without prior consent

of the council expressed in writing. The grantee shall file with the council within thirty days prior to sale, transfer, assignment or lease of the franchise or any part thereof or any rights or privileges granted thereby, written evidence of the proposed transaction certified to by the grantee or its duly authorized officers. Any proposed assignee must show financial responsibility to carry out the terms of the franchise and must agree to comply with all of the provisions of this chapter; and provided further, that no consent or approval shall be required for a transfer in trust, by mortgage, by security agreement, or by other hypothecation as a whole, to secure an indebtedness, or for a transfer required by operation of law.

E. Any right or power in, or duty impressed upon any officer, employee, department or board of the city shall be subject to transfer by the council or by law to any other officer, employee, department or board of the city.

F. The grantee shall have no recourse whatsoever against the city for any loss, cost, expense or damage, arising out of any provisions or requirements of this chapter or its enforcement.

G. Any franchise granted under this chapter shall not relieve the grantee of any obligation involved in obtaining pole space from any department or division of the city, other agency of government, utility company, or from others maintaining poles in streets; provided, that the latter shall cooperate with the grantee to the end that only one set of poles shall be required by all.

H. Any franchise granted under this chapter is in lieu of any and all other rights, privileges, powers, immunities and authorities owned, possessed, controlled or exercisable by the grantee, or any successor to any interest of the grantee, of or pertaining to the construction, operation or maintenance of any cable system in the incorporated limits of the city, and the acceptance of a franchise under this chapter shall operate as between grantee and the city, as an

abandonment of any and all of such rights, privileges, powers, immunities and authorities within the city, to the effect that, as between the grantee and the city, any and all construction, operation and maintenance by any grantee of any cable system in the city shall be, and shall be deemed and construed in all instances and respects to be, under and pursuant to such franchise, and not under or pursuant to any other right, privilege, power, immunity or authority whatsoever.

5.16.130 Rights reserved by city.

A. Nothing in this chapter shall in any way or to any extent impair or affect the right of the city to acquire the grantee's property either by purchase or through exercise of the right of eminent domain, and nothing in this chapter shall be construed to contract away or to modify or abridge the city's right of eminent domain in respect to any grantee.

B. No franchise granted under this chapter shall be given any value before any court or other public authority in any action or proceeding brought by the city in excess of the amount of the required filing fee and any other sum paid by the grantee to city for a franchise at the time of granting.

C. There is reserved to the city every right and power which is required to be reserved or provided in this chapter by any ordinance or resolution of the city, and the grantee, by its acceptance of any franchise, agrees to be bound thereby and to comply with any action or requirements of the city in its exercise of such rights or power, enacted or established before or after the effective date of the ordinance codified in this chapter.

D. The council may do all things which are necessary and convenient in the exercise of its jurisdiction under this chapter.

E. Neither the granting of any franchise under this chapter nor any of the provisions contained in this chapter shall be construed to prevent the city from granting any identical, or similar, franchise to any other person within all or any portion of the city.

F. There is reserved to city the right to amend any section or part of this chapter so as to require reasonable additional or greater standards of construction, operation, maintenance or otherwise, on the part of the grantee for purposes of protecting the public health, safety and welfare. This provision shall not apply to commitments of a contractual nature made in a franchise agreement or franchise renewal agreements.

G. Neither the granting of any franchise nor any provision in this chapter shall constitute a bar to the exercise of any governmental right or power of city.

H. All facilities of any grantee licensed under this chapter within the city shall be available for civil defense purposes at such times as the city director of civil defense shall require.

5.16.140 Complaint procedure.

A. The city manager or the city manager's designee is specified by the City as having primary responsibility for the continuing administration of a franchise and implementation of complaint procedures.

B. A Grantee shall maintain a central office within or in close proximity to the City, which shall be open during all usual business hours, have a publicly-listed telephone with a toll-free number and sufficient lines; and be so operated that complaints and requests for repairs, billing or adjustments shall be received on a twenty-four (24) hour basis.

C. A Grantee shall maintain a repair and maintenance crew which shall respond to subscriber complaints or requests for service within twenty-four (24) hours after receipt of the complaint or request. No charge shall be made to the subscriber for this service unless such maintenance or repair is required as a result of damage caused by subscriber.

D. A Grantee shall establish procedures for receiving, acting upon, and resolving subscriber complaints to the satisfaction of the city manager's office. A Grantee shall furnish a notice of such procedures to each subscriber at the time of initial subscription to the system and annually thereafter.

Grantee's service call procedures shall contain provisions to protect the interests of subscribers. In the event that the Grantee or its employee determines that Grantee's cable system is not responsible for any given problem which has resulted in a service call (i.e., subscriber equipment is at fault), the subscriber shall have the right to have this contention demonstrated through the use of an additional television receiver comparison. A standard television receiver will be used in the subscriber's home to allow a direct A/B comparison of performance.

E. A Grantee shall keep a maintenance service log which will indicate the nature of each service complaint, the date and time it was received, the disposition of said complaint and the time and date thereof. This log shall be made available for periodic inspection by representatives of the city manager. All service complaint entries shall be retained on file for a period consisting of the most recent three (3) years.

F. When there have been similar complaints made or when there exists other evidence, which, in the judgment of the city manager casts doubt on the reliability or quality of cable service, the city manager shall have the right and authority to compel a Grantee to test, analyze, and report on the performance of

the system. Such report shall be delivered to the city manager no later than fourteen (14) days after the city manager formally notifies the Grantee and shall include the following information: the nature of the complaints which precipitated the special tests; what system components were tested, the equipment used, and procedures employed in said testing; the results of such tests; and the method in which said complaints were resolved.

G. The city manager may require that tests and analyses shall be supervised by a professional engineer not on the permanent staff of a Grantee. The aforesaid engineer should sign all records of the special tests and forward to the city manager such records with a report interpreting the results of the tests and recommending actions to be taken by a Grantee and the City.

H. The City's right under this section shall be limited to requiring tests, analyses, and reports covering specific subjects and characteristics based on said complaints or other evidence when and under such circumstances as the City has reasonable grounds to believe that the complaints or other evidence requires that tests be performed to protect the public against substandard cable service.

I. The city manager is authorized and empowered to adjust, settle or compromise any controversy or charge arising from the operations of any grantee under this chapter, either on behalf of the city, the grantee or any subscriber in the best interest of the public.

J. Either the grantee or any member of the public who may be dissatisfied with the decision of the city manager may appeal the matter to the council for hearing and determination.

K. The council may accept, reject or modify the decision of the city manager and the council may adjust, settle or compromise any controversy or cancel any charge arising from the operations of any grantee or from any provision of this chapter.

5.16.150 Refunds.

a. Subscribers not satisfied that services have been provided as outlined in this ordinance and the Franchise Agreement shall be encouraged to notify the System Manager. The Grantee shall work with the subscriber to resolve the problem within 48 hours, and upon request by a subscriber, the Grantee shall credit the subscriber's account on a pro rata basis for loss of service commencing 48 hours after notification of the Grantee.

b. A grantee shall at the time of initial subscription to the system and annually thereafter furnish a notice to subscribers of their right to a refund for any loss or interruption of service for 48 hours or more.

5.16.160 Liquidated damages.

By acceptance of the franchise granted by the City, a Grantee understands and shall agree that failure to comply with any time and performance requirements as stipulated in this ordinance and franchise agreement will result in damage to the City, and that it is and will be impracticable to determine the actual amount of such damage in the event of delay or non-performance; the franchise agreement shall include provisions for liquidated damages to be paid by the Grantee in amounts set forth in the franchise agreement and chargeable to the security fund for the following concerns:

a. Failure to complete system construction or reconstruction in accordance with Section 5.16.170 and Section 5.16.430 unless the Council specifically approves the delay by motion or resolution, due to the occurrence of conditions beyond Grantee's control, a Grantee shall pay five hundred dollars (\$500.00) per day for each day or part thereof, the deficiency continues.

b. Failure to provide upon written request, data, documents, reports, information or to cooperate with City during an application process or cable system review, a Grantee shall pay fifty dollars (\$50.00) per day for each day or part thereof, the violation occurs or continues.

c. Failure to test, analyze and report on the performance of the system following a written request pursuant to this ordinance, a Grantee shall pay to City one hundred dollars (\$100.00) per day for each day or part thereof, that such noncompliance continues.

d. For failure to provide in a continuing manner the broad categories of services proposed in the accepted application unless the Council specifically approves Grantee a delay or change, or the Grantee has obtained modification of its obligation under Section 625 of the Cable Communications policy Act of 1984; Grantee shall pay to the City five hundred dollars (\$500.00) per day for each day or part thereof that each noncompliance continues.

e. Forty-five (45) days following adoption of a resolution by the City Council in accordance with Section 5.16.270 determining a failure of Grantee to comply with operational, maintenance or technical standards, Grantee shall pay to the City five hundred dollars (\$500.00) for each day or part thereof, that such non-compliance continues.

f. Any other action or non-action by the Grantee as agreed upon between the City and Grantee and set forth in the franchise agreement. Nothing in this section shall preclude further liquidated damages as agreed upon by the parties in the franchise agreement.

5.16.170 Commencement of construction and service.

A. Construction Plan and Schedule

(1) Map and Plan

Grantee shall submit a construction plan or reconstruction plan which shall be incorporated by reference and made a part of the franchise agreement. The plan shall consist of a map of the entire franchise area and shall clearly delineate the following:

(a) The areas within the franchise area where the cable system will be initially available to subscriber including a schedule of construction for each year that construction or reconstruction is proposed.

(b) Areas within the franchise area where extension of the cable system cannot reasonably be done due to lack of present or planned development or other similar reasons, with the areas and the reasons for not serving them clearly identified on the map.

B. Upon acceptance of any franchise, the grantee shall immediately initiate action to obtain all permits, licenses, easements, variances and any other authorizations which are required or necessary in the conduct of its business, including but not limited to any utility joint use attachment agreements, microwave carrier licenses, any authorizations required to import distant signals, and any other permits, licenses and authorizations to be granted by duly constituted regulatory agencies having or asserting jurisdiction over the operation of the cable system, any associated microwave transmission facilities, or any other associated facility, and the grantee shall proceed with due diligence until all such matters are obtained.

Copies of all petitions, applications and communications submitted by the grantee to the Federal Communications Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable operations authorized pursuant to its franchise, shall also be submitted simultaneously to the city by the grantee.

C. Within ninety days after obtaining all the required or necessary permits, licenses, easements, variances and any other authorizations referred to in subsection A of this section, the grantee shall commence construction and installation of the cable system.

D. Within six months after building permits are granted for a particular area, the grantee shall proceed to render initial services to subscribers, and the completion of construction and installation shall be pursued with reasonable diligence, not to exceed fifteen months from the date of the granting of the building permits for the particular area to be served.

E. Failure to do any of the requirements of subsections A, B, C and D of this section within the time specified except as provided in subsection F of this section shall be grounds for termination of the franchise.

F. The council may in its discretion extend the time for the grantee, acting in good faith, to do any act required under this section. The time for commencement of construction and installation, or the rendering of service to subscribers, initially or thereafter, shall be extended or excused, as the case may be, for any period during which the grantee experiences delay or interruptions due to any of the following circumstances if reasonably beyond its control: necessary utility changes or rearrangements, governmental or regulatory restrictions or requirements, labor strikes, lockouts, war (declared or undeclared), national emergency, fire, earthquake, the elements and acts of God.

G. Grantee shall extend cable system upon request of any contiguous area not designated for initial service in the plan when potential subscribers can be served by extension of the cable system past dwelling units equivalent to a density of forty (40) homes per mile of street. Extension shall be at Grantee's cost. If undergrounding is required by regulation, Grantee must make installation at Grantee's expense. Where aerial extension is allowed by

regulation, but underground installation is requested by benefitted subscribers, the cost of undergrounding that exceeds the estimated aerial extension cost may be charged to benefitted subscribers.

5.16.180 Forfeiture and termination.

a. In addition to all other rights and powers retained by the City under this ordinance or otherwise, the City reserves the right to forfeit and terminate a franchise and all rights and privileges of a Grantee in the event of a material breach of its terms and conditions. In interpreting this ordinance, material provisions shall include all labeled as such and all others, which, under all the facts and circumstances indicated, are a significant provision of the franchise agreement. A material breach by Grantee shall include but shall not be limited to the following:

(1) Failure to begin or complete system construction, reconstruction or system extension, or system improvement as provided under the franchise;

(2) Failure to provide the broad categories of services promised; assuming Grantee has unsuccessfully pursued whatever recourse is available under Section 625 of the Cable Communications Policy Act of 1984;

(3) Failure to restore service after ninety-six (96) consecutive hours of interrupted service, except when approval of such interruption is obtained from the City; or

(4) Material misrepresentation of fact in the application for or negotiation of the franchise.

b. The foregoing shall not constitute a material breach if the violation occurs but it is without fault of a Grantee or occurs as a result of circumstances beyond its control. Grantee shall not be excused by mere economic hardship nor

by misfeasance or malfeasance of its shareholders, directors, officers, or employees.

c. The City may make a written demand that a Grantee comply with any such provision, rules, order, or determination under or pursuant to this ordinance and franchise agreement. If the violation by the Grantee continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the City may place the issue of termination of a franchise before the City Council. The City shall cause to be served upon Grantee at least twenty (20) days prior to the date of such a Council meeting, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and issue which the Council is to consider.

d. The City Council shall hear and consider the issue and shall hear any person interested therein, and shall determine in its discretion, whether or not any violation by the Grantee has occurred.

e. If the City Council shall determine the violation by a Grantee was the fault of Grantee and within its control, the Council may by resolution declare that the franchise of the Grantee shall be forfeited and terminated unless there is compliance within such period as the City Council may fix, such period not to be less than sixty (60) days, provided no opportunity for compliance need be granted for fraud or misrepresentation.

f. The issue of forfeiture and termination shall automatically be placed upon the Council agenda at the expiration of the time set by it for compliance. The Council then may terminate a franchise forthwith upon finding that Grantee has failed to achieve compliance or may further extend the period in its discretion.

5.16.190 Security Fund.

a. Within thirty (30) days after the award or renewal of a franchise, a Grantee shall deposit with the City a corporate surety bond in the amount of \$50,000. The bond shall be used to insure the faithful performance by a Grantee of all provisions of this ordinance and resulting franchise agreement; and compliance with all orders, permits and directions of any agency, commission, board, department, division or office of the City having jurisdiction over its acts or defaults under a franchise and the payment by the Grantee of any penalties liquidated damages, claims, liens and taxes due the City which arise by reason of the construction, operation or maintenance of the system, including cost of removal or abandonment of any property of Grantee.

b. The corporate surety bond shall be maintained at \$50,000 during the entire term of a franchise, even if amounts have to be withdrawn pursuant to subdivision a. or c. of this section. The Grantee shall keep the same in force and effect at all times throughout the existence of the franchise and thereafter until Grantee has liquidated all of its obligations with the City that may have arisen from the acceptance of the franchise ordinance by Grantee or from the exercise of any right or privilege granted hereunder, including the removal of all poles, wires, cables, underground conduits, manholes, and other conductors and fixtures incident to the maintenance and operation of its cablesystem, should such removal be required by City Council or undertaker. by Grantee upon the termination of the franchise.

c. If a Grantee fails to pay to the City any compensation within the time fixed herein; or fails after ten (10) days' notice to pay to the City any taxes due and unpaid; or fails to repay the city within ten (10) days any damages, costs or expenses which the City is compelled to pay by reason of any act or default of

the Grantee in connection with a franchise; or fails after ten (10) days' notice by the City of such failure to comply with any provision of a franchise which the City reasonably determines can be remedied by demand on the corporate surety bond. The City may immediately require payment of the amount thereof with interest and any penalties from the corporate surety bond.

d. The rights reserved to the City with respect to the corporate surety bond are in addition to all other rights of the City whether reserved by a franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such corporate surety bond shall affect any other right the City may have.

5.16.200 Construction bond.

a. Within thirty (30) days after the award or renewal of a franchise, a Grantee shall obtain and maintain at its cost and expense, and file with the City Clerk, a corporate surety bond in a company authorized to do business in the State of California and found acceptable by the City Attorney, in the amount of five hundred thousand dollars (\$500,000) to guarantee the timely construction, rebuild or reconstruction and full activation of the cable system and the safeguarding of damage to private property and restoration of damages incurred with utilities.

The bond shall provide but not be limited to the following condition: There shall be recoverable by the City, jointly and severally from the principal and surety, any and all damages, loss or costs suffered by the City resulting from the failure of a Grantee to satisfactorily complete construction, rebuild, or reconstruction and fully activate the cable system throughout the franchise area pursuant to the terms and conditions of this ordinance and the franchise agreement.

b. Any extension to the prescribed construction time limit must be authorized by the Council. Such extension shall be authorized only when the Council finds that such extension is necessary and appropriate due to causes beyond the control of a Grantee.

c. The construction bond shall be terminated only after the Council finds that a Grantee has satisfactorily completed initial construction and activation or reconstruction of the cable system pursuant to the terms and conditions of this ordinance and the franchise agreement.

d. The rights reserved to the City with respect to the construction bond are in addition to all other rights of the City, whether reserved by this ordinance or authorized by law, and no action, proceeding or exercise of a right with respect to such construction bond shall affect any other rights the City may have.

e. The construction bond shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be cancelled by the surety nor the intention not to renew be stated by the surety until sixty (60) days after receipt by the City, by registered mail, of written notice of such intent to cancel or not to renew."

5.16.210 Construction practices.

A. Any poles, cable lines, wires, conduits or other properties of the grantee shall be constructed or installed in streets in accordance with good engineering practice at such locations and in such manner as is approved by the director of public works and shall conform to all applicable codes and laws.

B. The grantee shall not install or erect any facilities or apparatus in or on other public property, places or rights-of-way, or within any privately-owned

area within the city which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by the city, except those installed or erected upon existing or future public utility facilities, without obtaining the prior written approval of the director of public works and the owner-subdivider.

C. In those areas and portions of the city where the transmission and distribution facilities of both the public utility providing telephone service and those of the utility providing electric service have been or are to be placed underground, then the grantee, upon written request by the director of public works so to do, shall likewise initially construct, install, operate and maintain its transmission and distribution facilities underground. For the purposes of this subsection, "underground" includes a partial underground system. Amplifiers in the grantee's transmission and distribution lines may be in appropriate housings as approved by the director of public works. The city shall not in any manner be responsible for any costs incurred by any grantee in placing his property underground.

5.16.220 Removal or abandonment of facilities.

A. . In the event that the use of any part of the cable system is discontinued for any reason for a continuous period of six months, or in the event such system or property has been installed in any street or public place without complying with the requirements of this chapter, or the franchise has been terminated, cancelled or has expired, the grantee shall promptly, upon being given ten days' written notice, remove from the streets or public places all such property and poles of such system other than any which the director of public works may permit to be abandoned in place. In the event of such removal, the

grantee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the director of public works.

B. Any property of the grantee remaining in place sixty days after the termination, forfeiture or expiration of the franchise shall be considered permanently abandoned. The director of public works may extend such time.

C. Any property of the grantee to be abandoned in place shall be abandoned in such a manner as the director of public works prescribes. Subject to the provisions of any joint use attachment agreement, upon permanent abandonment of the property of the grantee in place, the property shall become that of the city and the grantee shall submit to the director of public works an instrument in writing, to be approved by the city attorney, transferring to the city the ownership of such property.

5.16.230 Changes required by public improvements.

The grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place, any property of the grantee when required by the director of public works by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines and tracks or any other type of structures or improvements by public agencies; provided, however, that the grantee shall in all such cases have the privilege and be subject to the obligations to abandon any property of the grantee in place, as provided in this chapter.

5.16.240 Failure to complete work.

Upon failure of the grantee to commence, pursue or complete any work required by law or by the provisions of this chapter or by its franchise to be done in any street or other public place, within the time prescribed, and to the satisfaction of the director of public works, the director of public works may, at his option, cause such work to be done and the grantee shall pay to the city the cost thereof in the itemized amounts reported by the director of public works to the grantee within thirty days after receipt of such itemized report.

5.16.250 Insurance.

A. The grantee shall indemnify the city, its officers and its employees against all claims, demands, actions, suits and proceedings by others, against all liability to others, and against any loss, cost and expense resulting therefrom, including reasonable attorneys' fees, arising out of the exercise and enjoyment of its franchise irrespective of the amount of the comprehensive liability insurance policy required under this section.

B. The grantee shall at all times during the existence of any franchise issued under this chapter maintain in full force and effect, at its own cost and expense, a general comprehensive liability insurance policy, in protection of the city, its officers, boards, commissions, agents and employees, in a company approved by the city attorney and in a form satisfactory to the city attorney, protecting the city and all persons against liability for loss or damage for personal injury, death and property damage, occasioned by the operations of the grantee under such a franchise, and for property damage, provided that the maximum amount for which liability shall be assumed, and requirements for the City of Lodi being named an additional insured, and any other insurance requirements shall be as set and required from time to time by resolution of the City Council. A copy

of such policy or policies, or certificates of insurance showing the existence of such insurance coverage, shall be filed by the grantee with the City Clerk.

C. The policies mentioned in the subsection B of this section shall name the city, its officers, boards, commissions, agents and employees, as additional insureds, shall contain a contractual liability endorsement approved by the city attorney and shall contain a provision that a written notice of any cancellation or reduction in coverage of such policies shall be delivered to the city manager thirty days in advance of the effective date of the cancellation or reduction.

5.16.260 Right of inspection--Plans and records. A. At all reasonable times, the grantee shall permit any duly authorized representative of the city to examine all property of the grantee, together with any appurtenant property of the grantee situated within or without the city, and to examine and transcribe any and all maps and other records kept or maintained by the grantee or under its control which deal with the operations, affairs, transactions or property of the grantee in relation to its franchise. If any maps or records are not kept in the city, and upon reasonable request they are not made available in the city, and if the council determines that an examination of them is necessary or appropriate, then all travel and maintenance expense necessarily incurred in making such examination shall be paid by the grantee.

B. The grantee shall prepare and furnish to the director of public works and the city manager at the times and in the form prescribed by either of such officers, such reports with respect to its operations, affairs, transactions or property, as may be reasonable, necessary or appropriate to the performance of any of the rights, functions or duties of the city or any of its officers in connection with the franchise.

C. The grantee shall at all times make and keep in the city full and complete plans and records showing the exact location of all cable system equipment installed or in use in streets and other public places in the city.

D. When any portion of the cable system is to be installed on public utility poles and facilities, certified copies of the agreements for such joint use of poles and facilities shall be filed with the director of public works.

5.16.270 Service standards.

a. A Grantee shall put, keep, and maintain all parts of the system in good condition throughout the entire franchise period.

b. Upon termination of service to any subscriber, a Grantee shall promptly remove all its facilities and equipment from the premises of such subscriber upon subscriber's request, unless said service serves multiple users.

c. Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use.

d. Grantee shall not allow its cable or other operations to interfere with television reception of persons not served by Grantee, nor shall the system interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents of the City.

e. A Grantee shall continue through the term of the franchise to maintain the technical, operational, and maintenance standards and quality of service set forth in this ordinance and franchise agreement. Should the City find, by resolution, that a Grantee has failed to maintain these standards and quality of service, and should it, by resolution specifically enumerate improvements to be

made, a Grantee shall make such improvements. Failure to make such improvements within forty-five (45) days of such resolution will constitute a material breach of condition for which the remedy of Section 5.16.160 is applicable. (Liquidated Damages.)

5.16.280 Continuity of service mandatory.

a. It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to a Grantee are honored.

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

b. In the event Grantee fails to operate the system for ninety-six (96) consecutive hours without prior approval of the City or without just cause, the City may at its option, operate the system or designate an operator until such time as Grantee restores service under conditions acceptable to the City or a permanent operator is selected. If the City is required to fulfill this obligation for a Grantee, the Grantee shall reimburse the City for all reasonable costs or damages in excess of revenues from the system received by the City that are the result of the Grantee's failure to perform.

5.16.290 Performance evaluation sessions.

a. The City and a Grantee shall hold scheduled performance evaluation sessions within thirty (30) days of the fourth, eighth, twelfth, and sixteenth

anniversary dates of a Grantee's award of the franchise and as may be required by federal and state law.

b. Special evaluation sessions may be held at any time during the term of a franchise at the request of the City or the Grantee.

c. All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with legal notice. Grantee shall notify its subscribers of all evaluation sessions by announcement on its system between the hours of 7:00 p.m. and 9:00 p.m. for five (5) consecutive days preceding each session.

d. Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to, service rate structures; franchise fee; liquidated damages; free or discounted services; application of new technologies; system performance; services provided; programming offered; customer complaints; privacy, amendments to this ordinance; judicial and FCC rulings; line extension policies; and Grantee or City rules.

5.16.300 New developments.

a. Subsequent to each Performance Evaluation Session as set forth in Section 5.16.290, the City Council shall have the authority to order a public hearing on the provision of additional channel capacity by Grantee or on the inclusion in the Grantee's cable system of "state of the art" technology or upgraded facilities. Notice of such hearing shall be provided to Grantee and the Public not later than thirty (30) days prior to such hearing.

b. If after such hearing the City Council determines that (1) there exists a reasonable need and demand for additional channel capacity and/or state of the art technology or upgraded facilities, and (2) provision has been made or will be made for adequate rates which will allow Grantee a fair rate of return on its

investment (including the investment required to provide the additional channels and/or the state-of-the-art technology or upgraded facilities), and (3) will not result in economic loss for the Grantee, the City Council may order Grantee to provide a specified number of additional channels and/or specified state-of-the-art technology or upgraded facilities. Without implying any limitations as to other provisions of this ordinance, this Section is deemed a material provision within the meaning of Section 5.16.180 of this ordinance.

5.16.310 Filings with city. All matters provided in this chapter to be filed with the city, unless provided otherwise in this chapter, shall be filed with the city manager.

5.16.320 Fiscal Report.

The Grantee shall file annually with the city manager no later than one hundred twenty (120) days after the end of the Grantee's fiscal year, a copy of a financial report applicable to the cable system serving Lodi, or its corporate annual report, including an income statement applicable to its operations during the preceding twelve (12) month period, a balance sheet, a statement of its properties devoted to the cable system operations, by categories, giving its investment in such properties on the basis of original cost, less applicable depreciation, a statement of sources and application of funds; and a statement of current subscribers and penetration reached for each class of cable service. These reports shall be certified as correct by an authorized officer of Grantee and there shall be submitted along with them such other reasonable information as the City shall request.

5.16.330 Refusal of service.

Subject to Section 5.16.130, no person or entity in the existing service area of the grantee shall be arbitrarily refused service; provided, however, that the grantee shall not be required to provide service to any subscriber who does not pay the applicable connection fee or monthly service charge or any other charges as provided by this chapter or any resolution granting the franchise.

5.16.340 Service contract.

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

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

B. The form of the grantee's contract with its subscribers, shall be subject to approval of the city manager with respect to the installation of this provision.

5.16.350 Television sale or repair.

The grantee or any of its employees during their course of employment shall not engage in the business of selling or leasing television or other receivers which make any use of signals transmitted by its system, nor shall the grantee or any of its employees during the course of their employment engage in the repair of such receivers or the sale of parts for the same. This restriction shall not apply to a converter that increases the capacity of the system that may be sold or leased by the grantee to a subscriber.

5.16.360 Free service.

The grantee shall provide free of charge a service drop for cable service for all public and nonprofit private schools, city police and fire stations, city recreation centers, and any additional municipal buildings designated by the city council, provided that such locations are passed by transmission cable maintained for the service of paying subscribers. If the service drop exceeds one hundred fifty feet, the grantee may charge for the excess footage on the basis of time and materials.

5.16.370 Moving of buildings.

The grantee shall, on the request of any person holding a building moving permit issued by the city, temporarily raise or lower its wires to permit the moving of buildings. The actual expense of such temporary removal or raising or lowering of wires shall be paid by the permittee. The grantee shall be given not less than five working days advancenotice to arrange for such temporary wire changes.

5.16.380 Unauthorized connections -- Tampering.

A. It is unlawful for any person, firm or corporation to make any unauthorized connection, whether physically, acoustically, inductively, electronically or otherwise, with any part of a franchised cable system within the city for the purpose of taking or receiving television signals, radio signals, pictures, programs, sound or electronic impulses of any kind for the purpose of enabling himself or others to receive any such television signal, radio signal, picture, program, sound or electronic impulses.

B. It is unlawful for any person, without the consent of the grantee, to willfully tamper with, remove, obstruct or injure any cables, wires, devices or equipment used for the distribution of television signals, radio signals, pictures, programs, sound or electronic impulses of any kind.

5.16.390 Transfers and assignments.

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

No such consent shall be required for a transfer in trust, mortgage, or other hypothecation as a whole or in part to secure an indebtedness.

The proposed assignee must show technical ability, financial capability, legal qualifications and general character qualifications as determined by the City and must agree to comply with all provisions of the franchise and such conditions as may be prescribed by Council expressed by resolution. City shall be deemed to have consented to a proposed transfer or assignment in the event its refusal to consent is not communicated in writing to Grantee within one hundred twenty (120) days following receipt of written notice of the proposed transfer or assignment.

b. The Grantee shall promptly notify the City of any actual or proposed change in or transfer of, or acquisition by any other party of, control of the Grantee. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. Every change, transfer, or acquisition of control of the Grantee shall make the franchise subject to cancellation unless and until the City shall have consented thereto,

which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the City may inquire into the qualifications of the prospective controlling party and the Grantee shall assist the City in any such inquiry.

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

d. The consent or approval of the City Council to any transfer of the franchise shall not constitute a waiver or release of the rights of the City in and to the streets, and any transfer shall by its terms, be expressly subject to the terms and conditions of a franchise.

e. In any absence of extraordinary circumstances, the City will not approve any transfer or assignment of a franchise prior to substantial completion of construction or reconstruction of proposed system.

f. In no event shall a transfer of ownership or control be approved without successor in interest becoming a signatory to the franchise agreement.

5.16. 400 Access channels.

a. Each cable system franchised by the City of Lodi shall provide at least one (1) channel dedicated to access for use by the public as well as governmental and educational agencies.

b. If the access channel is being utilized more than eighty percent (80%) of the time between 4:00 p.m. and 11:00 p.m. for twelve (12) consecutive weeks, Grantee shall, upon written notice from the City, make additional community access channel(s) available for the same purposes(s), with a maximum of three (3) community access channels to be dedicated for these said purposes(s).

c. Nothing in this section shall require Grantee to construct additional channel capacity to the system for the sole purpose of providing additional access channels.

d. Whenever any access channel is utilized less than four (4) hours per day for six (6) days per week for twelve (12) consecutive weeks, the Grantee may be permitted to utilize unused access channel capacity for different and additional purposes, under rules and procedures established by the City.

e. Grantee shall record all requests for use of access channel. Whenever such records indicate in the opinion of the City Council that an excessive number of people or programs are being turned away for lack of available access channel capacity; or whenever the criteria in paragraph (b) are exceeded for any one of the existing access channel uses, those access channels which have been permitted by the City for "interim" use by a Grantee shall each be restored to public, governmental or educational use as applicable.

5.16.410 Waivers.

a. Any provision of this Ordinance may be waived at the sole discretion of the City by resolution of the City Council.

b. Grantee may submit a request for waiver to the City Council at any time during the franchise term. Such request for waiver may, at the sole discretion of the City Council, be set for public hearing and a decision shall be made within one hundred and twenty (120) days following the submission. Procedures for modification of franchise obligations shall be in compliance with Section 625 of the Cable Communications policy Act of 1984.

c. The City Council may authorize the economic, technical or legal evaluation of such waiver request and Grantee shall be required to reimburse the City for any expenditures incurred by City in connection with such evaluation.

d. This section is enacted solely for the convenience and benefit of the Grantor and shall not be construed in such a manner as to create any right or entitlement for the Grantee.

5.16.420 Required services and facilities.

a. A franchise application shall include a description of the grantee's system design and a description of the broad categories of programming and services being offered, including optional premium services, a description of facilities being proposed for local origination programming, and facilities being offered to various community institutions. The offer of the broad categories of programming and services contained within a Grantee's application shall be deemed a binding offer of such Grantee for and to the benefit of the City and the subscribers of Grantee. In the event a program originator ceases to provide a service, or in the event the Grantee determines that other cable services may be of greater benefit to subscribers, the Grantee may, subject to subsections b and c, substitute or drop such services.

b. The system, after the incorporation of such substitute services, shall satisfy the warranty made by Grantee to subscribers and potential subscribers in its application for a franchise. The City Council, on behalf of system subscribers, shall have the right to review any substitution of service or change in broad categories of programming that the Grantee has made and may order a change therein if it determines, after due hearing on notice, that the warranty has been violated or that certain broad categories of programming and services that were committed by Grantee in its Proposal are not being delivered. Any such order shall issue only after a public hearing has been scheduled and held; and written notice of such hearing shall have been provided to the Grantee and to the

public at least 30 days prior to such hearing. Any such order may be enforced by an appropriate action in the Courts of California or of the United States. A Grantee shall not, in relation to this section, be deemed to have waived any right accorded to a franchised cable television operator arising under the First Amendment to the Constitution of the United States, or under the Cable Communications Policy Act of 1984.

c. Notwithstanding subsections a and b, a Grantee may, in accordance with the Cable Communications Policy Act of 1984, upon 30 days' advance notice to the City, rearrange, replace or remove a particular cable service required by the franchise if:

(1) such service is no longer available to the Grantee; or

(2) such service is available to the Grantee only upon the payment of a royalty required under section 801(b)(2) of title 17, United States Code, which the Grantee can document:

(a) is substantially in excess of the amount of such payment required on the date of the Grantee's offer to provide such service, and

(b) has not been specifically compensated for through a rate increase or other adjustment.

Notwithstanding subsections a and b, a Grantee may take such actions to rearrange a particular service from one service tier to another, or otherwise offer the service, if the rates for all of the service tiers involved in such actions are not subject to regulation.

Section 5.16.430 Construction and technical standards.

a. Compliance with construction and technical standards.

Grantee shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinances and construction standards of the City

of Iodi; The Standards of Good Engineering Practices for Measurements on Cable Television Systems, published by the National Cable Television Association, 1983; and detailed standards submitted by Grantee as part of its application, which standards are incorporated by reference in the franchise agreement. In addition, Grantee shall provide the City, upon request, with a written report of the results of Grantee's annual proof of performance tests. In the event of the repeal of FCC Rules and Regulations, Part 76, Grantee shall pay the costs incurred by the City for any technical assistance deemed necessary by the City for obtaining independent verification of technical compliance with all standards. This includes the costs that may be incurred by the City for checking compliance during the evaluations required in Section 5.16.290.

b. Additional specifications

Construction, installation and maintenance of the cable system shall be performed in an orderly and workmanlike manner. All cables and wires shall be installed, where possible, parallel with and in the same manner as electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations. Underground installations shall be in conformance with applicable codes.

Grantee shall at all times comply with:

- (1) National Electrical Safety Code (National Bureau of Standards);
- (2) National Electrical Code (National Bureau of Fire Underwriters);
- (3) Bell System Code of Pole Line Construction; and
- (4) The Standards of Good Engineering Practices for Measurements on Cable Television Systems (National Cable Television Association), 1983.

Furthermore, the system shall not endanger or interfere with the safety of persons or property in the franchise area or other areas where the Grantee may have equipment located.

SECTION 2. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 3. This ordinance shall be published one time in the "Lodi News Sentinel", a daily newspaper of general circulation printed and published in the City of Lodi and shall be in force and take effect thirty days from and after its passage and approval.

Approved this day of

MAYOR

Attest:

ALICE M. REIMCHE
City Clerk

State of California
County of San Joaquin, ss.

I, Alice M. Reimche, City Clerk of the City of Lodi, do hereby certify that Ordinance No. _____ was introduced at a regular meeting of the City Council of the City of Lodi held _____ and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held _____ by the following vote:

Ayes: Council Members -

Noes: Council Members -

Absent: Council Members -

Abstain: Council Members -

I further certify that Ordinance No. _____ was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

ALICE M. REIMCHE
City Clerk

Approved as to Form

RONALD M. STEIN
City Attorney

TO: The Honorable Mayor and
Members of the City Council

FROM: City Manager

SUBJECT: Cable Television Ordinance

The attached letter written by Ms. Mary Helen Barro, General Manager, King Videocable, addressed to the cable company's attorney, Mr. Robert Mullen, provides an overview of the current procedures relative to customer service calls. Mr. Mullen asked that this memo be distributed to City Councilmembers prior to tomorrow night's meeting to allow sufficient time for review.



King Videocable Company

16 December 1985

Mr. Robert H. Mullen, Esq.
Mullen, Sullivan & Newton
1111 West Tokay Street
Lodi, California 95240

COPY

Dear Bob:

The following will provide you with an overview of our current procedures relative to customer service calls, along with an update as to recent improvements made throughout the system in this regard.

Additionally, we have prepared an estimate of costs which would be incurred by King Videocable, and in turn our subscribers, should the City Council request that we augment our present system of staffing.

CURRENT STATUS - CUSTOMER SERVICE CALLS

We have made major improvements here, following our "tune-up" of the system. At present we are scheduling same-day or next-day appointments with no difficulty. For customers who work we schedule either a first or last appointment of the day. Example: Either between 8:00 AM and 9:00 AM or between 4:00 PM and 5:00 PM, to minimize the stay-at-home time for customers. Another alternative we arrange is to call the customer approximately 15 to 20 minutes before our field representative will arrive at the customer's home. The majority of customers are satisfied with either an AM or PM appointment. The above arrangements take care of about 99.5% of our requests for service calls. Should a customer not be able to be home between 8:00 AM and 5:00 PM we will then schedule an appointment as soon after 5:00 PM as possible. We do try to minimize these calls for our daytime crew, however, in order to minimize overtime pay expenses.

Afterhours and weekend requests for service are handled by our stand-by personnel. Calls are answered by our telephone answering service, who then calls our stand-by Technician.

Our stand-by technician is called immediately under the following conditions:

1. Any individual reporting either "no cable" or "snow on all channels."
2. Any area outage, or five (5) or more calls from a specific area reporting a similar reception problem.
3. Any emergency situation reported by the police, fire department, or other

emergency response agency or public utilities which require cooperation/ assistance from King Videocable, regardless of the hour.

4. After 9:00 PM, seven days per week, the stand-by technician is called for those cases involving area outages and emergencies only. Individual calls for "no cable" or "snow on all channels" are handled as soon as possible after daybreak the following morning. Customers with minor break-up of pictures on one or more channels are scheduled on a first-come, first-served basis the next day, Monday through Friday.

Please keep in mind that to send a technician out after dark on calls which require climbing poles and checking mid-strand sections of cable/amplifiers is extremely dangerous, and that our staff often require daylight in order to complete repairs.

WEEKEND SERVICE CALLS

King Videocable has attempted to provide weekend installations and service calls for our customers, but with very poor results. Regretably, customers make appointments and then fail to stay home. This results in a great unnecessary expense for the company, and in turn, our subscribers.

From June 1, 1985 through December 1, 1985 we experienced the following percentage of customers not at home to keep appointments:

<u>DAYS OF THE WEEK</u>	<u>INSTALLATIONS</u>	<u>SERVICE CALLS</u>
Monday - Friday	10%	10%
Weedends	30 to 40%	40 to 50%

During this time we also kept our offices open on Saturdays for walk-in customers. At first, only one or two per day came in. Later a few more, but never more than five or six persons came in during any given day, for the entire period.

As a result, we have informed our customers that our offices would no longer be open on weekends, effective December 1, 1985. While we do respond to "no cable", "snow on all channels", area outages and emergencies evenings and on weekends, we no longer schedule appointments for minor service and installations after hours and on weekends. TO DATE WE HAVE HAD NO COMPLAINTS ABOUT THIS CHANGE IN POLICY.

COMPARISON OF KING VIDEOCABLE/PACIFIC BELL/P.G.& E. RESPONSE POLICIES

King Videocable's service response guidelines compare very favorably with those of the telephone and gas companies, which follow:

Pacific Bell

The telephone company will no longer come to the home to service telephone equipment unless their records indicate that a customer is leasing their equipment. If there is static on the line or phone service is totally out, the telephone company will respond as follows:

Mr. Robert H. Mullen, Esq.

16 December 1985

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1. AM or PM appointments are scheduled on a first-come, first-served basis. Commercial customers are given a 4-hour block of time, while residential customers are given a 6-hour block of time during which the repairman will arrive, depending on the time of day the problem is reported, Monday thru Friday.
2. The repair crews are on duty from 8:00 AM to 6:00 PM. Telephones are answered between 7:00 AM and 9:00 PM by a combination of office and part-time office personnel. After 11:00 PM an on-call individual gets the call. Customers who call after 8:00 PM evenings must wait until the next day for repairs, beginning at 8:00 AM.
3. The only exception to the above policy is a "critical service business" such as a hospital, police, fire department, etc., or an individual with a medical emergency situation.
4. The telephone company will make appointments for service Saturdays, if a customer cannot be helped during the week. However, the only customers who will receive repair service on Sundays, are those noted in item 3 above, i.e. critical service or medical emergency cases.

P.G. & E.

Usually, P.G. & E. likes to schedule appointments for the next day, with the customer waiting between 9:00 AM and 5:00 PM, Monday through Friday. However, they do have alternatives as follows:

1. P.G. & E. will respond to an emergency round the clock, with a minimum response block of two hours.
2. Anything short of an emergency gets next-day service, preferably all-day waits. They will schedule AM or PM. If a customer calls in the AM, sometimes they can get a PM appointment for the same day. But usually, it's a next-day AM or PM arrangement. Non-emergency calls are not set on Sundays.

However, even with P.G. & E., emergencies are scheduled according to the work-load for that date, regardless of which day of the week it is.

AUGMENTING KING VIDEOCABLE STAFF/SERVICE

Under our current system, with full staff and office hours available Monday through Friday, 8:30 AM to 5:00 PM; with a telephone answering service and one stand-by technician available the balance of the 24-hour period, our annual costs are approximately \$12,000.00 for the period from 5:00 PM to 8:30 AM Monday through Fridays and weekends.

Projected costs for extending our services as indicated in the City Attorney's memorandum to His Honor the Mayor and Members of the City Council, dated December 6, 1985 for this same block of time are approximately \$168,850.00. This represents an increase to the Basic Customer of approximately \$1.70 per month.

Mr. Robert H. Mullen, Esq.

16 December 1985

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Of course, these estimated figures are based on 1985 rates and salaries and would be augmented as applicable for 1986 and beyond.

A modified plan with an additional two office personnel plus a part-time technician working the 5:00 PM to 11:00 PM shift, Monday through Friday, with the answering service taking over the balance of the time, calling a stand-by technician, would increase costs by approximately \$50,000 to \$65,000.00 annually, depending on the arrangements. If these additions were made, the approximate monthly increase to our customers would be \$.63.

King Videocable would be willing to consider these added expenses to ourselves and our subscribers, if the Mayor and City Council request that we do so. However, in view of the great improvements we have made in recent months, both in quality of pictures and service responses, it is our opinion that our customers will be unwilling to absorb the additional expense.

Sincerely,



Mary Helen Barro
General Manager

MHB:a

cc: Mr. Richard D. Shay

754 F.2d at 1401. The Court of Appeals concluded that the First Amendment foreclosed the City from granting an exclusive franchise if the City's public rights of way could accommodate more than one cable system. Given the procedural posture of the case, the Court credited PCI's factual arguments (subject to being proved or disproved at trial) that there is room for PCI on the poles and that cable is not a natural monopoly in Los Angeles. 1/ Also, the Court found that the City had not yet shown an exclusive franchise was justified to avoid undue disruption of public rights-of-way.

As part of its First Amendment analysis, the Court of Appeals concluded that the City's utility poles and public rights of way become a public forum once they are offered to a cable system, and the City may not foreclose additional cable systems if there is room.

The City may not [through the cable franchising process] solicit "bids" from prospective speakers and deny access to its facilities to all save the highest "bidder"...

* * * *

Instead, the City must content itself with uniformly applying to all applicants regulations tailored to minimize the burden on public resources and granting franchises to all who are willing to satisfy the City's legitimate conditions.

754 F. 2d at 1409.

What are the implications of the case for your City?

The decision means that a community may not act arbitrarily to limit the number of cable television franchises. Thus, if two or more cable systems apply to use utility poles and public rights of way, a City would need to consider whether all of the qualified applicants can be accommodated without undue disruption of the public rights-of-way and without the kind of destructive competition that would result in inadequate service to subscribers or would endanger the public safety. We see nothing wrong in requiring Cities to consider such issues and would not recommend that you participate in the case at the

1/ Hence, the Court did not consider whether the Los Angeles franchise process would pass muster under the First Amendment if only one system could be accommodated on public rights of way, or if economically only one system could survive in the City.

Supreme Court if that were all that were at stake. However, there are aspects of the Ninth Circuit decision which are troubling, and there is a danger that the Supreme Court may decide the case in a way that undercuts local regulatory authority over cable.

First, there are suggestions in the opinion of the Court of Appeals that cable television is not a natural monopoly, and therefore regulation by the City is not justified. However, in a City where the Cable system is in fact a natural monopoly, the City must have authority to regulate it; and requiring multiple franchising would simply lead to destructive competition and a serious risk of collapse of service or inadequate service. The question of natural monopoly should be left to each community to decide, subject to judicial review for cable applicants to guard against any arbitrary denial of their rights. Cities should warn the Supreme Court that destructive competition or ineffective competition are real possibilities in some communities, justifying exclusive franchising or limitations on the number of cable systems in those communities.

Second and perhaps most worrisome, if the Supreme Court finds that cable systems have a very broad freedom to speak or to be silent, it may be difficult for Cities to require, for example, that cable systems serve in less profitable neighborhoods, or provide public access channels for others to exercise their freedom of speech. You need to protect yourself on these issues by arguing for regulatory authority to require such services in the case before the Supreme Court.

Third, it is important to fight the cable systems' likely argument to the Supreme Court that the Court of Appeals' decision in Preferred did not go far enough and cable systems cannot be regulated no matter what.

We attach a recent article on the potentially vast implications of the Supreme Court's review of the Ninth Circuit's decision in the Preferred case.

Attachment

Supreme Court To Hear Case Challenging Franchising On First Amendment Grounds

By J.L. Freeman

Washington Bureau Chief

WASHINGTON, D.C.—Setting the stage for what could be a landmark ruling on the First Amendment rights of cable television operators, the U.S. Supreme Court Nov. 12 said it would hear arguments in a suit by a Los Angeles operator challenging the city's franchising process.

The Ninth Circuit Court of Appeals last spring ruled that the city could not prevent the cable

"Cable's been huffing and puffing wanting to get a First Amendment case to the Supreme Court . . . So here we go."

—cable attorney

operator, Preferred Communications Inc., from stringing wire for cable service in an area already served by another operator as long as there was enough room on utility poles for a second cable. The lower court held that Preferred had a First Amendment right to provide service.

But attorneys here last week said that the case could have implications far beyond the issue of how many cable operators may serve an area. It could, they said, either provide major legal foundation for city regulation of cable, reversing a long pattern of deregulatory laws and rulings, or, on the other hand, could establish full First Amendment rights for operators, giving them important ammunition for challenges to many of the city, state and federal rules that govern cable service.

Cable and city attorneys here last week said the Supreme Court's move took them by complete surprise, and both sides said they feared what it could mean for their clients. Of the several cable First Amendment cases now before lower federal courts, Preferred, because there has never been a court ruling on the

facts of the case, seemed the riskiest, they said.

Although the Supreme Court has dealt with cable cases before, this will be the first case that emphasizes cable operator First Amendment rights in city franchising process.

"This has to be viewed as a roll of the dice for the entire kitty," said Nick Miller of Miller & Young, who represents several cities. "Any attorney has to get nervous looking at that."

Following standard court procedure, Los Angeles will file its opening brief about Jan. 1 with Preferred responding about Feb. 1. Oral arguments would be in March or April with a decision by July 1 when the court term ends. The attorneys noted the Supreme Court has overturned the Ninth Circuit more often than any other circuit in recent years.

"In terms of the applicants, the two black businessmen who own Preferred, we're disappointed this action will mean about a one-year delay in their starting their cable business," said Sol Schildhouse of Farrow, Schildhouse & Rains which represents Preferred. "But for the cable industry we're delighted."

"There are a lot of cases pending out there in a lot of circuit courts," Mr. Schildhouse said. "We're hoping the Supreme Court here will set clear ground rules so there won't be any weird pioneering out there that could get the cable industry in trouble."

"(Lead attorney Harold) Farrow's confident we'll win this one, the Supreme Court will say cable has First Amendment rights," he said. "But that doesn't mean cities won't be able to do anything."

National Cable Television Association president James Mooney issued the following statement: "We would rather that this case have gone back for trial in the lower courts, because the issues involved have never been argued on the merits. But, if the Supreme Court wants to take a look at cable's First Amendment rights, then I think we have a good case to make. Three appeals courts (in four cases) recently have ruled that cable operators enjoy First Amendment protection, and we hope the Supreme Court will also adopt that view."

Both city and cable attorneys last week emphasized no one can predict what the high court will do on any case and that it could rule for either side, issue only a narrow ruling, or send the case back for trial on the facts.

"What we would hope to gain," said city attorney Norman Sinel, "is a clear statement by the court that while there are clearly First Amendment rights protecting cable operators in their editorial channel-choosing capacity, those rights cannot be extended to interfere with a fairly run, objective franchising process."

A loss of city franchising ability "would be an ultimate loss to the public," said Mr. Sinel, of Arnold & Porter. "The entire structure would fall," he said.

and only wealthy neighborhoods would get cable service.

"The whole concept of franchising is at issue here," agreed one prominent cable attorney who asked that his name not be used. But he expressed concern that the Supreme Court might narrow the lower court's outline of cable's rights. "Clearly their concern cannot be to expand

Preferred's holdings because they're about as broad as they could be. So, therefore, the high court has to be concerned with restricting the holdings in *Preferred*," he said.

As one NCTA official said, "One of the problems with *Preferred* is it's hard to say precisely what issue that case presents. That decision tends to wander around a bit."

According to Jack Cole, of Cole Raywid & Braverman, and a leading cable attorney, a key to the case will be whether the Supreme Court rules that a franchise is a right under the First Amendment or that a franchise is a privilege under the First Amendment. Cities, he noted, could regulate a privilege more than a right.

"There are lots of people in the cable industry very nervous about this case, no matter which way it goes," said another cable attorney who asked his name not be used. If the Supreme Court agreed with *Preferred*, the attorney said, any number of operators could build an area. "A great many people like the *de facto* exclusive contract—they're concerned with how many, what concessions a city can get in exchange for that contract. If those are reasonable, they would rather have the *status quo* than open-season on franchising."

According to Mr. Miller, a 100 percent city win would overturn many recent Federal Communications Commission and Congressional actions which deregulated cable.

Because the case was never tried at the lowest court level and therefore has no factual record,

Miller said, the court probably will act on general First Amendment law rather than on the specific Los Angeles situation. "That's a high-risk case for both sides," he said.

"I think it's good that the Supreme Court is going to look at the issue of First Amendment rights for cable operators in terms of franchising," said cable attorney Jay Ricks of Hogan & Hartson. "I don't think *Preferred* is the best case for that because there is no factual record. I find that to be an unusual and troubling aspect."

However, a city attorney who asked that his name not be used said cities always lose when a court deals only with the theoretical aspect of cable. "This is not the case the cities wanted before the Supreme Court," the attorney said.

"Cities win when courts understand what cable is," the attorney said. "Cities lose on theoretical cases."

Robert Ruxin, of Preston, Thorgrimson, Ellis & Holman, represents major cities and agreed.

The case is dangerous because courts needed a record to "have a more complete understanding" of the "reality" of cable, Mr. Ruxin said, referring to natural

monopolies and broken franchise promises.

The attorneys last week also noted the Supreme Court ruling here would have some impact on at least two other cases of major importance to the cable industry. But they said they weren't sure what that impact would be.

The high court has been asked to hear *Quincy-Turner*, a case in which the appeals court here ruled FCC regulations that cable operators carry all local broadcast signals violated First Amendment rights of cable operators and programmers. Also, now before the full Eleventh Circuit Court of Appeals is *Florida Power v. FCC*, a case in which a three judge panel ruled the 1973 pole attachment act was unconstitutional and that the FCC could not regulate rates cable operators pay utilities for space on poles.

The National League of Cities will back up Los Angeles, said Cynthia Pols, NLC counsel. "We stand to gain a lot possibly," she said. "The whole question of cable operators being like newspapers will be put to rest."

If the court rules that cable has rights similar to those of newspaper publishers, and that telephone poles are public forums on which anyone can speak "then that doesn't leave much to regulate," Ms. Pols said. If the court said cable was a full First Amendment speaker but poles were not public forums, then cities would still have some regulation authority, she said.

"In this area we've lost in every circuit we've been in," Ms. Pols said.

Concluded another cable attorney: "Cable's been huffing and puffing wanting to get a First Amendment rights case to the Supreme Court . . . so here we go." □

SPIEGEL & McDIARMID

1350 NEW YORK AVENUE N.W.
WASHINGTON DC 20005-4798

TELEPHONE (202) 879-4000
TELECOPIER (202) 879-4001

JOHN MICHAEL ADRAGNA
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STEPHEN C. NICHOLS
PATRICIA E. STACK
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December 2, 1985

TO: Clients Whose Communities Are
Served by Privately Owned Cable
Television Systems

Re: Supreme Court Case on Local Franchising
Authority

Dear Clients:

The purpose of this letter is to alert you to a case now before the Supreme Court concerning the franchising of cable television systems, City of Los Angeles v. Preferred Communications, Inc., No. 85-390. In that case, the Supreme Court will consider for the first time whether the First Amendment rights of cable operators prohibit a City from granting an exclusive cable television franchise. We discuss the legal issues (and their background) in more detail in the enclosed short memorandum. Please pass this letter and memorandum along to all city officials who deal with cable television issues. The case is important to you because the Supreme Court's decision may affect franchising or refranchising in your community. It may also affect your ability to oversee cable television in your community, to negotiate effectively with cable television operators, and to enforce promises made by those operators. Given the importance of the issues involved, we plan to file an amicus curiae brief with the Supreme Court on behalf of our interested cable-affected clients, in support of City regulatory authority. Your City may want to join in that brief.

Other City groups will probably also file amicus briefs, ^{1/} but we do not know whether those other briefs will cover the key points that we shall cover on behalf of our interested clients, as described in the enclosed memorandum. Because the brief must be filed by the end of December, please let us know by December

^{1/} Among the groups considering filing amicus curiae briefs is the National League of Cities.

20 if you wish to join in the brief, especially if you have any ideas or suggestions you would like to see incorporated in the brief. We expect the total cost of this effort to be no more than \$15,000; we will not charge any individual city or community participant more than \$750 and will charge less if enough cities join or total costs do not reach \$15,000. Participants would also receive a follow-up analysis of the Supreme Court's ultimate decision in the case and the implications of that decision for franchising and related community concerns. In any event, it is important for your City to keep a careful watch on this case because of the effect it will likely have on negotiations and litigation between cities and cable operators. If you have any questions, please let us know.

Sincerely,

Alan J. Roth by DW

Alan J. Roth

Joseph Van Eaton

Donald Weightman

JVE:mer

Enclosure



King Videocable Company

1521 S. Stockton Street
Lodi, California 95240
209/369-7451

An Affiliate of King Broadcasting Company

December 16, 1985

Mr. Thomas A. Peterson
City Manager
City of Lodi
221 West Pine Street
Lodi, California 95240

Dear Tom:

This letter is in response to your request for a written statement regarding our services to customers wishing to block out the Playboy Channel on cable television.

As I explained, current technology provides for scrambling of the video portion of all premium services, including the Playboy Channel. However, there may be brief periods (two to three seconds) when the video may be recognizable on certain television sets, depending on the electronics of those sets. The vast majority of television sets will have a totally scrambled picture virtually all of the time. The audio portion of the signals is not scrambled at this time. However, we have found that, again - depending on the electronics of the TV set, the audio portion of the signal may also be distorted.

For those subscribers wishing to totally block out both the visual and audio portions of a given signal, we provide a Parental Control Unit which can be obtained for a one-time deposit of \$15.00. When the subscriber wishes to return the control unit, we will return \$10.00 of the deposit. \$5.00 is retained in order to cover costs of servicing it and returning it to stock for re-issue.

You should know that, from time to time, two other premium services (Showtime and HBO) may also contain programming considered to be of an adult nature. If subscribers also wish to block out these services, they may do so by obtaining a Parental Control Unit programmed to the channel in question.

Another method of blocking out both the audio and visual signal of a particular channel is for the subscriber to obtain a Hamlin Converter which is available at a monthly rate of \$2.00. Our Hamlin Converters can be programmed to block out certain channels completely. This must be done by our technical personnel and subscribers are strictly prohibited from tampering with our converters, as they may damage the equipment and be liable for a replacement charge of \$200.00.

The electronics industry is expanding and developing at such a rapid rate, it's difficult to keep pace with the latest developments. However, we are constantly on the look-out for new equipment that will help us improve the quality of service

DEC 17 1985

Mr. Thomas A. Peterson

December 16, 1985

Page 2

for our customers. One such recent development is a new remote control converter introduced by Pioneer. We have ordered 300 but they are already on back-order at the factory. The new Pioneer Remote Converter can be programmed much more easily to block out certain channels. However, programming will still have to be done by our technical personnel. As soon as they arrive, we will make them available.

Please note that with the exception of Mrs. Dot Kurst, we have had no complaints about the audio on the Playboy Channel for over a year. Parents who do not wish to receive the audio, simply request the Parental Control Unit. We have had no requests for Parental Control Units to block the audio of other premium services.

All new King Videocable subscribers are informed, in writing, that the Playboy Channel, and on occasion Showtime and HBO as well, contain programming of an adult nature. They are also notified of the availability of the Parental Control Unit and programmable converter.

We will continue to inform all new subscribers of the audio and video blocking equipment which we provide. Additionally, as new electronic developments are introduced, we will make them available to our interested subscribers whenever possible.

I hope I have answered all your questions as well as reassured you that we have taken every measure possible, to provide desired protections for our customers in this matter. If you need additional information, I'm as near as the telephone.

Sincerely,



Mary Helen Barro
General Manager

MHB:a

cc: Mr. Robert H. Mullen, Esq.
Mr. Richard D. Shay

CITY COUNCIL

DAVID M. HINCHMAN, Mayor
FRED M. REID
Mayor Pro Tempore
EVELYN M. OLSON
JAMES W. PINKERTON, Jr.
JOHN R. (Randy) SNIDER

CITY OF LODI

CITY HALL, 221 WEST PINE STREET
CALL BOX 3006
LODI, CALIFORNIA 95241-1910
(209) 334-5634

THOMAS A. PETERSON
City Manager

ALICE M. REIMCHE
City Clerk

RONALD M. STEIN
City Attorney

November 27, 1985

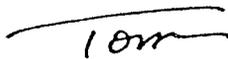
Ms. Mary Helen Barro
Manager, King Videocable
1521 S. Stockton Street
Lodi, CA 95240

Dear Mary Helen:

This is a follow up to our telephone conversation earlier today concerning the operation of the Playboy channel on our cable television system. It is my understanding that the picture on this channel is "scrambled" so that only those subscribing to this service receive a picture which can be viewed. The sound is something else again. You have advised me that it is not possible to "scramble" the sound at this time. You also advised me that you have ordered new equipment which will make it possible to scramble the sound transmission when this equipment is installed in the home, similar to your present parental control devices. However, I also understand that your customers who do not have this equipment installed in their homes will still receive unscrambled Playboy channel sound.

I would appreciate a written response from you as to how your company proposes to address this issue in the future.

Sincerely,



Thomas A. Peterson
City Manager

TAP/lh