

CITY COUNCIL MEETING  
JULY 3, 1985

CC22  
pg 466  
SET PUBLIC HEARING  
RE CATV REFRANCHISING

In a report from City Manager Peterson, Council was reminded that the City Council recently received a request from King Videocable Company, the CATV system operating in the City of Lodi, for a renewal of the company's franchise to provide cable television service. The first appropriate step in this process is the holding of a public hearing to seek community input in evaluating the cable company's performance and to identify future community needs for cable services. The City's CATV Consultant, CTIC Associates (Mr. Harold Horn) will be in attendance to assist in the conduct of this hearing. Letters will be sent to various community organizations advising of the scheduled date and time of the hearing.

The City Council set Wednesday, July 24, 1985 at 7:30 p.m. as the date and time to conduct a public hearing concerning the request of King Videocable Company (CATV) for franchise renewal.

To: The Honorable Mayor and  
Members of the City Council

 From: City Manager

Subject: Cable Television Franchise Renewal

At the regular adjourned City Council meeting of May 29, 1985 Mr. Harold Horn of CPIC Associates, the City's cable television consultant, made reference to a letter he had written to the City in February in which he outlines the steps to be taken in complying with the new Cable Communications Policy Act of 1984 as it relates to franchise renewal. Attached, for your information and review, is a copy of that letter.

# CTIC Associates

Associated with  
The Cable Television Information Center

RECEIVED

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AUDREY M. REYNOLDS  
CITY CLERK  
CITY OF LODI

February 22, 1984

Mr. Henry A. Glaves  
City Manager  
City of Lodi  
City Hall  
Lodi, CA 95240

Dear Henry:

At long last we have received an initial response to our request for information from King Videocable Company of Lodi, via Malarkey-Taylor Associates, their consulting firm. You may recall we requested the company to fill out several forms last October 16, 1984.

We are continuing our discussions with Malarkey-Taylor for certain financial information that was not included as requested, i.e., balance sheet, sources and uses statement, and depreciation figures. We have agreed with Malarkey-Taylor that the pro forma forecast financial information and their specific technical proposal for future rebuild/upgrade of the Lodi system could wait until the City has had the opportunity to examine community needs and review our findings regarding the present operations.

As you are aware, since we first started our discussions regarding potential renewal of the Lodi franchise, the new Cable Communications Policy Act of 1984 has been enacted by Congress and signed by the President. This new law took effect on December 29, 1984.

Procedurally everything we have done to date is in conformity with the new law. The new law does, however, require very specific legal steps that we will need to follow to protect the City's interests.

To comply with these new requirements I am listing below the steps necessary to be taken and I am relating these requirements to the tasks we agreed to perform in our contract with the City. The time table can of course be modified to meet your needs more precisely.

Mr. Henry A. Graves, City Manager  
February 22, 1985  
Page 2

1. Background: The new Act provides that during the six-month period which begins with the 36th month before the franchise expiration, the City may on its own initiative or shall at the request of the cable company, commence proceedings which afford the public appropriate notice and participation for the purpose of:
  - a. identifying the future cable-related needs and interests; and
  - b. reviewing the performance of the cable operator under the franchise during the then current franchise term.

If I have counted correctly, February 20, 1985 is the start of the 36th month prior to the expiration of the existing franchise on February 20, 1988. The six-month period for commencing with Steps a. and b. above would end on August 20, 1985.

2. Performance Review: The contract we entered into with the City of Lodi on October 4, 1984 provides for a performance review of the cable operator (Task 1) (we are now examining in our offices company generated information regarding their current operations). An on-scene technical examination of the existing system is proposed to be conducted by our Director of Technical Services, William Kohutanycz, on March 6, 7, and 8, 1985 (Task 1-a). Mr. Kohutanycz will perform an engineering appraisal of the system design, quality of received television signals, look for system deterioration, examine construction and maintenance practices and procedures; and look at the quality of signals being delivered at the extremities of the existing system. While in Lodi, Mr. Kohutanycz will also examine the company complaint files and all files in which complaints have been made directly to the City regarding the cable company operations. A cross-check will also be made to determine if existing city regulatory requirements detailed in Ordinance 855, Resolution No. 3158 (especially Section 10), and Resolution 80-64 have been complied with. It would be helpful, if you, or appropriate department heads that have any regular contact with the cable company, could make some time available to Mr. Kohutanycz to present any observations that would be helpful in establishing any additional factual basis regarding the company's performance over the last several years.

Mr. Henry A. Glaves, City Manager  
February 22, 1985  
Page 3

Task 1-b of our contract relates to a financial review of the existing system. This task is currently underway in our offices based on information recently supplied by the company.

Task 1-c that involves our review of the City's ordinances that regulate cable television is also currently underway in our offices. We will be presenting suggestions for updating these ordinances and resolutions to conform to current practices and to comply with the new Cable Communications Policy Act of 1984. This report and recommendation will be presented at a future work session with the City Administration, City Attorney and City Council. Changes suggested by the City would then be incorporated in further revisions until the draft ordinance reflects the City Council's policy decisions.

Sometime during the last two weeks of April CTIC will plan on completing the preparation of a discussion paper which will include our findings in Tasks 1-a, b, and c. At this time it would be appropriate to have the proposed policy workshop with the City staff and City Council. We would anticipate this work session might require a half day and hopefully would result in direction to the consultant for revisions in the regulatory ordinance, identification of community needs and desires, and clarifications, if needed, regarding the consultants' evaluation of the cable company's performance.

3. Identifying Community Needs: The perception of community needs by the staff and City Council and the level of effort desired by the City to identify those needs (see federal requirement (1a) above) should be addressed at that workshop. If you and the Council deem it advisable, the workshop could be publicized as a public hearing in which the City might solicit public participation in hearing our findings to date, and urging the public to participate in identifying cable-related needs and reviewing the cable company performance. Alternatively, a separate public hearing could be conducted at a subsequent time to receive public input (to comply with the federal requirement for public participation).

Mr. Henry A. Glaves, City Manager  
February 22, 1985  
Page 4

Evaluating community needs can range from a simple process of conducting public hearings; or perhaps educational workshops, then public hearings; or more elaborate community needs assessments conducted by your consultant through a questionnaire and interview process or public attitude survey that would provide public input on both community needs and cable system performance. The hearing process, if conducted with the workshop (or perhaps later in the week during the same trip to Lodi) could be done within the resources provided in our current contract. A more elaborate community needs assessment would need to be negotiated as an extension of our existing contract. We have experience in all these differing levels of effort, but essentially it is a policy question the City will need to decide as to the level of effort the City would be most comfortable with.

4. Prepare list of requirements to be included in a Company proposal for franchise renewal: Upon completion of the proceedings described above (identification of needs and reviewing cable company performance) the City may require the cable company to present a proposal that will address the requirements identified by the City.

The new legislation contemplates the City receiving a proposal from the company under either a formal or informal procedure. In order to facilitate the company's development of such a proposal they should at least receive an indication from the City of such material that it may require, including, if appropriate, a proposal to upgrade the cable system (626(b)(2)\*). Before granting or denying a proposal the City will need to "afford the public adequate notice and opportunity for comment."

Under the new law the City in its request for proposal to the company (A) may establish requirements for facilities and equipment, but (B) may not establish requirements for video programming or other information services.

- A. Facility and equipment requirements defined in the Congressional Committee Report (Aug. 1, 1984) which constitute part of the legislative history that guides interpretation of the Act, set forth the following:

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\*Cable Communications Policy Act of 1984.

Mr. Henry A. Glaves, City Manager  
February 22, 1985  
Page 5

"Facility and equipment requirements may include requirements which relate to channel capacity; system configuration and capacity, including institutional and subscriber network; headends and hubs; two-way capability; addressability; trunk and feeder cable; and any other facility or equipment requirement, which is related to the establishment and operation of the cable system including microwave facilities, antennae, satellite earth stations, uplinks, studios and production facilities, vans and cameras for PEG use." [Public, Educational, Government use.]

- B. A City may not require directly or indirectly as part of the franchise renewal the provision of particular-video or other information services or even a broad category of video or other information service. However, the City may enforce any provisions agreed to that stipulate broad categories of video programming (e.g., children's programming; programming in a particular foreign language; programming which is of primary interest to a particular minority group; news and public affairs programming; sports programming) and other services offered by the cable operator and incorporated into a new franchise.

"The Committee does not intend by this provision to give franchising authorities indirectly, such as through the renewal process, the authority to require the cable operator to offer certain program services or service packages."

Procedurally, we will assist the City in developing the details and instructions to the Company for items to be included in their proposal. Depending upon the level of effort decided upon by the City in identifying community needs (item 3 above) the development of this request for proposal to the company could take place as early as the first two weeks in May or as late as perhaps two or three months longer (July or August, 1985).

5. Receive company proposal [Perhaps as early as first two weeks of June or as late as September 1985.]

Mr. Henry A. Graves, City Manager  
February 22, 1985  
Page 6

6. CTIC will complete the evaluation and analysis of company proposal and prepare recommendations for City consideration. The new law states that any findings and requirements made of a cable company are to be examined as to the cost implications on the company (i.e., company's ability to earn a fair rate of return on its investment and the impact of such costs on subscriber rates). This step will require 30-45 days [end of July or October 1985].
7. CTIC will discuss with the City the results of the evaluation of the company proposal, and develop strategies and procedures with City for starting informal negotiations with cable company. [First part of September or November.]
8. Schedule negotiation sessions as needed between City and company. [September-November.]

DISCUSSION: If these informal negotiations fail to make progress, one or both parties may resort to formal procedures outlined in Cable Communications Policy Act of 1984. [See Step 4 above.] If formal procedures are needed the first two steps (needs identification and system performance evaluation) may not need to be repeated if both activities have been well documented and the public has been afforded an opportunity to participate.

Formal Renewal Procedure:

The first action required by the new law would be for City Council within four months to renew the franchise, or issue a preliminary assessment that franchise should not be renewed.

Second Action - City Council, on its own initiative or at the request of the company shall commence an administrative proceeding and give prompt public notice of such proceeding to the cable operator and the public.

Mr. Henry A. Glaves, City Manager  
February 22, 1985  
Page 7

The Administrative proceeding shall consider whether -

"(A) the cable operator has substantially complied with the material terms of the existing franchise and with applicable law;

"(B) the quality of the operator'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;

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

"(D) the operator'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."

Both the cable company and the franchising authority have the right to introduce evidence (including evidence related to issues raised in the initial proceeding in which the City prepared its needs assessment and conducted a system performance evaluation).

NOTE: The consultant's report on performance and the documentation of community needs, the evaluation of the company proposal, and the transcripts of Public Hearings all become important legal documents.

Both parties have the right to require production of evidence and to question witnesses.

Mr. Henry A. Graves, City Manager  
February 22, 1985  
Page 8

A transcript is required to be made of these proceedings.

Upon completion of the administrative proceeding 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 cable operator. Such decision requires the City to state its reasons for renewal or denial. A denial must be based on one or more adverse findings of items (A), (B), (C) and (D).

A denial based on failure to substantially comply with material terms of the existing franchise or on events considered in item (A), (B) (above) can not be made unless the City has provided the company with notice and an opportunity to cure the problem.

Further, a denial by the City can not be accomplished if it can be documented (by the company) that the City has waived its right to object, or has effectively acquiesced.

Any final decision by City to deny the cable company a renewal of franchise or where a company can claim it was adversely affected by failure of the City to act in accordance with the procedural requirements of the new Federal Act (described above), may be appealed by the company to a Federal District Court, or State court of general jurisdiction.

The Court can grant relief to the cable company if it finds that City was not in compliance with procedural requirements, or the cable company can demonstrate that the adverse finding by the City was not supported by a preponderance of the evidence based on the record of the proceedings.

9. (a) CTIC would prepare contract ordinance to include results of informal negotiations between City and Company [October-November].

NOTE: [If formal procedures have by now been initiated, these steps, a and b, could be delayed for up to four months.]

Mr. Henry A. Graves, City Manager  
February 22, 1985  
Page 9

(b) Place new regulatory ordinance on first reading  
[November-December]. (Must take into consideration  
State/local legal time requirement.)

10. Adoption of final contract ordinance, which would become  
effective upon Council approval and company acceptance  
[during November or December 1985].

\* \* \*

The above outline and discussion of procedural steps is of course  
tentative and subject to the City's modification and approval. The  
cable company's needs and concerns regarding the time table and the  
suggested formal vs informal procedures also have to be taken into  
consideration.

As shown above, several of the steps required under the new law were  
anticipated as part of the initial contract between the City and CTIC.  
There are some additional steps, however, that need to be considered and  
upon approval by the City some modification of the CTIC contract will be  
necessary.

For example, the evaluation of the existing system was contemplated  
and covered in the contract. This part of the evaluation will be pre-  
sented in the discussion paper originally contemplated. The new law  
clearly requires a two-step process in which the existing system is  
evaluated and then (after the City presents the company with its require-  
ments) the company presents its proposed system for providing services  
for a new franchise period.

The new elements of work include:

(a) The preparation of a statement of City requirements (to be  
developed from CTIC system evaluation, workshop, hearings,  
and City needs assessments) [see Item 4].

Estimated professional time -

2 days	\$1,440.00
Production	160.00
	<u>\$1,600.00</u>

Mr. Henry A. Glaves, City Manager  
February 22, 1985  
Page 10

- (b) Evaluation of proposed system. This will require a review of financial pro forma information from company as well as a technical evaluation of proposed system. Part of this was anticipated in our initial work plan, but a separate report is now required that would examine the financial impact of any City requirements [see Item 6].

Estimated professional time -

Technical Evaluation - 2 days	\$1,280.00
Financial Evaluation - 2 days	1,280.00
Project Manager - .5 days	360.00
Production	200.00
	<u>\$3,120.00</u>

- (c) Community needs study (Item 3). Depending upon level of effort deemed necessary by City, this could range from virtually no additional cost by using information gained by public hearing and City's current knowledge of community needs, to special community surveys, and needs assessment studies. These types of studies can range \$10-12,000. Alternatively they might be performed in-house by the City. We can discuss this in greater detail depending upon your perception of need.
- (d) Item No. 7 (above) involves a presentation of CTIC's evaluation of the company's proposal and developing strategies for negotiation. Originally this step was anticipated to be included as part of the policy workshop (contract Task 2). The professional time was already anticipated. The additional cost will be trip expenses - \$1,140.00.

Henry, I apologize for the length of this letter. It seems important that now that we have received the first information from the company and that we are now dealing in a completely different regulatory environment with the passage of the new Act, that it is appropriate to advise you and the City Council how we perceive Lodi to be affected by these changes.

Mr. Henry A. Glaves, City Manager  
February 22, 1985  
Page 11

If the scheduled visit proposed by our Director of Technical Services causes any special problems please let me know. He will not need much, if any, of your time, as most of his work will be with the company. He will, however, need access to any files you may have that relate to the franchise and any complaints the City has received in recent years regarding the cable company operations.

Best regards,



Harold E. Horn  
President

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Discussion Paper  
for the  
City of Lodi, California

Reviewing Performance of the  
King Videocable Company and  
Examining Regulatory Options  
of the City Pertaining to  
Cable Television

May 20, 1985

**CTIC Associates**

## TABLE OF CONTENTS

	<u>Page</u>
CHAPTER I: INTRODUCTION	I- 1
CHAPTER II: TECHNICAL REVIEW OF CABLE SYSTEM	II- 1
A. General System Description	II- 1
B. System Compliance	II- 8
C. Technical Evaluation/System Operations	II-12
D. Conclusion	II-17
CHAPTER III: FINANCIAL REVIEW	III- 1
A. Introduction	III- 1
B. Revenues and Subscribership	III- 1
C. Operating Expenses	III- 4
D. Capital Expenditure	III- 8
E. System Profitability	III- 9
CHAPTER IV: SERVICES REVIEW	IV- 1
A. Introduction	IV- 1
B. Current Services Available to Lodi Subscribers	IV- 1
C. Services Available to Cable Operators Nationally	IV- 3
D. Services Available in Other Communities	IV- 4
E. Support for Community Programming	IV- 6
F. Summary	IV- 8
Table IV-1. Current Subscriber Services Offered by King Video Cable in Lodi, California - May 1985	IV-10
Table IV-2. King Video Cable - Lodi: Services and Rates	IV-11
Table IV-3. King Video Cable - Lodi: Local Program Production Facilities	IV-12
Table IV-4. King Video Cable - Lodi: Support for Community Programming	IV-13
Table IV-5. Comparison of Cable Systems and Services in Nine Cities	IV-14
CHAPTER V: EXAMINING REGULATORY OPTIONS OF THE CITY	V- 1
APPENDIX A: SATELLITE SERVICES AVAILABLE TO CABLE OPERATORS - MAY 1985	

## CHAPTER I: INTRODUCTION

This discussion paper has been prepared in accordance with the agreement between the City of Lodi and CTIC Associates. The purpose of this paper, along with analysis of existing and proposed regulations is to present CTIC's findings, conclusions and recommendations regarding the existing operations of the local cable system - King Video Cable Company.

The new Cable Communications Policy Act of 1984 establishes a procedure for the consideration of requests for cable franchise renewal. One of the requirements in this process is to review the performance of the cable operator under the current franchise.

CTIC requested from the cable company that several forms be filled out regarding its present operation. These have been reviewed and analyzed by CTIC's professional staff. In addition CTIC's Director of Technical Services conducted an on-scene technical examination of the cable system in Lodi on March 6, 7, and 8, 1985.

Chapter II of this discussion paper presents a technical review of the existing system, the extent to which the present system is in compliance with the City's franchise agreement and its regulatory ordinance and makes suggestions that the City may wish to consider when establishing its basic

requirements for a proposal from the company regarding its request for a renewal of its franchise.

✓ Chapter III presents an analysis of the financial information supplied by King Video. Detailed, authenticated financial information is essential under the new federal legislation in order to examine the cost implications of community requirements or company initiated expansion and system improvements. The impact on the company's ability to earn a fair rate of return and the cost impact of improvements on subscriber rates are both essential examinations. In addition, the City is required to determine if the cable company has the financial ability to continue to service the community and that the company's eventual proposal is "reasonable to meet the future cable-related community needs and interests taking into account the cost of meeting such needs and interests." If the company should ever seek future modifications of its proposal or in the services the system provides, the basic determinations, of necessity, will rely on an evaluation of the company's financial circumstances.

✓ Chapter IV describes the present services being offered in Lodi and makes a comparison with several cities of similar demographics that have recently undergone renegotiations. This information is provided as a type of benchmark as officials in Lodi examine their options and consider what they may wish to require in their request for a proposal from the company.

✓ Chapter V provides a review of the current regulatory ordinances of the City of Lodi and makes a number of suggestions for consideration of the City Council as it evaluates the type of regulations it wishes to require in any renewal of a franchise.

This discussion paper is intended to provide a base of information to assist the City in formulating its requirements for a franchise renewal. The evaluation of the present cable operations presented in this paper are from the perspective of an independent outside source that has had extensive experience in evaluating cable companies on behalf of local governments for the last thirteen years. Of equal or of even more importance to the overall evaluation of the performance of the company is the subjective and objective information from the subscribers themselves and from the City officials who have been monitoring the company since it took over the operation of the Lodi facilities. These observations should be documented through a public hearing process prior to identifying the future requirements to be made of the company.

As a part of identifying the future needs of the community (which is the second major requirement of the new Cable Act) the City may wish to look at several different approaches. Some of them were pointed out in a letter from CTIC to the City Manager on February 22, 1985, in which we describe the new process required under Federal legislation. The level of effort of such a study need not be extensive if the City Council feels it already has a good idea of the Community's needs. Additional public hearings may be necessary and specific needs assessment questionnaires or public attitude surveys may also assist in identifying the needs of the community that may be served by cable television.

Once the City completes its review of the performance of the existing cable operator and identifies the future cable related needs and interests,

it may then require the company to present a proposal that will address the requirements identified by the City.

CTIC Associates appreciates the opportunity to present this first phase of the renewal process to the City and looks forward to a discussion of the issues presented and for policy guidance in the updating of the City's regulatory ordinances.

## CHAPTER II: TECHNICAL REVIEW

On March 6, 7 and 8, 1985, CTIC Associates conducted an on-site review of King Videocable Inc.'s (King Video) operations in Lodi for the primary purpose of developing an understanding of the local system to assist the City in its ongoing franchise review/renegotiations process. This review examined the Lodi system in terms of compliance with franchise requirements, the make-up and capabilities of the system, the interaction between the City and the company and the technical quality of received and delivered signals.

This chapter of our report will be presented in four major sections. The first will provide a general description of the system, the second will address compliance points. The third section will explain the methodology used and the results of our technical quality examination, and the fourth will present our overall conclusions.

### A. GENERAL SYSTEM DESCRIPTION

The Lodi cable system is designed as a standalone system with all but one signal carried on the system received or processed at a single headend located in the southern section of the City at 1521 South Stockton Street.

The one exception to this is off-air Channel 2, KTVU from Oakland which is received at a remote site, approximately six miles south of Lodi and relayed to the headend utilizing the upstream capabilities of one of the system's trunk cables. KTVU is received and relayed in this manner because even with this extra processing, the signal from the remote site is of higher quality than a signal received directly at the headend. As off-air television signals may be affected by local environmental factors in the vicinity of the receive site, this is not an uncommon feature of some cable systems.

At the headend, the off air reception facilities consist of a 220 foot Tri-Ex T-26H guyed tower, using an assortment of off air antennas and Scientific Atlanta (SA) signal processors to receive and process signals. Satellite signals are received using 3 SA five meter antennas, Avantek and M/A Com low noise amplifiers and SA receivers and modulators. The headend is also equipped with two spare satellite receivers and one spare tuneable modulator (Tomco) that can be used if primary equipment fails or has to be maintained. At the time of our visit the standby modulator was in use to provide the signal for Showtime on Channel J. This modulator was functioning adequately, however, the overall quality of its signal was less than other adjacent channels and was also introducing a slight amount of interference on Channel 13, CBN. The interference noted was not overly severe and would likely not be found objectionable by subscribers. As this spare modulator was to be replaced later that day with the primary SA unit we would find its use as an emergency standby to be acceptable but would suggest that it be fully examined/adjusted if longer term use was envisioned.

In addition to off air and satellite television signals, the Lodi system also carries FM and audio services which are received in the same manner as the television signals. "Local" FM signals (Stockton, Sacramento, San Francisco, Angwin, as well as Lodi) are received directly off air at the headend and are processed using Catel FM processors. Stereo audio from satellite channels (Showtime, MTV, HBO, the Nashville Network, and Disney) plus six audio only satellite services are processed using Wegener equipment. In delivering these services to subscribers, King Video has recently moved all of the audio services out of the standard FM broadcast band (88-108 MHz) to a higher frequency. This was done basically with a security goal in mind and requires the subscriber to this service to have a special FM converter to "translate" these higher frequencies back to frequencies their FM receivers can process. Before these FM converters became available, audio signals were simply carried in the standard FM spectrum, which made them very vulnerable to piracy using a FM-VHF splitter available at many retail outlets.

Signal security also plays a part in the way in which King Video delivers video programming to subscribers. King Video currently offers two tiers of basic channels which it designates as Basic and Tier. Its Tier is made up of four satellite services (USA, Nashville, MTV and CNN) plus two San Francisco broadcast stations. Basic consists of all other channels (broadcast, ESPN, CBN, community programming) except the four premium channels (Showtime, HBO, Disney and Playboy) for which separate monthly fees are charged.

In delivering these channels, King Video transmits all Basic channels without modification (other than frequency translations to the proper channels) but scrambles all Tier and Premium channels so that only authorized subscribers may receive them. All of these channels are scrambled using Hamlin scramblers which require subscribers to have Hamlin converters to descramble the signals. However, two premium channels, Showtime and HBO, are also scrambled using equipment manufactured by OAK with these signals then placed on channels other than those used to carry the same programming scrambled with the Hamlin equipment. The reason that two scrambling systems are used is because the OAK system was the first installed. This system allows the cable company to use a relatively inexpensive, single channel descrambler for basic subscribers who want to receive a pay service rather than requiring more expensive multichannel converters. When Showtime was first offered in Lodi (8/12/79) the single channel OAK decoder seemed like a reasonable method for delivering this pay channel. Later as the tier was introduced, a multichannel converter was required and the Hamlin converter was ultimately selected. Some of OAK's multichannel converters were also used, however, King Video was not satisfied with their overall performance and the Hamlin converters were selected. At this time King Video is also experiencing some trouble with the OAK single channel converters and hopes to eventually phase all of these units out of use.

In order to deliver all of its channels to subscribers, King Video utilizes approximately 135 miles of single cable plant (100 aerial, 35 underground). Like many older systems, the Lodi plant consists of a mix of different types of equipment. Generally the system has been constructed

with CommScope cable (older P-1 type and newer P-III type) with active electronics made by Jerrold (older) and Sylvania (newer). The system is currently operating to 234 Mhz, or to Channel 25 although King Video does program Channel 26 with Channel 4 from San Francisco. It does not promote this channel in any of its literature as it cannot guarantee the quality with which it can be delivered. In responding to CTIC's technical forms King Video has stated that it expects that most of the cable system should be able to carry frequencies up to 270 MHz (about 30 channels) but noted that some older sections may not be able to handle these frequencies well. During CTIC's later signal quality observations in the field, Channel 26 was seen to be at a lesser quality than other system channels. Although no precise measurements were made, visual observations showed a picture that was noisier than other channels (perceptible "snow" in the picture) at a number of test points. One possible explanation for this performance would be a "roll off" in higher frequency, or, the signal levels being significantly lower at a given point, than a good design would call for. It may be that the system, or most of it, could handle frequencies to 270 MHz, but it also seems obvious that additional effort would be required to proof and balance the system at these frequencies.

King Video's reference of a 270 MHz capacity for most of the system, may be a result of the actual configuration of the system in Lodi. Basically, two trunks leave the headend on Stockton Street. One of these goes south and provides service to relatively few Lodi residents, but does serve homes outside the City limits and extends to the remote reception site. The other trunk goes north to Kettleman Lane where it splits and ultimately serves the majority of Lodi residents. This major trunk goes north on Stockton to

Kettleman where it splits with one leg going straight, one going east and then north on Central Avenue, with the remaining leg going west and splitting to go north on Hutchins, Ham Lane and Lower Sacramento Road.

When the Lodi system was expanded to include the midband channels (9 channels located "between" VHF channel 6 and 7) primary concern was to see that the trunks would be able to carry these frequencies. The same type of emphasis was used when additional channels above channel 13 were added, which is common practice in the cable industry. In the Lodi system however, a good amount of distribution electronics (bridger amplifiers and line extenders) are also used. While all trunk amplifiers may be fully capable of operating to 270 MHz, according to King Video, all distribution amplifiers may not have been fully upgraded or replaced, which would explain the apparent rolloffs of channel 26 noted in our field observations. The extent and location of any older distribution amplifiers is not known at this time.

Given the fact that it is likely the distribution lines from the trunk (including feeder cable, bridger amplifiers and line extenders) may be the weakest section of the system because of the different types of equipment that may be used, we should note that normal quality expectations may not hold true. Normally we can expect that worst-case system performance will occur at the farthest distance from the system's headend. This is because signal quality is basically determined by the number of active devices (i.e., amplifiers) a signal must pass through to reach a given point. For this reason, the system's extremities, at the ends of the longest amplifier cascades are usually representative of worst-case performance. In the Lodi system, since there may be sections of the "old" distribution from any

point in the trunk, the expected "location" of worst-case performance can not be predicted.

We should note here that our field observations (discussed in detail in the following section) did not show generally poor signal quality at any point tested. These observations did show, however, that channel 26 appeared to be rolling off at a number of points. Thus while the system is currently performing adequately it appears that further channel expansion could require significant effort to insure that all segments of the system can function at higher frequencies.

While the Lodi system has existed since 1968 and is largely made up of older types of equipment and cable, King Video has also updated its design requirements in the last few years. In doing this it has constructed new developments with systems that can ultimately carry 400 to 450 MHz. Since these frequencies can not be delivered to these new sections through the existing plant, King Video has only activated the new sections to 300 MHz. It would be relatively easy to upgrade these new sections when higher frequencies can be delivered to them.

Overall we found that the Lodi system is currently capable of functioning acceptably but feel that significant effort would be required to expand service and remain flexible over the term of a renewed franchise. As the existing system is currently programmed at or near its capacity, some of the system is at an age where replacement will soon become necessary (especially the distribution system and house drops) and that other sections will need replacement based on normal maintenance (e.g., certain underground areas with a high water table), a major rebuild of the system appears to be indicated.

Exactly how much of the system would need to be totally replaced will be uncertain until a section by section appraisal of the system can be made. We would expect that most of the newer sections of the plant (new development, replaced drops...) could be "re-used".

#### B. SYSTEM COMPLIANCE

Chater 8A - Community Antenna Television of the Lodi City Code established the basic requirements of the cable system operator. Rather than discuss each individual section of the Code, we will only highlight those sections in which specific requirements are set. Generally we will proceed consecutively from section to section.

Sections 8A-11. Payment - Requires Grantee to pay 3 percent franchise fee on monthly gross revenues to City; to be paid on a quarterly basis or as directed. City records indicate that payments have been made, although the schedule of these payments is somewhat irregular.

Sections 8A-12. Financial statements: Inspection - Among other things, requires the franchisee to file within 90 days of the end of its fiscal year, a financial statement prepared by a certified public accountant or public accountant showing in detail gross annual receipts. Further, Grantee is to pay, within 15 days, any franchise fee due.

Our examination of the Record of the City Council (Record), did not indicate that such filings have been received.

- Section 8A-13 Rates - As modified in May of 1980, the franchisee is only required to notify the City 30 days prior to any rate change or modification. Examination of the City Clerk's files indicated that this requirement has generally been met, however, copies of notifications for all rate increase are not contained in these files, but are reflected at the appropriate times, in the Record.
- Section 8A-17 Procedure following acceptance of franchise - Paragraph a. of this section is a standard requirement for the operator to file with the City, copies of all petitions, applications and communications to the FCC or other regulatory bodies or agencies. Our examinations of the City Clerk's files did not show those "normal" communications usually submitted under such a requirement, e.g., annual proof of performance tests, earth station license, or requests to use protected frequencies.
- Section 8A-18 Construction and Installation Requirements - Paragraph a. states that the system "shall be constructed or installed in streets in accordance with good engineering practice..." While CTIC was not present during construction, our limited visual examination of the system showed that the existing system appears to be generally the result of construction in accordance with good engineering practice, which, we must note, has evolved since the early sections of the system was installed. We should emphasize that this requirement and conclusion are based on the physical appearance of the system, and do not necessarily imply any evaluation of quality of delivered service.
- Section 8A-22 Surety Bond Required - The Grantee is required to file and maintain in full force over the life of the franchise, a corporate surety bond in the amount of \$25,000, renewable annually.
- The last reference to such a bond in the files was found in a letter dated 4/11/77 from Fred S. James & Co. of Portland, Oregon. This letter indicated that such a bond from Safeco Insurance

Co. had been on file with the City since 4/70 and continues in full force and effect. It would be advisable to seek a current verification of this information.

Section 8A-23 Liability Insurance Required - The Grantee is required to indemnify the City, its officers and its employers against all claims, demands, actions... The Grantee is also required to maintain its own liability insurance, and to file with the City Council copies of such policies or certificates of insurance.

Review of the City Clerk's files shows a certificate of insurance from Parker, Smith and Feek, Inc. for an insurance policy (Transamerica Ins. Co. #19188705, effective 7/1/84, expiration 7/1/85) which exceeds the monetary limits set by this section. We note, however, that this certificate only gives a 10-day notice of cancellation or reduction, as opposed to the 30-day notice required in this section.

Section 8A-25 Operational Standards - The overall requirements of this section are addressed in the section of this report dealing with system performance.

Section 8A-26 Filing with the City - "All matters herein provided to be filed with the City, unless provided otherwise herein shall be filed with the City Manager."

As has been noted previously, most, if not all of the areas in which there is a question of actual compliance, deal with the Grantee's filings with the City. To be perfectly fair we must note that there are two possible explanations for these questions: (1) the required information was not filed, or (2) the information was filed with a different office and was not discovered in our examinations.

Section 8A-27 Location of Office; Telephone Connection - The Grantee is required to maintain a local office within the City as well as having a local telephone number. Both of these requirements are being met.

Section 8A-29

Signed Contract Required - The Grantee is required to use a contract form for all subscribers incorporating a provision basically noting that in providing service, the Grantee makes use of public right-of-ways, the continued use of which is not guaranteed.

If this is denied the Grantee will make reasonable efforts to provide service over alternate routes, however the subscriber will make no claims against the City or Grantee, if this use is denied.

Paragraph 9 of the King Video Cable Company conditions of agreement (see Appendix) contains these basic parts but does specify the use of "poles" rather than public rights of way, and has the subscriber agree to make no claims against the company or utility companies. This item goes on to state, that if the use of said poles is denied, the customer grants to the company, the right to install its own poles, or do necessary guying or place ditches in order to continue its service.

Section 8A-31

Free Service - The Grantee is required to provide free of charge a service drop for all public and non-profit public schools, city police and fire stations, city recreation centers, church recreation rooms and any additional municipal buildings designated by the City Council. If the necessary drop would be in excess of 150 feet, the Grantee is permitted to charge time and material for excess footage.

According to King Video connections have been made to City Hall, the City utility building, three Lodi Fire Stations, the Public Library, the public hospital, two high schools, three junior high schools and approximately 10 elementary schools and two churches. We also note that the system has been designed so that live video feeds may be originated from the City Council and the School Board using two dedicated cables.

## C. TECHNICAL EVALUATION/SYSTEM OPERATIONS

The first step in CTIC's on-site evaluation was the examination of received signal quality at the system headend. This step is a vital part of any examination as there can be no expectation of acceptable delivered signal quality (to subscribers) unless acceptable quality signals are first received by/at the headend. The cable distribution system cannot improve the quality of a "poorly received" signal.

Observations at the headend showed that most signals were received with good quality, however, there are a few exceptions which were discussed earlier that should again be noted. These exceptions center around the fact that a standby modulator was being used for Showtime or Channel 23 during our examinations. The observed performance of this modulator indicated that it would be sufficient for standby use but should not be used full-time without adjustment or repair. Its performance in carrying Showtime was slightly noisier than other channels but was still acceptable, however it was also interfering slightly with Channel 13 - CBN. The "normal" Scientific Atlanta modulator for Showtime had been repaired and was scheduled for installation at the time of our examination.

The second step in our on-site evaluation was to determine the quality of signals that were being delivered to subscribers' homes. As it is infeasible in a limited time frame to conduct a statistically valid sampling of signal quality in actual residences in Lodi (given the numbers

involved and the difficulties often encountered in coordinating access to private homes) delivered signal quality was evaluated by proxy with examinations conducted at the end of the longest amplifier cascades in the service area. As the actual amount of degradation a signal will suffer is largely determined by the number of amplifiers the signals must pass through to reach a given subscriber, the extreme points in the distribution system are reasonably representative of worst-case system performance. In addition to the system extremities, examinations were also conducted at a number of other test points in the distribution system to represent average system performance for reasons discussed in the first section of this chapter.

The test points chosen were:

Approximate Location

#1	Almond, West of Cherokee
#2	Sacramento, north of Yosemite
#3	Ham Lane at Lake Home
#4	Le Bec Court at Edgewood
#5	Turner at Lincoln
#6	Miwok Drive at Mokelumne River Drive
#7	Beckman at Black Diamond
#8	Ham Lane at Port Chelsea
#9	Lodi Avenue at Wood Drive
#10	Oak, between Rose and Crescent

Allowing for the different types and qualities of the various signals carried on the system, observations showed generally good quality signals in all but three "cases" seen at a number of test points. Two of these exceptions involve single channels (Channel 2 or Channel 10) and may be headend or reception related. The other exception could also be considered as

affecting a single channel (Channel 26, which is not promoted by the company) but is an indication of the distribution system performance.

In the first two cases, minor degradation in the form of additional noise was seen on Channel 2 at a number of testpoints (numbers 2, 4, 7 and 8). In the case of Channel 10, interference, as the apparent result of co-channel pickup with another signal (potentially off-air Channel 10 from Modesto) was seen at a number of locations (numbers 3, 4 and 9). In all these cases the interference seen was noticeable at close observations (18"-24") but would likely not be noticeable or objectionable to subscribers at normal viewing distances. Although this performance was not initially seen at the headend, its appearance at various locations throughout the system, appears to indicate a possible reception related cause rather than a "problem" with the distribution system. While the problem noted was not severe, King Video should continue to monitor the situation, to determine the cause, and whether any corrective measures are indicated.

The other case, noted for Channel 26, was basically the observation of additional noise at most testpoints (Numbers 3-10). The actual amount of noise varied from point to point, from a relatively minor level to a more objectionable level. Rather than being reception related, this problem appeared to be simply due to the fact that the distribution system was "rolling off" beyond Channel 25 (or decreasing in signal strength) more rapidly than would be called for in a normal design. As the level or strength of the desired signal decreases, the impact of

system noise becomes more significant, and can increase to the threshold of visibility or to become objectionable. We must point out that King Video does not market or promote Channel 26 to its subscribers and simply allows any subscriber with the proper equipment to receive it. As it is not a defined part of its channel offerings, the weakness of this channel does not indicate that it is not necessarily meeting all of its performance requirements, but does point out an overall "weakness" in the distribution system in Lodi. Basically, the distribution system appears to be operating at its maximum useable capacity with the delivery of Channel 25. The delivery of any channels beyond this cannot be guaranteed and would likely require a significant amount of effort, in terms of limited upgrade to be able to deliver more channels acceptably.

Overall, our examination showed that the cable system is capable of delivering generally good quality signals to ends of the longest amplifier cascades, within the present operating parameters. On the whole our examination showed that the system appears to be well constructed, given the overall age of the system and should be able to deliver good quality signals to all subscribers at this time.

While at this time, the system should be able to deliver good quality signals, we should note that given the large number of individual components in the system (headend, cable, amplifiers, passives, drops) it is quite likely that a single component could fail unexpectedly affecting one or more subscribers services. Such an occurrence is even more likely

given the advanced age of the system. We point this out to stress that in these cases timely maintenance (preventative and on demand) and service are necessary to maintain and restore service.

Based upon the City's impressions, the company has generally been responsive to service and maintenance requirements, however, we must note that the company's records do not make verification of these impressions possible. Over the life of the franchise, the Lodi system, like many others, has "suffered" from its share of employee turnover. Also, like many older systems, it did not have structured plans for maintenance and recordkeeping. Preventative maintenance may have been done (and since the City has not received a flood of calls over the life of the franchise, some maintenance probably was done) however, there were no records kept, either with required tests or with results, to allow the company to analyze its history for any significant trends. Subscriber complaint records were kept, however, with the exception of eight months in 1983, no weekly or monthly summaries were compiled. Instead, complaint and service call records were filed in each subscriber's individual record. This allows the company to investigate a specific customer's record, but does not allow a review of the type of service calls required over time for the entire system.

The lack of this type of information makes it difficult, if not impossible for us to perform an objective examination of King Video's past performance in these areas. This situation should change in the near future. In the recent past King Video has reviewed its operations

and has (or will) taken steps to update its procedures. Steps taken range from the obvious (communications of service call procedures to the after hours answering service as of 11/84), to the somewhat more subtle (establishment of weekly, monthly and semi annual preventative maintenance schedules). The company has also recently changed from its paper based system for billing and service calls to an on-line computer based operation. As can be expected with new computer systems, all of the bugs have not yet been worked out, and the system can only give a basic manpower report - or a simple listing of activity. With the proper subroutine, this system should be able to provide a weekly or monthly summary of service calls by "cause or cure". These improvements can not of course recreate the past, but they should serve to simplify any future monitoring of system performance and operations.

#### D. CONCLUSION

Overall our examination of system performance indicated that while the system currently appears to be delivering good quality signals, it is not reasonable to expect the existing system to be able to meet the community's needs over the term of a new or extended franchise without significant change. The primary reasons for this conclusion are the limitations of the existing distribution system design, components in place, available channel capacity and simply the age of much of the system.

While a component by component check of the system was not done, factors indicate that a major rebuild project would be more suitable than a limited effort attempting to expand the channel capacity of the existing system. Given the age and system design, a limited upgrade could prove counter productive due to increased maintenance and service requirements. The same type of increased maintenance requirements can also be expected eventually if the present system were to remain unchanged as continual aging takes its toll on system components.

As noted earlier, our compliance check has noted a few areas in which full compliance is not readily apparent, mainly in the area of the company's filings with the City. Not diminishing the importance of these filings, we would note that it is possible that information may have been filed in other areas or that there has been some misunderstanding of requirements and procedure. We would expect that the company should have no problem complying with these requirements as they are neither unusual nor onerous.

## CHAPTER III: FINANCIAL REVIEW

### A. INTRODUCTION

This section of the report analyzes the financial condition of the CATV system serving Lodi, California. King Video has provided three years of historical financial data covering 1982, 1983 and 1984. For these years, fairly detailed revenue data was provided. However, only summary operating expense data was provided for 1982 and 1983. In addition, the operator was unable to provide us with the requested Balance Sheets or Sources and Uses of Funds Statements. The operator states that it does not keep detailed financial records for its subsidiaries.

As noted elsewhere in our report, the franchisee has not complied with the financial report filing requirements of the ordinance. Because accurate financial records are required in future contract modifications or renegotiations, we recommend that the City take steps to improve enforcement of this franchise requirement, and expand the requirement to include more detailed operating expenses, accounting assumptions, and system demographics.

### B. REVENUES AND SUBSCRIBERSHIP

The system serving Lodi consists of 168 plant miles (47 underground). It passes 18,000 homes and serves 8,500 subscribers. This reflects a system-wide 47.2 percent market penetration rate, or slightly below a national

average of 55-56 percent. The portion of the cable plant serving the City of Lodi consists of 135 plant miles and passes 16,800 homes. Lodi accounts for 80 percent of system mileage and 93 percent of homes passed. Subscriber-ship in Lodi totalled 8,000 in 1984 or 94 percent of system subscribership. Market penetration in Lodi is approximately equivalent to the system-wide penetration of 47 percent.

Over the past three years, the operator has constructed 30 miles of new plant of which 11 have been within the City of Lodi. An additional 1800 homes have been passed by cable plant over this period, of which 1300 exist within Lodi. The implication of this information is that the operator has been constructing in very high density areas within Lodi (118 homes per mile) and in very low density areas (26 homes per mile) outside Lodi.

The subscriber base has grown 11 percent over the past three years, almost identical to growth in homes passed. As such, no real improvement in market penetration has occurred since 1982.

The cable system passes an average of 107 homes per cable-mile; 124 homes per cable mile within Lodi. System densities are one indication of profit potential, since the higher the density the lower the average investment for homes passed. System density in excess of 100 homes per mile is generally considered a favorable indication for a system to have profit potential.

The system also serves 24 commercial subscribers, all of which are based in Lodi.

The following table shows the sources of revenue from the Lodi portion of the system for 1982, 1983 and 1984:

	<u>\$000s</u>		
	<u>1982</u>	<u>1983</u>	<u>1984</u>
Basic Revenue	\$ 786	\$ 894	\$ 930
Second Set Revenue	53	55	58
Pay TV	404	462	630
Other	-	6	23
Total	\$1,243	\$1,418	\$1,641
Average Monthly Revenue per Subscriber	\$14.06	\$15.35	\$17.09

The basic revenues reported reflect a basic service rate increase between 1982 and 1983.

Revenue reports reflect that approximately 30 percent of the subscriber base is selecting an additional outlet of cable service at a monthly rate of \$2.00 per month.

Pay television revenues have shown the most notable improvement over the past three years. Between 1983 and 1984 pay television revenue improves over 36 percent.

The growth in monthly revenues per subscriber between 1982 and 1983 of about 8 percent appears attributable to increase in basic fees. The eleven percent increase in revenue per subscriber between 1983 and 1984 appears

attributable to increases in pay service revenues. There was an overall 14 percent increase in total revenues between 1982 and 1983 and a 15 percent increase between 1983 and 1984.

The Lodi portion of the system accounts for about 94 percent of system revenues and about 1.8 percent of King Broadcasting Company revenue for 1984 or 10 percent of its CATV division revenues.

#### C. OPERATING EXPENSES

In CATV operations, expenses are generally allocated between plant, origination, and general, selling and administrative (GSA) categories.

Plant expenses represent those costs associated with maintaining the distribution plant. The largest cost item under plant expense is typically salary costs for technical staff.

King reports seven plant staff in 1982 through 1984. This staff consists of two installers, three technicians, and a two-man construction crew. Average salary in 1984 for plant staff was \$15,429. This appears to be a reasonable plant staff for a system of this size.

Unfortunately no detailed expense items were provided for 1982 or 1983. In 1984, plant maintenance averaged \$244 per mile which is somewhat high and probably reflects the age of the system. Power expense average \$54 per mile in 1984. This appears slightly low but within a reasonable range.

Vehicle expense was reported at \$19,000 on 1984. This appears consistent with the probable number of vehicles associated with the size of the staff and system.

Total plant expense in 1984 was \$219,000 of which \$111,000 was capitalized. We are surprised to see such a high level of capitalized expense in 1984, since only eight miles of new plant was added. Reported plant expense for 1982 and 1983 was \$251,000 and \$167,000 respectively. While this shows a decline in plant operating costs over time, capitalized expense was not identified for these years and therefore it is difficult to interpret whether a real decline occurred. Staffing levels have remained unchanged since 1982.

Origination expenses are those costs associated with producing or acquiring programming for transmission over the cable system. The largest origination cost is associated with satellite and pay television programming.

In 1984, King reports spending 97 cents per subscriber per month for ESPN, MTV, USA and CNN. Pay service expense appears to have averaged around 40 percent of pay television revenues in 1984. This level of expense is consistent with other systems we have reviewed with similar rate structures.

Production expense associated with local programming totalled \$47,000 in 1984. King reports one full-time director and two part-time cameramen for local production. A production coordinator was added in 1984.

Total origination expense increased 50 percent between 1983 and 1984. This increase is likely attributable to additional pay service revenues and the additional local production staff.

Total General Selling and Administrative costs in 1984 are reported at \$427,000, an increase of 33 percent over 1983 but less than the \$455,000 reported for 1982. Because expense itemization was not provided for 1982 or 1983, we are unable to determine the categories of expense responsible for these increases.

King maintains an administrative staff of 11 which is fairly large on a comparative basis of administrative staff per subscriber. Typically administrative staffing average one per 2,000 subscribers. In this case the ratio is one per 770 subscribers. Most unusual is a sales staff of three plus a Marketing Manager for a system this size. For most small systems, the marketing manager position is a regional position.

Most other categories of expense detailed under the administrative category in 1984 appear reasonable and consistent with other systems we have reviewed.

The Lodi system receives a corporate overhead allocation based on a ratio of the system's basic subscribers to the company's total basic subscriber base. Reported corporate overhead allocation for 1982, 1983, and 1984 totals \$80,000, \$64,000, and \$60,000 respectively. These allocations average 4.7 percent of system revenues or about \$8.84 per subscriber per year. On a comparative basis with other systems we have reviewed, this overhead allocation is very reasonable and compares favorably with the overhead allocations of many multiple system operators.

The following table shows the average annual operating expense per subscriber.

Operating Expense per Subscriber

1982	\$137.449
1983	\$ 98.442
1984	\$113.000

Overall, operating expenses on a per-subscriber basis appear quite reasonable. We are unable to specify the causes for the 28 percent decline in operating expense per subscriber between 1982 and 1983 or the 15 percent increase between 1983 and 1984 because expense details were not provided for 1982 and 1983. However, we speculate that perhaps in 1983 a significantly higher percentage of operating costs qualified for capitalization and thus net operating costs may have declined while gross costs remained constant or increased. Between 1983 and 1984, it is likely that a principal cause for increased operating costs per subscriber is programming costs. Many satellite service providers increased their fees to operators in 1984. In addition, as per-subscriber expenditure on pay services increased in 1984, the amount attributable to pay service providers also increased.

Operating expenses on a per-subscriber basis increased 15 percent in 1984 while average revenues increased 11 percent.

The relationship between expenses and revenues was .81 in 1982 but improved dramatically to .53 in 1983 and .55 in 1984. Operating ratios for 1983 and 1984 are very favorable.

## D. CAPITAL EXPENDITURE

Within the franchise area, King reports the following capital expenditures over the past three years:

	<u>\$000s</u>
Headend	\$150
Distribution Plant	102
Drops	144
Converters	160
Leasehold Improvement	6
Program Origination Studio	22
Tools, Test Equipment	3
Vehicles	23
	<u>\$610</u>

The 11 miles of plant added since 1982 appear to have been constructed at an average cost of \$9,273 per mile.

Expenditure for drops (connecting subscriber homes to the distribution plant) appears quite high. King added 630 new subscribers between 1982 and 1984. Given a reasonable turnover factor, cost per drop appears to exceed \$100. Typically drop costs average \$40-\$50 per drop including capitalized labor. However, some of this cost may be attributable to drop replacement given the relative age of the system.

The \$160,000 reported expenditure for converters appears reasonable as does reported expenditures for vehicles.

The total reported expenditure between 1982 and 1984 of \$610,000 represents 64 percent of total capital expenditures for the financial entity or

total system. According to supplemental information provided, capital expenditure in the first month of 1985 totalled \$289,000 for the entire financial entity.

Since 1970, the operator reports \$3.121 million in capital expenditures for the entire system. More than half of that expenditure has occurred within the past five years.

E. SYSTEM PROFITABILITY

The operator reports the following annual income statement for the franchise area for 1982 through 1984.

	<u>\$000s</u>		
	<u>1982</u>	<u>1983</u>	<u>1984</u>
Revenue .....	1243	1418	1641
Expenses .....	1013	758	904
Operating Inc. ....	230	660	737
Depreciation .....	252	144	175
Pretax Income .....	(22)	516	562
Pretax Cash Flow .....	230	660	737
Estimated Tax Liability (Benefit)* (48%) .....	(25)	238	234
Estimated After Tax Income .....	3	278	328
Estimated After Tax Cash Flow ....	255	422	503
Less Capital Expenditure .....	154	103	353
Estimated Net Cash Flow to Parent ..	101	319	150

\*Less Investment Tax Credit at 10 percent

King was unable to provide tax or interest expense for the individual subsidiary for 1982 through 1984 since these expenses are consolidated on a corporate level. However, for the purpose of this analysis we estimated a tax liability at 48 percent of pretax earning less investment tax credits associated with capital expenditures.

The operator reports a pre-tax loss of \$22,000 in 1982. We estimate a tax benefit of \$25,000 on a \$22,000 loss when Investment Tax Credit are added, yielding a positive net income of \$3,000. This would result in an after-tax cash flow of \$255,000 which exceeds reported capital expenditures for the system by \$101,000. In other words, we estimate the system returned \$101,000 to the parent in net cash benefit in 1982.

We estimate after tax cash flow of \$422,000 in 1983 which, less the \$103,000 reported capital expenditure, should have returned \$319,000 in net cash flow to the parent that year. We estimate net cash flow to the parent of about \$150,000 in 1984.

The net value of plant and equipment is estimated by the operator's consultant at the following:

\$1,122,494 in 1982  
\$1,224,494 in 1983  
\$1,496,494 in 1984

These figures yield a return on investment\* of less than 1 percent in 1982, 23 percent in 1983 and 22 percent in 1984. If working capital is added to the investment base, returns on investment for the years examined are again

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\*Net income divided by net assets.

negligible for 1982, 20 percent in 1983 and 19 percent in 1984. The three-year average annual return in investment would be 13.5 percent.

Overall the system appears to have made substantial improvements in profitability and cash flow over the past three years.

In our opinion, this system could fairly support a system rebuild if such was negotiated as part of a new agreement. We estimate such a rebuild could be accomplished at approximately \$1.4 to \$1.7 million. If this was accomplished over a two-year period, 60 to 70 percent of needed funds could be derived from the systems operating cash flow.

The parent company, King Broadcasting Company had \$25.5 million in current assets as of June 30, 1984 with a current ratio (relationship between current assets and current liabilities) of 1.56. Total assets were \$96.3 million. Net income for fiscal 1984 was \$8.8 million and cash flow totaled \$17.4 million. Scheduled maturity of long-term liabilities in 1985 total \$5.884 million. The firm generated a 17.6 percent return on equity and a 12.4 percent return on fixed assets.

CATV operations assets account for 22.5 percent of King's total non-current assets and 17.8 percent of its revenues.

Both subsidiary and parent appear to be in a strong financial position.

## CHAPTER IV: SERVICES

### A. INTRODUCTION

In this chapter we are presenting a description and analysis of the services offered to Lodi subscribers by King Video. As a prerequisite to the renewal process, the City of Lodi may wish to consider the services now available as they relate to services available in other communities as well as the types of services available to cable operators for distribution.

This chapter includes three main discussions. The first is a review of the current services in Lodi. The second is a comparison of the Lodi service line up and rates with cities of similar size and location in reference to major population centers, and with cable systems of approximately the same age. The third topic of this section of our report examines the support for Local Origination and Access Program Production, including channels, studios, production equipment and other support such as staff and operating expenses. The reader is referred to Tables IV-1 through IV-5 for further elaboration of these issues.

### B. CURRENT SERVICES AVAILABLE TO LODI SUBSCRIBERS

Table IV-1 presents the current service line up offered by King Video as presented in its submission to CTIC Associates. Two tiers of Basic Service are currently offered, representing a total of 18 channels of programming.

Tier 1 Basic has a \$9.50 monthly charge and includes 12 channels of programming, including nine broadcast services, satellite services ESPN (sports programming) and CBN (religious oriented family programming) and one Community Programming channel which offers locally produced video programming and automated information such as time, weather, public service announcements and advertisements.

Tier 2 offers an additional six channels of service including two San Francisco broadcast stations and satellite services USA Network (sports and entertainment), MTV (rock music videos), The Nashville Network (country music videos) and CNN (24 hour/day news). Tier 2 is priced at \$6.95 if taken with Basic Tier 1, at \$3.50 if one pay service is subscribed to and at no charge if two pay services are taken. Pay services available include HBO, Showtime and The Disney Channel, each with an "a la carte" price of \$11.95 and The Playboy Channel with a monthly charge of \$8.95. King Video offers discount for multi-pay subscribers as well, with two pays available for \$20.45 and three pay services available for \$30.45. These fees are of course in addition to the fee for Basic Services.

Table IV-2 presents all of the rates for King Video-Lodi services. A variety of Sample Costs are presented on this Table which demonstrate the effect of the above mentioned discounts. For example, Basic Tier 1, Tier 2 and one pay service would cost \$9.50 plus \$3.50 plus either \$8.95 or \$11.95 for totals of \$21.95 (with the Playboy Channel) or \$24.95 (any one of the other three pay options.) The discount packages are designed to encourage subscribers to take multi-pays, as can be seen. By adding one more pay service to the package just described, the monthly fee would then be \$29.95 -

\$9.50 for Basic Tier 1, no charge for Tier 2, plus \$20.45 for the two pay services. Thus the "per-service" price diminishes the greater the number of services which are subscribed to.

King Video also provides a package of FM/Audio services which includes 11 regional FM services, six satellite audio services, two basic service audio simulcasts and three pay service audio simulcasts. This package has a \$4.00 monthly charge.

#### C. SERVICES AVAILABLE TO CABLE OPERATORS NATIONALLY

Currently there are over 50 Basic and Premium services distributed via satellite to cable systems across the country. The Lodi system has a representative sample of some of the more popular programming services, however there are other services which the City may be interested in. Although the Cable Act prohibits franchising authorities from requiring specific services by name, the City may be interested in the general types of programming available. A list of programming services is provided in Appendix A. These include programming geared for specific audiences such as minorities, children, senior citizens and the hearing impaired. Also there are a variety of programming services with specific interest orientations, such as religious programming sponsored by a variety of denominations, public affairs programming covering the U.S. House of Representatives, financial and business news, educational services, health and family care services, a 24 hour weather service, cultural programming, more types of

music video programming, additional sports programming, and Spanish language programming. The City of Lodi may wish to review this universe of available programming to determine which types of services may be of interest to Lodi residents.

#### D. SERVICES AVAILABLE IN OTHER COMMUNITIES

Table IV-5 presents cable system data and services provided currently in Lodi with eight other communities. Selection of the comparison cities was based on several factors. All of the communities, like Lodi, are in the population range of approximately 25,000 to 40,000. All nine cities are between 20-40 miles of another larger city which is a larger television market center and thus the primary source of broadcast television stations. Most all of the nine cities originally received cable television services in the mid 1960's, an additional reflection of the ability to receive broadcast services. Of the nine cities, Lodi, and Charlottesville, Virginia are currently involved with "pre-renegotiation" activities with their respective cable operators. The cable systems in Battle Creek, Michigan and Port Huron, Michigan were both upgraded in the mid to late 1970's from 12 channel configurations, and Port Huron is now gearing up for an additional upgrade. Blacksburg, Virginia, Petaluma, California, Midland, Michigan, Bowling Green, Ohio, and Columbus, Indiana have all had recent renewals of their cable franchises with rebuild/upgrades in process. We present this comparative data for the further information of the City of Lodi for use with its franchise renewal process.

As can be seen from Table IV-5, most of the comparison cities have between 30-35 channel capacity. The Basic/Tier 1 services offer from 12 to 25 services at monthly fees from \$6.75 to \$12.95. Five of the cities, including Lodi, offer a second level of basic service, with channel numbers ranging from 18 to 30 (cumulative--including Tier 1 services) with monthly fees ranging from \$9.75 to \$12.60. In Lodi, King Video is charging \$16.45 for this package, but as noted above, this fee decreases with the Discount Packages. Numbers of premium options ranges from one to six, at rates from \$8.50 to \$11.95. (It should be noted that the Bowling Green system is going to be expanded to 30 channels by June 1985 and plans are to add more premium and basic services but these data were not yet available.)

At least four of the comparison cities are two-way capable. Only one system, the one in Port Huron, MI, will offer a pay-per-view channel as a part of its proposed upgrade - a service in which special sports or entertainment events are offered one program at a time for one fee for the program.

The services offered by King Video are reasonably typical for a system of its age and size; however as mentioned above, there are quite a few additional types of programming available to cable operators today which are not represented in Lodi. Additionally, the rates offered by King Video are somewhat higher than average until a subscriber reaches a level of Basic plus multi-pay whereupon the discounts take effect. This is a marketing device used by many cable operators, however it may place limitations on certain subscribers not interested in spending \$30/month on cable service.

## E. SUPPORT FOR COMMUNITY PROGRAMMING

Table IV-3 presents the production facilities and equipment currently available for local program production in Lodi. Table IV-4 presents the Operating Budget and Staff support provided during 1984 by King Video-Lodi and the hours of Local Origination and Access programming cablecast on the one Community Channel.

As we understand it, this channel includes automated community bulletin board information, time, weather, advertisements and public service announcements, plus the Local Origination (LO) and Access video programming. It appears from the types of programming described in King Video's submission and the supportive letters from citizens and community groups that the services offered on this channel are popular. This suggests to us that an additional item of consideration for Lodi City officials would be the addition of one or two channels for these purposes. If the community is very interested in this local communications medium it quite possibly would be able to produce enough programming to justify another channel with video services; thus allowing retention of the one community channel for automated information that would be solely dedicated for this purpose.

King Video offers program producers a reasonable amount of production equipment. The equipment which is leased offers good supplemental capacity and the permanent addition of this equipment may be appropriate. However, there appears to be an absence of post-production editing facilities which may be an item for future consideration. For the dedicated access users, the

addition of another portable unit may be appropriate, perhaps in the 3/4" format so that it is compatible with the LO/Access shared use equipment. The VHS video recorders are useful as this format is compatible with many home VCRs and offers subscribers the option of home playback.

King Video provides one full time and two part-time staff for community production. No information was provided regarding the hours during which community producers had access to facilities. Future consideration may need to be given to additional part-time staff to allow more hours of availability. Additionally, King Video did not mention if it conducts any training for community producers, which might be useful to the community. King Video has presented some documentation of community support for these kind of services so it is certainly aware of the "good will" factor which is created by these activities.

As noted in the previous section, we looked at other communities which had conducted renewals with their cable operators recently. According to the Renewal Case Studies provided in Paul Kagan's Cable TV Franchising newsletter, facilities and support for local origination and access program production were often included with system upgrades. In Bowling Green, before the renewal of its cable franchise, only one automated access channel was provided by the cable operator. The new agreement calls for the cable operator to provide an additional channel for combined Public and Educational access uses, with another channel to be made available after this channel was used 80% of the time weekdays during 5 and 11:30 p.m. The cable operator would also provide portable facilities, personnel and a studio, probably at the university.

Also according to Cable TV Franchising, the cable operator in Columbus, IN will be providing a new access studio and three access channels as a part of its renewal agreement. According to company representatives, currently two channels are active, with one channel used to cablecast LO and Access programming. Five full-time staff are currently employed to support community programming and 25 to 50 hours a week of video programming is cablecast. No information about operating expenses was provided.

In Midland, Michigan, the renewal agreement calls for \$90,000 in access support over the first three years, with an initial grant of \$45,000 made immediately. The operator will provide two access channels in place of one which was shared between producers in two cities which have adjoining franchises. According to that cable operator, one full-time staff member is employed for access, with one intern also available to assist users. Currently about 25 hours of programming is cablecast per week.

#### F. SUMMARY

During this pre-renewal time frame, it is important for Lodi City officials to examine the current capabilities of its cable system in conjunction with the needs and desires of the community regarding the future uses of the cable system. The variety of services available to cable operators and the potential for cable system utilization are great and will continue to expand over the next decade as the cable industry matures. The services and facilities currently provided by King Videc are reasonable for a system

of its age. However the City should give attention to future needs and interests regarding cable television services in the City as it proceeds through franchise renegotiations.

REFERENCES:

The data presented on Table IV-5 were gathered from a variety of sources. The Broadcasting Yearbook 1985 and Cablefile '85 were used for initial selection. Our staff then called the various cable operators for clarification and further information. We gratefully acknowledge the assistance of these cable operators. For the Cities of Midland, MI, Bowling Green, OH, and Columbus, IN, we referred to Paul Kagan's Cable TV Franchising newsletter which features "Renewal Case Studies" periodically.

Cable TV Franchising: March 27, 1984 "Renewal Case Study #11: Bowling Green, OH", p. 6.

January 20, 1984 "Renewal Case Study #8: Columbus, IN", p. 6.

February 29, 1984 "Renewal Case Study #9: Midland, MI", p. 6.

## TABLE IV-1

CURRENT SUBSCRIBER SERVICES OFFERED BY KING VIDEO CABLE  
IN LODI, CALIFORNIA - MAY 1985CHANNELSBasic Service:

- 2 KTVU (IND) Oakland
- 3 KCRA (NBC) Sacramento
- 4 KRBK (IND) Sacramento
- 6 KVIE (PBS) Sacramento
- 8 KTXL (IND) Sacramento
- 9 KXTV (CBS) Sacramento
- 10 KCSO (IND) Modesto
- 11 KICU (IND) San Jose
- 12 KOVR (ABC) Sacramento
- 5 ESPN
- 7 Community Channel (Time, Weather, local announcements,  
Local Origination)
- 13 CBN

Tier 2

- 15 USA Network
- 16 Nashville
- 17 MTV
- 18 CNN
- 19 KGO (ABC) San Francisco
- 22 KBHK (IND) San Francisco

Premium Services

- 14 Disney Channel
- 23 Showtime
- 24 HBO
- 25 The Playboy Channel

FM Audio Services

- 11 Regional FM Stations
- 6 Satellite Stations
- 2 Basic Service Simulcast Stations
- 3 Premium Service Simulcast Stations

TABLE IV-2

KING VIDEO CABLE - LODI: SERVICES AND RATES

<u>Basic Service</u> - 12 channels	-	\$ 9.50	
Tier - 6 channels			
o with Basic only	-	\$ 6.95	(\$16.45 with Basic)
o with 1 pay service	-	\$ 3.50	(\$13.00 plus pay service fee)
o with 2 pay services	-	No charge	(\$ 9.50 plus pay service fee)
Installation	-	\$25.00	
Additional Outlets	-	\$ 2.00	each
<u>FM Audio Services</u>	-	\$ 4.50	
<u>Pay Services:</u>			
o HBO	-	\$11.95	
o Showtime	-	\$11.95	
o Disney Channel	-	\$11.95	
o Playboy Channel	-	\$ 8.95	
<u>Discount packages:</u>			
2 pay services	-	\$20.45	
3 pay services	-	\$30.45	
<u>Converter Rental (optional)</u>	-	\$ 2.00	
Remote Converter	-	\$ 4.95	
<u>SAMPLE COSTS:</u>			
Basic, Tier, 1 Pay Service	-	\$21.95	(Playboy)
	-	\$24.95	(HBO, Showtime or Disney)
Basic, Tier, 2 Pay Services	-	\$29.95	
Basic, Tier, 3 Pay Services	-	\$39.95	
Basic, Tier, 2 Pay Service 1 Additional outlet and FM/ Audio Services	-	\$36.45	

## TABLE IV-3

KING VIDEO CABLE - LODI: LOCAL PROGRAM PRODUCTION FACILITIESA. Shared Use - Local Origination and Access

Studio Facilities: 380 square feet

1. Video Equipment

1 3/4" VCR  
 1 1/2" VHS VCR  
 1 Character generator  
 3 Monitors  
 1 Dual monitor  
 1 Triple monitor  
 2 Multicasters  
 1 Video control center  
 Camera with titlers  
 Portable lights  
 Head phones  
 Slide projector  
 35 mm Camera with flash  
 Van for remote productions

Also available for LO and Access (company leases equipment)

special effects generator  
 mics  
 lights  
 battery packs  
 1 1/2" VCR

2. Audio Equipment

2 Audio boards  
 1 Turntable  
 1 Tape deck  
 2 Cassette recorders  
 2 mics  
 mic mixer

TOTAL LO/ACCESS EQUIPMENT VALUE = \$30,300 (plus leased  
 equipment - no  
 value stated)

B. Access Equipment

1 Camera  
 1 Light kit  
 1 1/2" VHS VCR  
 2 Mics  
 1 Mic mixer

TOTAL ACCESS EQUIPMENT VALUE = \$ 4,100

TABLE IV-4

KING VIDEO CABLE - LODI: SUPPORT FOR COMMUNITY PROGRAMMING1984 Operating Budget

Local Origination:	\$26,465
Access:	<u>8,885</u>
Total:	\$35,350

1984 StaffPercent of Time Allocations:

		<u>LO</u>	<u>Access</u>	<u>I-Net</u>	
Production Coordinator:	1 - FT	65	25	10	= 100%
Camera Crew:	2 - PT	50	40	10	= 100%

Hours of Programming

Local Origination:	16 hrs./week
Access:	5-7 hrs./week

TABLE IV-5: COMPARISON OF CABLE SYSTEMS AND SERVICES IN NINE CITIES

	-1-	-2-	-3-	-4-	+5-	-6-	-7-	-8-	-9-
FRANCHISE AREA:	LODI, CA	CHARLOTTESVILLE, VA	PORT HURON, MI	BATTLE CREEK, MI	BLACKSBURG, VA	PETALUMA, CA	MIDLAND, MI	BOWLING GREEN, OH	COLUMBUS, IN
CABLE OPERATOR	King Video	Jefferson	Herron	TCI-Taft	Booth	Viacom	Gerity	Wood	Cox
POPULATION (1980)	35,000	40,000	34,000	36,000	31,000	34,000	37,000	26,000	31,000
<b>SYSTEM DATA</b>									
Date of Award	1968	1963	1965	1965	1964	1964	1972	1964	1966
Activation Date	1968	1963	1965	1967	1969	1964	1972	1964	1966
Renewal/ Rebuild Date	-	1978	1976/1985	1977	1983	1983	1984	1984	1983
Plant Miles	135	167	238	351	150	300	200	88	176
Home Passed	16,800	18,000	13,223	30,000	11,000	16,360	16,500	9,000	12,030
Basic Subs.	8,000	12,302	9,462	19,000	6,700	-	10,000	-	8,800
Channel Capacity	24	30	-	24	30	35	32	54	35
Activated Channels	22	27	27	23	20	28	32	13	28
<b>Basic Service:</b>									
Tier	1	1	1	1	1	1	1	1	1
# Channels	12	12	12	12	17	25	20	12	24
Monthly Fee	\$ 9.50	\$ 6.75	\$ 8.50	\$ 8.35	\$ 9.70	\$ 9.08	\$ 8.50	\$ 7.95	\$12.95
Tier	2	2	2	2	-	-	2	-	-
# Channels	18	26	30	21	-	-	27	-	-
Monthly Fee	\$16.45	9.75	12.45	12.60	-	-	12.50	-	-
Pay Services/ Monthly Fee	HBO, Sho, TDC @ \$11.95; TPC @ \$8.95	HBO, TMC @ \$9.95; CMAX @ \$7.95	Sho, TDC @ \$8.95; CMAX @ \$8.00; TMC, HBO, PAS @ \$9.95	HBO, CMAX @ \$10.50	HBD, Sho @ \$9.95; HTS @ \$9.90	HBO, Sho @ \$11.95; TDC @ \$10.95	HBO, CMAX @ \$8.50; TDC, PAS @ \$10.00	TMC @ \$9.00	HBO, CMAX, TDC @ \$9.00
Discount Packages	T2 \$6.95 with Basic, \$3.50 w/1 pay, N/C w/2 pays	-	-	-	-	HBO, & Sho \$21.40; TDC \$6.95	-	-	-
# Pay per View Channels	-	-	1	-	-	-	-	-	-
Two-Way				No	Capable	No	Capable	Capable	Capable
Notes:			Services Re-presented are Proposed for 1985 upgrade.	Plant Miles, Homes Passed & Basic Subs. include Springfield, MI franchise.				System expands to 30 channels by June, 1985.	
Key:	HBO = Home Box Office; Sho = Showtime;		HTS = Home Team Sports; CMAX = Cinemax;		TDC = The Disney Channel; PAS = Pro Am Sports System; TPC = The Playboy Channel		TMC = The Movie Channel		

## CHAPTER V: REVIEW OF REGULATORY ORDINANCE

CTIC has reviewed Chapter 8A of the Lodi City Code regarding Community Antenna Television and also Ordinance 855 (December 6, 1967) that was the originating ordinance, and Ordinance 1202 (May 7, 1980) that amended Chapter 8A. These ordinances constitute the local regulatory procedures that would apply to any cable company wishing to serve Lodi. Other relevant documents reviewed were Resolution 3158 that awarded the current franchise to Multi View Systems, Inc., established a franchise fee of 6 percent and required Council approval for change of rates; a certification stating that on February 18, 1970 the City Council authorized the transfer of the franchise from Multi View System, Inc. to King Video Cable Company; and Resolution 80-64-May 1980, amending Resolution 3158 to change franchise fee to 3 percent of gross receipts, and to effectively eliminate rate regulation (by Ordinance 1202), except to require the filing of rate changes with City Council 30 days prior to effective date of change.

The basic underlying ordinance and Code are very well done and contain many features that are continuing to be used by cities even 18 years later. The ordinance is similar to those adopted in many California cities in the late 1960s. Considering that the FCC had not yet adopted its franchising standards by then and have subsequently made many changes, much of the present code is still excellent and being recommended to be continued as originally written.

Several new sections are suggested from our collective experience with hundreds of local governments as they have dealt with operating problems with cable companies over the last several years. Additional sections are proposed that would recognize needed changes to reflect the new Cable Communications Policy Act of 1984.

While the proposed language adds considerably more words to a well prepared original ordinance, we feel that the added protection recommended may save the City from a series of potential problems. Like most ordinances, they are written for the protection of the parties involved but hopefully may never be needed for actual performance purposes. Today cable companies trade and transfer properties often and local system managers are constantly being moved. A system that has no problems one day, overnight has multiple problems that may require City intervention to clarify or clean up an undesirable set of problems.

In our opinion the primary deficiency of the present code is that it does not provide enough "teeth" to cause effective enforcement of its requirements, except by revoking the franchise itself.

In the proposed sections that follow we would recommend consideration of several sections to increase the City's ability to enforce ordinance requirements and to cause system improvements.

- o A complaint procedure that requires system testing when necessary and a corrective procedure required;
- o A penalty or liquidated damages section that can be used to achieve compliance short of trying to revoke a franchise (which is legally and practically difficult to accomplish);

- o An expanded revocation/termination section;
- o A "state-of-the-art" clause that can give some flexibility in accomplishing future changes in the system;
- o A security fund from which to draw upon to pay liquidated damages if and when they occur;
- o A construction bond to cover both initial construction of a cable system and future reconstruction or rebuilding of system;
- o A strengthened section dealing with transfers and assignment of a franchise.
- o Service standards and requirements to make improvements when needed;
- o A section requiring continuity of service;
- o A section requiring periodic performance evaluation sessions;

The second set of recommendations deals with suggestions that will update the present ordinance to comply with the new federal Cable Communications Policy Act of 1984.

- o New definitions for "Basic Service," "Cable Services," "Cable System," and other more minor definitions;
- o Grant of authority
- o Renewal procedures;
- o Required services and facilities;
- o Access channels;
- o Waiver from ordinance requirements;

In conclusion we would also recommend that some changes and additions be made to present wording of some existing sections.

- o Repeal definitions section 8A-1 "CATV" that excludes "Pay TV" also Section 9b - of Ordinance 855 that also prohibits "Pay TV";
- o Increase application fee (Section 8A-4) from \$250.00 to probably \$5,000, or to cover City's costs, whatever they might be;
- o Remove requirement from application (8A-4(e) that requires a description of every public street that will be used to construct a cable system;
- o Replace Franchise Renewal section (Section 8A-8) with new federal requirement (see enclosed wording);
- o Add broadcaster and copyright liability provision to insurance requirements and examine if present limits listed are still adequate;
- o Require more specific financial recordkeeping regarding the operating costs and profitability of the Lodi system.

PROPOSED PROVISIONS TO INCREASE ENFORCEMENT CAPABILITY

SECTION . 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 capable of responding 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. A Grantee may charge for service calls to the subscribers' home that are not the result of cable failure upon approval of a rate and equitable procedure by the City.

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.

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.

SECTION . 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.

SECTION . 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 \_\_, \_\_ and Section \_\_, 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 CATV system review, a Grantee shall pay Fifty Dollars (\$50.00) per day, or part thereof, each 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 types 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 \_\_\_ 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.

SECTION . 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) Violation of any material provision of the franchise or any material rule, order, regulation or determination of the City made pursuant to the franchise;

(2) Attempt to evade any material provision of the franchise or practices any fraud or deceit upon the City or its subscribers or customers;

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

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

(5) 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

(6) 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.

SECTION . NEW DEVELOPMENTS

a. Subsequent to each Performance Evaluation Session, as set forth in Section \_\_, 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 CATV 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 waste 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 \_\_\_ of this ordinance.

SECTION . SECURITY FUND

a. Within thirty (30) days after the award or renewal of a franchise, a Grantee shall deposit with the City a cash security bond or letter of credit in the amount of \$50,000. The cash bond or letter of credit 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 cash bond or letter of credit 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 CATV system, should such removal be required by City Council or undertaken 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 cash bond or letter of credit the City may immediately require payment of the amount thereof, with interest and any penalties, from the cash bond or letter of credit.

d. The rights reserved to the City with respect to the cash bond or letter of credit 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 cash bond shall affect any other right the City may have.

SECTION . 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 CATV 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 CATV 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 CATV 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.

SECTION . TRANSFERS AND ASSIGNMENTS

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

No such consent shall be required for a transfer in trust, mortgage, or other hypothecation as a whole or in part to secure an indebtedness, except that when such hypothecation shall exceed fifty (50%) percent of the market value of the property used by the franchisee in conducting the business franchise. Such consent shall not be withheld unreasonably.

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 subordinate 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. The City Council reserves the right of "first refusal" to purchase a cable system at the market value price if and when it is placed on the market for sale.

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

SECTION . 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.

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 breach of condition for which the remedy of Section \_\_\_ is applicable. (Liquidated Damages.)

SECTION . 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 that a Grantee elects to overbuild, rebuild, modify, or sell the system, or the City gives notice of intent to terminate or fails to renew a franchise, the Grantee shall act so as to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances.

In the event of a change of Grantee, or in the event a new operator acquires the system, 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.

SECTION . PERFORMANCE EVALUATION SESSIONS

a. The City and a Grantee shall hold scheduled performance evaluation sessions within thirty (30) days of the third, sixth, ninth, and twelfth, fifteenth and eighteenth 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 at least two (2) channels of 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.

PROPOSED PROVISIONS TO UPDATE PRESENT CODE

Definitions

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 re-transmission 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 1934, 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.

SECTION . GRANT OF AUTHORITY

a. 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, man-

holes, 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.

b. 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.

c. 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.

d. The construction, maintenance, and operation of Grantee's CATV 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.

SECTION . DURATION OF FRANCHISE; RENEWAL

a. The duration of the rights, privileges and authorizations granted in a franchise agreement shall be not to exceed \_\_\_\_\_ 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 subsection 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).

(7) The Grantee shall pay all costs incurred by the City considering and processing a proposal for renewal as described in Subsections (1), (3)(a), (3)(c), and (6).

SECTION . REQUIRED SERVICES AND FACILITIES

a. A franchise application shall include a description of the grantee's system design and a description 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 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 programming or cable services may be of greater benefit to subscribers, the Grantee may, subject to Subsections b and c, substitute 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 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 video or other information programs 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.

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 . ACCESS CHANNELS

a. Each cable system franchised by the City shall provide at least one governmental access channel dedicated to the City of Lodi; one educational access channel dedicated to the public school system in Lodi; and one public access channel to be utilized by the public in accordance with rules and regulations established by the City Council.

b. If any governmental or educational access channel is being utilized more than ten hours per day, five days a week between the hours of 6:00 a.m. and 11:00 p.m. for twelve (12) consecutive weeks; or if any public access channel is being used 80 percent of the time between 4:00 p.m. and 11:00 p.m. for twelve (12) consecutive weeks, Grantee shall, upon receipt of written notice from City make new channel(s) available for the same purpose(s); provided, however, that nothing in this paragraph shall require Grantee to construct additional access channel capacity to the cable system for the sole purpose of providing additional channel capacity. Such requirement may be met by making available, on a part-time basis, one or more other underutilized channels, or on a full- or part-time basis one or more other unused

access channels until such time as such underutilized or unused channels are needed for the uses to which they have been dedicated.

c. Whenever any access channel, other than the basic access channels, required in subsection (a) for governmental, educational and public access, is utilized less than four (4) hours per day for six days per week for a continuous period of not less than twelve (12) consecutive weeks, the City may permit different or additional uses for said channel. The Grantee may be permitted to utilize unused access channel capacity under rules and procedures established by the City, however no access capacity shall be utilized by the Grantee until all other channel capacity on the cable system has been programmed.

d. Access channels permitted by the City for "interim" use by a cable operator are to be restored to governmental, educational or public access use whenever the criteria in paragraph (b) are exceeded for any one of the existing access channel uses or whenever the demand for use as demonstrated by records of each access channel indicate that an excessive number of people or programs are being turned away by lack of channel capacity available.

SECTION . WAIVERS

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

b. Grantee may submit a request for waiver to the City Council of the City of Lodi at any time during the franchise term. Such request for waiver may, at the sole discretion of the City Council of the City of Lodi, 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.

APPENDIX A

Satellite Services Available to Cable Operators-- May 1985

BASIC SERVICES

ACTS Satellite Network

Christian, family programming

Arts and Entertainment Network

Performing arts, entertainment

BET (Black Entertainment Network)

Black-oriented entertainment, sports, public affairs

CBN Cable Network (Christian Broadcasting Network)

Entertainment, family programming, Christian shows

CNN (Cable News Network)

24-hour news, weather, sports, features

CNN Headline News

Newscasts, local news inserts

C-SPAN (Cable Satellite Public Affairs Network)

Live coverage of Congress, public hearings,  
call-ins

Country Music Channel

Country western music video

Discovery Music Channel

24-hour entertainment

Don King Sports & Entertainment Network

Monthly sports, concerts, specials

ESPN

24-hour sports and sports-related programming, business news

EWTN (Eternal World Television Network)

Catholic religious, entertainment programming

Financial News Network

Live financial, business programming

Genesis Story Time

Children's storybooks

BASIC SERVICES (continued)

The Learning Channel  
Adult education

Lifetime  
Human interaction/information shows

MSN-The Information Channel (Modern Satellite Network)  
Public service information channel

MTV (Music Television)  
All-stereo video music channel

NCN (National Christian Network)  
Multi-denominational religious programming

NJT (National Jewish Television)  
Cultural, religious and public affairs programming

The Nashville Network  
Country music entertainment

Nickelodeon  
Programming for children and teenagers

PTL (Praise the Lord) The Inspirational Network  
Interdenominational family programming

Pacific Cable Network  
Variety programming

Prime of Life Network  
Programs geared to adults 45 and older

SIN (National Spanish Television Network)  
Spanish-language series, specials, news

SPN (Satellite Programming Network)  
Lifestyles programs, international, educational, sports  
video music, classic movies

Santa Fe Communications  
Catholic, family programming service

The Silent Network  
Originally produced programming for the hearing impaired

BASIC SERVICES (continued)

TBN (Trinity Broadcasting Network)

24-hour Christian programming

USA Cable Network

Women's, children's, youth, sports, variety

VH-1 (Video Hits 1)

Video music channel for 25-54 age group

WGN

Chicago station with movies, sports, news

WOR

New York station with movies, news, sports, specials

WPIX

NY station with movies, sports, news, specials

WTBS

Atlanta station with movies, sports, original programming  
syndicated shows, news

The Weather Channel

Live coverage of national and local weather

PAY SERVICES

American Movie Classics  
Hollywood Classics

BRAVO

International films, performing arts

Cinemax

Feature films, documentaries, original music, comedy programs

The Disney Channel

Family-oriented entertainment

GalaVision

Spanish-language programming

HBO (Home Box Office)

Movies, sports, documentaries, entertainment

Home Sports Entertainment

Regional sports

Home Team Sports

Regional sporting events

HTN (Home Theater Network)

Family programming, movies, entertainment

The HiLife Channel

Pay-per-view movies, pay-per-night adult entertainment

The Movie Channel

All-movie service

The Playboy Channel

Original Playboy programming and films

Professional Education Network

Education for lawyers and accountants

RSVP Sports

All-sports, pay-per-view network

Showtime

Movies, Broadway plays, dramatic features and specials