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Title: Ordinance amending the Pittsburgh City Code, Title 4: Public Place and Property, Article II: Telecommunications, Chapter 425- Cable Communications; by amending language to Sections 425.02, 425.03, 425.07, 425.08, 425.13 and 425.20.

Sponsors: Theresa Kail-Smith

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Date	Ver.	Action By	Action	Result
12/28/2015	1	Mayor	Signed by the Mayor	
12/21/2015	1	City Council	Passed Finally	Pass
12/16/2015	2	Standing Committee	AFFIRMATIVELY RECOMMENDED	Pass
12/15/2015	1	City Council	Read and referred	
12/15/2015	1	City Council	Waived under Rule 8	Pass

Ordinance amending the Pittsburgh City Code, Title 4: Public Place and Property, Article II: Telecommunications, Chapter 425- Cable Communications; by amending language to Sections 425.02, 425.03, 425.07, 425.08, 425.13 and 425.20.

WHEREAS, the duties of managing and maintaining telecommunications users of the public rights-of-way were originally vested in the Department of City Information Services, and said Department is now the Department of Innovation and Performance; and

WHEREAS, the Department of Public Works will now assume the duties of managing and maintaining telecommunications users of the public rights-of-way,

The Council of the City of Pittsburgh hereby enacts as follows:

Section 1. Amending the Pittsburgh City Code, Title 4: Public Place and Property, Article II: Telecommunications, Chapter 425- Cable Communications; by amending language to Sections 425.02, 425.03, 425.07, 425.08, 425.13 and 425.20 as follows:

§ 425.02 - DEFINITIONS.

For the purpose of this Chapter and any agreement awarding a Franchise in accordance herewith, the

following definitions apply in this Chapter. References hereafter referred to as "sections" are, unless otherwise specified, references to sections of this Chapter. Defined terms remain defined terms whether or not capitalized. When not inconsistent with the context, words used in the present tense include the future tense, words in the single number include the plural number, words in the plural number include the singular, reference to a masculine gender shall include the feminine. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- (a) **BASIC SERVICE.** Any Cable Service tier that includes the lawful retransmission of local television broadcast signals and any Public, Educational, and Governmental Access programming required by this Chapter or a Franchise Agreement to be carried on the basic tier. Basic Cable Service as defined herein shall be consistent with 47 U.S.C. § 543(b)(7) (1997).
- (b) **CABLE ACT.** The Cable Communications Policy Act of 1984, Pub. L. No. 98-549, (codified at 47 U.S.C. §§ 521-611 (1982 & Supp. V. 1987) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, and the Telecommunications Act of 1996, Pub. L. No. 104-104 (1996) as it may, from time to time, be amended.
- (c) **CABLE SERVICE or SERVICE.**
 - (1) The one-way transmission to Subscribers of (i) video programming, or (ii) other programming service; and
 - (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- (d) **CABLE SYSTEM.** A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service to multiple Subscribers within the Franchise Area, but such term does not include:
 - (1) A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
 - (2) A facility that serves Subscribers without using any public Right-of-Way; or
 - (3) A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201-226, except that such facility shall be considered a Cable System to the extent such facility, whether on a common carrier basis or otherwise, is used in the transmission of video programming directly to Subscribers.
- (e) **CHANNEL.** A portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel (as television channel is defined in the FCC by regulation).
- (f) **CITY.** The City of Pittsburgh, a municipal corporation of the Commonwealth of Pennsylvania.
- (g) **COMPLAINT.** Any oral, written or electronic inquiry, allegation, or assertion made by a Person regarding Cable Service.
- (h) **COUNCIL.** The Council of the City of Pittsburgh, Pennsylvania.
- (i) **DIRECT INCREMENTAL COSTS.** The costs actually incurred by Franchisee in meeting an obligation under its Franchise which Franchisee would not otherwise have incurred in order to either operate and conduct the business of its Cable System or meet another obligation of the Franchise.
- (j) **DIRECTOR.** The Director of [~~City Information Systems~~]the Department of Innovation and Performance, or her / his designee.
- (k) **EDUCATIONAL ACCESS CHANNELS.** Access for non-commercial educational Access programming

use.

- (l) FCC. The United States Federal Communications Commission or a designated representative.
- (m) **FRANCHISE.** The rights and obligations extended by the City to a Person to own, lease, construct, maintain, or operate a Cable System in the rights-of-way within the Franchise Area for the purpose of providing Cable Services. Any such authorization, in whatever form granted, shall not mean or include: (i) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City; (ii) any permit, agreement, or authorization required in connection with operations in the right-of-way including, without limitation, permits and agreements for placing devices on or in poles, conduits, or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the right-of-way.
- (n) **FRANCHISE AGREEMENT.** A Franchise granted pursuant to this Chapter.
- (o) **FRANCHISE AREA.** The entire existing territorial area within the City as it is now constituted or may in the future be constituted, or any other area in the City for which a Franchise is granted in a Franchise Agreement.
- (p) **FRANCHISE FEE.** Any tax, fee, or assessment of any kind imposed by the City or other governmental entity on a Franchisee solely because of its status and activities as such. The term "Franchise Fee" does not include: (i) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment that is unduly discriminatory against cable operators or cable Subscribers); (ii) capital costs that are required by a Franchise Agreement to be incurred by a Franchisee for PEG Access equipment and facilities; (iii) costs associated with the construction and operation of an I-Net; (iv) requirements or charges incidental to the award or enforcement of a Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, compliance audits, penalties, or liquidated damages; or (v) any fee imposed under Title 17 of the United States Code.
- (q) **FRANCHISEE.** A Person who is granted a Franchise and that Person's agents, employees, lawful successors, transferees, or assignees.
- (r) **GOVERNMENT ACCESS CHANNELS.**
 - (1) Channels specially designated for non-commercial governmental access programming use; and
 - (2) Facilities and equipment necessary for the use of such channels.
- (s) **INSTITUTIONAL NETWORK or I-NET.** Capacity or fibers from both within the primary cable network and/or separately constructed networks that is dedicated to governmental, educational and other publicly funded or not-for-profit organizations. The I-Net includes all equipment required to make the capacity available including but not limited to fiber, coaxial cable, switching, routing, transmitting and receiving equipment necessary for the use of the network.
- (t) **INSTITUTIONAL NETWORK SERVICES.** The provision of usable bandwidth capacity to I-NET Users through fiber optic lines for non-commercial applications including but not limited to two-way dedicated voice, data, video and telephony channels connecting and interconnecting facilities owned, leased or used by the City, schools or other units of local government, and other local publicly funded or not-for-profit organizations. Other applications include but are not limited to computerized traffic control systems for coordinated traffic control on an area-wide basis; interconnection of facilities serving police, fire and other public safety systems; interconnection of government buildings for the two- or one-way interchange of video signals; and local area networks or wide-area networks connecting governmental buildings, such as for GIS (Geographical Informational Systems) purposes.

- (u)INTERNET ACCESS. The provision of cable modem service and transport over the Cable System of Internet and other high-speed data communications.
- (v)OTHER PROGRAMMING SERVICE. Anything other than one-way video programming offered by Franchisee, including Internet access.
- (w) PERSON. Any individual, natural person, corporation, partnership, proprietorship, organization, governmental entity, or other form of organization.
- (x)STATE. The Commonwealth of Pennsylvania.
- (y)SUBSCRIBER. Any Person who is lawfully receiving, for any purpose or reason, any Cable Service whether or not a fee is paid, including each such person in a multiple unit building, except for purposes of reporting or cost allocation, where equivalent subscriber basis may be used.
- (z)SYSTEM. A Franchisee's Cable System operated pursuant to a Franchise Agreement within the Franchise Area.

§ 425.03 - DELEGATION.

Whenever a provision appears requiring the Director to do some act, it is to be construed to authorize the Director to designate, delegate and authorize subordinates to perform the required act unless the terms of the provision or section require otherwise.

§ 425.04 - SERVICE OF NOTICE.

- (a) All notices required to be given to the City under any provision of this Chapter shall be deemed served:
 - (1)When delivered by hand in writing to the Director, or to [~~any adult person in charge of~~ personnel employed by [City Information Systems]the Department of Innovation and Performance, designated by the Director to attend to cable matters, and during normal business hours.
- (b) All notices required to be given to the Franchisee under any provision of this Chapter shall be deemed served:
 - (1)When delivered by hand in writing to the person designated in the agreement awarding a Franchise made in accordance herewith; or
 - (2)When regularly mailed to the person so designated.

§ 425.07 - PITTSBURGH CABLE COMMUNICATIONS ADVISORY COMMITTEE.

- (a) There shall be a body known as the Pittsburgh Cable Communications Advisory Committee ("the Committee"), which shall act solely as an advisory body to Council with regard to the optimal use of the cable communications system in the City. In its advisory capacity, the Committee shall endeavor to promote and develop the best use by the community of the cable communications system as a community communications system.
- (b) Council shall appoint eleven (11) members to the Committee as follows:
 - (1)Members of the Committee, with the exception of the Director, who shall receive the salary as Council may authorize, shall serve thereon without pay;

- (2) The members of the Committee shall be appointed on the following basis:
 - (i) Each Member of Council shall appoint one (1) representative from his or her respective Council district to serve on the Committee, for a total aggregate of nine (9) district members;
 - (ii) The Mayor shall appoint two (2) at-large members to serve on the Committee.
 - (iii) A member shall be deemed to have resigned from the Committee and shall no longer participate in any manner thereon when the member's residence is no longer in the area from which he or she was appointed if such member was appointed pursuant to subsection (B)(2)a hereof, or from the City if the member as appointed pursuant to subsection (B)(2)b hereof; or upon missing more than three (3) consecutive meetings of the Committee, absent good cause for doing so.
 - (3) District members and at-large members shall serve for a term of four (4) years. District members' terms shall expire with the terms of their respective Members of Council and terms of at-large members shall expire with the Mayor's term.
 - (i) Duration of appointments shall be decided by lot at the first scheduled meeting of the Committee.
 - (4) A chairperson and vice chairperson of the Committee shall be elected by a roll call vote of a majority of the members appointed and voting at the first scheduled meeting of the Committee.
 - (i) The chairperson so elected shall serve for a term of one (1) year from the date of the chairperson's election. Thereafter, a new chairperson shall be elected by Committee members on the anniversary of the initial Committee meeting.
 - (ii) A vacancy in the position of chairperson and/or vice chairperson of the Committee shall be filled by a roll call vote of a majority of the members appointed and voting at the meeting called for that purpose.
 - (5) Vacancies on the Committee, whether by reason of resignation or otherwise, shall be filled by Council according to whether the vacancy is that of a designated area member or a member-at-large, in accordance with subsection (B)(2) hereof. The member appointed to fill such vacancy shall serve for the duration of the vacated term.
 - (6) In addition members of the Committee appointed as herein before outlined, the Director shall be a nonvoting member of the Committee.
 - (i) The Director shall not serve as the chairperson of the Committee.
 - (7) Neither the Franchisee, nor any of its agents, servants, employees or their families, nor any of its subsidiary, parent or affiliated corporations or any of their agents, servants, employees or members of their families, nor any person with any financial interest in any agreement awarding a Franchise in accordance herewith, shall be appointed as a member of the Committee by Council.
 - (i) A representative of the Franchisee shall be named in the Franchise agreement who shall attend all meetings of the Committee. The representative shall be a nonvoting member of the Committee.
 - (8) Any action to be taken by the Committee shall require the concurrence of a simple majority of the members of the Committee present and voting. If action is taken without a quorum being present, any member may, at the next regularly scheduled meeting, request reconsideration of such action.
 - (9) Minutes of Committee meetings or records of any Committee actions shall be available for public inspection in the office of the City Clerk during normal business hours.
- (c) The Committee shall have the following specific functions:

- (1) Review the evaluation made by [~~City Information Systems~~]The Department of Innovation and Performance of the proposals to enter into an agreement for the award of a Franchise in accordance herewith which are submitted in response to the request for proposals thereto and make recommendations to Council regarding the selection of the Franchisee.
 - (2) Advise Council regarding general policy relating to the services provided to Subscribers and users by the Franchisee.
 - (3) Advise Council regarding the operation and use of any community communications channels with a view toward maximizing the diversity of programs and services to Subscribers and users.
 - (4) Encourage the use of any community communications channels among the widest range of institutions, groups and individuals within the city.
 - (5) Advise Council on the regulation of rates in accordance with this Chapter.
 - (i) The Committee shall submit a written report to Council which shall include, but shall not be limited to, recommendations to Council regarding rates and the findings upon which those recommendations are based.
 - (6) Make an annual report to the City which shall include, but not be limited to a summary report on the utilization of community communications channels, a review of any plans submitted during the year by the Franchisee for the development of new services and a summary report of the Committee's deliberations throughout the year.
 - (7) Report to Council on matters that may constitute violation of this Chapter.
 - (8) The Committee may appear before Council in accordance with Council's direction and in accordance with its rules in proceedings before Council on matters pertaining to the cable communications system.
 - (i) The Committee shall meet at least once every month, except August.
 - (ii) All meetings of the Committee shall be open to the public.
 - (9) Adopt rules and regulations governing its meetings and other activities.
 - (10) Request comments and suggestions regarding cable communications.
 - (11) Advise Council on proposed transfers of the cable communications system.
 - (12) Perform other advisory functions as Council may direct.
- (d) Council shall not pass any proposed resolution or ordinance relating to Committee functions identified in (c) above without referring same to the Committee for review. The Office of the City Clerk shall provide reasonable assistance to the Committee in its review of such proposed resolution or ordinance. If the Committee fails to act within forty-five (45) days of receipt of such referral, the Committee will be deemed to have approved the ordinance or resolution. The review period may be shortened if Council declares that an urgent reason exists requiring earlier Committee action.

§ 425.08 - FRANCHISE REQUIREMENTS

- (a) **Unlawful to Operate Without a Franchise.** It shall be unlawful for any Person to construct, operate or maintain a Cable System or to provide Cable Service in the City without a Franchise.
- (b) **Franchises Nonexclusive.** Any Franchise granted pursuant to this Chapter shall be nonexclusive. The City specifically reserves the right to grant, at any time, such additional Franchises for a Cable System or

any component thereof, to any other Person including itself, as it deems appropriate, subject to applicable federal and State law.

- (c) Franchises Non-Discriminatory. In the event the City grants more than one (1) Franchise or similar authorization for the construction, operation, or maintenance of any Cable System to a qualified Person in a Franchise Area, the City's policy shall be to grant the Franchises on terms that are non-discriminatory and competitively neutral, provided that nothing herein shall be construed as requiring the use of identical terms or conditions, or limit the enforceability of conditions that are freely negotiated.
- (d) Franchise Territory. Any Franchise shall be valid within the entire Franchise Area.
- (e) Federal, State, and City Jurisdiction.
 - (1) This Chapter shall be construed in a manner consistent with all applicable federal and State laws.
 - (2) In the event that the federal or State government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, City may, if it so elects, adopt rules and regulations in these areas to the extent permitted by law.
 - (3) This Chapter shall apply to all Franchises granted or renewed after the effective date of this Chapter. It shall further apply, to the extent permitted by applicable federal or State law, to all existing Franchises granted prior to the effective date of this Chapter.
 - (4) Franchisee's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Franchisee shall comply with all applicable general laws and ordinances enacted by the City pursuant to that power.
 - (5) Franchisee shall not be relieved of its obligation to comply with any of the provisions of this Chapter or a Franchise Agreement by reason of any failure of the City to enforce prompt compliance.
 - (6) This Chapter and all Franchise Agreements shall be construed and enforced in accordance with the substantive laws of the Commonwealth of Pennsylvania.
- (g) Rights Reserved To City.
 - (1) In addition to any rights specifically reserved to City by this Chapter or a Franchise Agreement, City reserves to itself every right and power that is required to be reserved by a provision of any other ordinance or under any other Franchise.
 - (2) City shall have the right to waive any provision of this Chapter or a Franchise Agreement, except those required by federal or State regulation, if the City determines: (1) that it is in the public interest to do so and (2) that the enforcement of such provision will impose an undue hardship on a Franchisee or the Subscribers. To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of City. Waiver of any provision in one (1) instance shall not be deemed a waiver of such provision subsequent to such instance, nor be deemed a waiver of any other provision of this Chapter or a Franchise Agreement unless the statement in its final form approved by the City Council so recites.
- (h) Franchise Agreement.
 - (1) Every Franchisee shall agree to the terms and provisions of a Franchise Agreement as negotiated between the Franchisee and the City.
 - (2) In addition to those matters required elsewhere in this Chapter to be included in the Franchise Agreement, each Franchise Agreement must contain the following express representations by each Franchisee:

- (i) Franchisee accepts and agrees to all of the provisions of this Chapter, and any supplementary specifications as to construction, operation, or maintenance of the System which the City may include in the Franchise Agreement.
 - (ii) Franchisee has examined all of the provisions of this Chapter and agrees to the terms and conditions herein.
 - (iii) Franchisee recognizes the right of the City to adopt such additional regulations of general applicability as it shall find necessary in the exercise of its police power.
- (4) Unless a Franchise Agreement specifically states otherwise, every Franchise shall apply to the entire territorial area of the City.
- (5) Every Franchise Agreement shall contain such further conditions or provisions as may be included in a request for proposal and/or negotiated between the City and a Franchisee, except that no such conditions or provisions shall be such as to conflict with any provisions of this Chapter or other law. In case of such conflict or of any ambiguity between any terms or provisions of a Franchise Agreement and this Chapter, the words of the Franchise Agreement shall control.
- (i) Initial Franchise Applications. Any Person desiring an initial Franchise for a Cable System shall file an application with the City. A reasonable nonrefundable application fee established by the City shall accompany the application. Such application fee shall not be deemed to be "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. § 542), and such payments shall not be deemed to be (i) "payments in kind" or any involuntary payments chargeable against the compensation to be paid to the City by Franchisee, or (ii) part of the compensation to be paid to the City by Franchisee pursuant to this Chapter or a Franchise Agreement. An application for an initial Franchise for a Cable System shall contain, where applicable:
- (1) A statement as to the proposed Franchise Area;
 - (2) Resume of prior history of applicant, including the legal, technical, and financial expertise of applicant in the cable television field;
 - (3) List of the partners, general and limited, of the applicant, if a partnership, or the percentage of stock owned or controlled by each shareholder, if a corporation;
 - (4) List of officers, directors, and managing employees of applicant, together with a description of the background of each such Person;
 - (5) The names and addresses of any parent or subsidiary of applicant or any other business entity owning or controlling applicant in whole or in part, or owned or controlled in whole or in part by applicant;
 - (6) A current financial statement of applicant verified by a CPA audit or otherwise certified to be true, complete, and correct to the reasonable satisfaction of the City;
 - (7) Proposed construction and service schedule; and
 - (8) Any additional information that the City deems applicable.
- (j) Consideration of Initial Applications.
- (1) Upon receipt of any application for an initial Franchise, the City Manager shall prepare a report and make his or her recommendations respecting such application to the City Council.
 - (2) A public hearing shall be set prior to any initial Franchise grant, at a time and date approved by the Council. Within thirty (30) days after the close of the hearing, the Council shall make a decision based upon the evidence received at the hearing as to whether or not the Franchise(s) should be granted, and,

if granted subject to what conditions.

- (k) Franchise Renewal. Franchise renewals shall be in accordance with applicable law including, but not necessarily limited to, the Cable Communications Policy Act of 1984, as amended. City and a Franchisee, by mutual consent, may enter into renewal negotiations at any time during the term of the Franchise. Franchise renewal may also arise if there are substantial changes to the contractual relationship between the City and the Franchisee.
- (l) Grant of Additional Franchise and Competing Service.
- (1) Since competing or overlapping Franchises may have an adverse impact on the public rights-of-way, on the quality and availability of services to the public and may adversely affect an existing operator's ability to continue to provide the services and facilities it is presently providing under a Franchise, the City may issue a Franchise in an area where another Franchisee is operating only following a public hearing to consider the potential impact which the grant of an additional Franchise may have on the community. In considering whether to grant one (1) or more additional Franchises, the City shall specifically consider, and address in a written report, the following issues:
- (i) The positive and/or negative impact of an additional Franchise on the community.
 - (ii) The ability and willingness of the specific applicant in question to provide cable services to the entire Franchise area which is served by the existing cable operator. The purpose of this subsection is to ensure that any competition which may occur among Franchisees will be on terms which when taken as a whole do not give a competitive advantage to one (1) Franchisee over another.
 - (iii) The amount of time it will take the applicant to complete construction of the proposed system and activate service in the entire Franchise area; and, whether the applicant can complete construction and activation of its system in a timely manner.
 - (iv) The financial capabilities of the applicant and its guaranteed commitment to make the necessary investment to erect, maintain, and operate the proposed Cable System for the duration of the Franchise term. In order to ensure that any prospective Franchisee does have the requisite current financial capabilities, the City may request equity and debt financing commitment letters, current financial statements, bonds, letters of credit, or other documentation to demonstrate to the City's satisfaction that the requisite funds to construct and operate the proposed system are available.
 - (v) The quality and technical reliability of the proposed system, based upon the applicant's plan of construction and the method of distribution of signals, and the applicant's technical qualifications to construct and operate such system.
 - (vi) The experience of the applicant in the erection, maintenance, and operation of a Cable System.
 - (vii) The capacity of the public rights-of-way to accommodate one (1) or more additional Cable Systems and the potential disruption of those public rights-of-way and private property that may occur if one (1) or more additional Franchises are granted.
 - (viii) The disruption of existing cable television service and the potential that the proposed Franchise would adversely affect the residents of the City.
 - (ix) The likelihood and ability of the applicant to continue to provide competing cable television service to Subscribers within the entire Franchise area for the duration of the Franchise.
 - (x) Such other information as the City may deem appropriate to be considered prior to granting any competing or overlapping Franchise.
- (m) Permits for Non-Franchised Entities. The City may issue a license, easement, or other permit to a person

other than the Franchisee to permit that person to traverse any portion of the Franchisee's Franchise area within the City in order to provide service outside, but not within the City. Such license or easement, absent a grant of a Franchise in accordance with this Chapter, shall not authorize nor permit said person to provide cable television service of any type to any home or place of business within the City nor render any other service within the City.

(n) Any cable communications system or part thereof located in the City right-of-way and not franchised by the City in accordance with this Chapter 425 shall obtain a ROW Use Agreement under Chapter 427-Telecommunications Systems in the Public Rights-Of-Way. The ROW Use Agreement hereunder shall be granted for the sole purpose of providing cable television signals to customers located in an adjoining municipality. The charges and ROW Use Agreement fees stated in subsection (a) hereof shall not apply provided that such adjoining municipality imposes no compensation and franchise fee requirements on any cable communications system or part thereof, franchised by the City in accordance with Chapter 425 which may be located in the adjoining municipality

§ 425.13 - OPERATION AND MAINTENANCE.

- (a) Open Books and Records. Each Franchisee shall cooperate with the City with respect to City's administration of this Chapter and its applicable Franchise Agreement. City shall have the right to inspect, at any time during normal business hours all books, records, maps, plans, financial statements and records, service complaint logs, performance test results, and other existing like materials of a Franchisee that relate to the operation of a Franchisee's System and that are reasonably necessary, in the City's [judgment] judgment, to City's enforcement or administration of this Chapter and/or a Franchise Agreement. The Franchisee shall not be required to maintain any books or records for Franchise compliance purposes longer than seven (7) years. Upon request, the City will treat designated information disclosed by a Franchisee as confidential to the extent permissible under state and federal law.
- (b) Communications with Regulatory Agencies. Copies of all petitions, applications, communications, and reports submitted by each Franchisee to the FCC, Securities and Exchange Commission, or any other federal or State regulatory commission or agency having jurisdiction in respect to any matters affecting System operations shall be made available to City promptly upon request. Copies of responses from the above regulatory agencies to each Franchisee likewise shall be made available promptly to City.
- (c) Annual Reports.
- (1) Each Franchisee shall make available to City, at the end of each of the applicable Franchisee's fiscal years during the term of a Franchise Agreement, the following:
- (i) A revenue statement certified by an officer of the Franchisee showing, in such detail as acceptable to City, the gross revenues of the Franchisee for the preceding fiscal year;
 - (ii) A current list of names and addresses of each officer and director and other management personnel of the Franchisee;
 - (iii) A list of all documents that relate to the Franchisee's System that were filed with any federal, State, or local agencies during the preceding fiscal year and that were not previously filed with City;
 - (iv) A statement of the Franchisee's current billing practices and charges; and

- (v) A copy of the Franchisee's current Subscriber Service contract.
- (2) City and its agents and representatives shall have authority to arrange for and conduct an audit of and copy the books and records of any Franchisee. A Franchisee shall first be given five (5) days notice of the audit, the description of and purpose for the audit, and a description, to the best of City's ability, of the books, records, and documents that City wants to review.
- (d) **Monitoring and Compliance Reports.** No later than April 15 of each year, each Franchisee shall make available to the City a copy of the results of all FCC performance tests for the Cable System that are required by Part 76 of the FCC's regulations.
- (e) **Additional Reports.** Each Franchisee shall prepare and furnish to City, at the times and in the form prescribed, such additional reports with respect to its operations, affairs, transactions, or property, which in the sole discretion of the City are necessary.
- (f) **Safety.**
 - (1) Every Franchisee shall at all times employ the standard of care attendant to the risks involved, and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to employees of the Franchisee.
 - (2) Each Franchisee shall install and maintain its wires, cables, fixtures, and other equipment in accordance with the requirements of all applicable codes and in such manner that they will not interfere with any installations of the City or any public utility.
 - (3) All lines, equipment, and connections in, over, under, and upon the Right-of-Way and private property within the City, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition and in good order and repair.
- (g) **Service Contract and Subscriber Information.**
 - (1) Each Franchisee shall have authority to promulgate such rules, regulations, terms, and conditions governing the conduct of its business as shall be reasonably necessary to enable the Franchisee to exercise its rights and perform its obligations under this Chapter and any Franchise Agreement and to assure uninterrupted Service to all of its Subscribers; provided such rules, regulations, terms, and conditions shall not be in conflict with the provisions of this Chapter, a Franchise Agreement, federal, State and/or local law, or any applicable rules and regulations.
 - (2) Every Franchisee shall submit to City any Subscriber contract that it utilizes. If no written contract exists, a Franchisee shall file with the City a document completely and concisely stating the terms of the residential Subscriber contract offered, specifically including the length of the Subscriber contract. The length and terms of any Subscriber contract shall be available for public inspection during normal business hours.
 - (3) The term of a Subscriber contract (excepting certain commercial accounts) shall not be for more than twelve (12) months duration unless after twelve (12) months the contract may be terminated at the Subscriber's option with no penalty to Subscriber. Nothing in this paragraph shall prohibit a Franchisee from entering into Subscriber contracts by reason of a line extension policy for a term that is longer than twelve (12) months in duration.

§ 425.20 - MISCELLANEOUS PROVISIONS.

- (a) **Rate Regulation.** The City reserves the right to regulate rates for Basic Service and any other services

offered over the Cable System, to the extent permitted by federal or State law. Franchisee shall be subject to the rate regulation provisions provided for herein, and those of the Federal Communications Commission (FCC) at 47 C.F.R., Part 76.900, Subpart N. The City shall follow the rules relating to cable rate regulation promulgated by the FCC at 47 C.F.R., Part 76.900, Subpart N.

(b) Rights Reserved to City.

- (1) Upon either the expiration or revocation of a Franchise, City shall have discretion to permit and/or require a Franchisee to continue to operate the Cable System for an extended period of time not to exceed six (6) months from the date of such expiration or revocation. A Franchisee shall continue to operate the System under the terms and conditions of this Chapter and the applicable Franchise Agreement and to provide the regular Subscriber service and any and all of the services that may be provided at that time.
- (2) The City shall have the right to compel continued operation of the Cable System whether by the Franchisee, by a trustee or receiver or by the City. The City shall have the option, in the public interest, to temporarily seize the cable assets of the Franchise and operate the system until such time as a dependable interim or permanent system operator is in place. The Franchisee may not remove equipment or documents necessary for continued operation of the system.

(c) Administration of Franchise. The City shall be responsible for the continued administration of this Chapter and all Franchise Agreements.

- (1) The Bureau of Cable [Telecommunications] for purposes of this Chapter has been established within [City Information Systems] the Department of Innovation and Performance.
- (2) The Director shall act as the representative of the City in all matters pertaining to any cable communications system established in the City. The Director, in his or her capacity pertaining to the Bureau of Cable [Telecommunications], shall have the following powers and duties:
 - (i) Mediating disputes or disagreements between a subscriber and the Franchisee at either's request, following investigation.
 - (ii) Reviewing and auditing all reports and filings submitted by the Franchisee to the FCC and to the City pursuant to this Chapter.
 - (iii) Promulgating regulations regarding the construction, reconstruction, operation, maintenance, dismantling, testing or use of the cable communications system established pursuant to an agreement awarding a Franchise in accordance herewith.
 - (iv) Reviewing all rules and regulations promulgated by the Franchisee or the City regarding Cable Service and community communications in order to ensure compliance by Franchisee. Copies of rates and rules and regulations, which are hereby declared to be documents of public record, shall be made available by the Director to those who request the same on a cost per copy basis.
 - (v) Conferring and coordinating with the Franchisee on the interconnection of the cable communications system created in accordance herewith with any other communications systems, including but not limited to cable communications systems.
 - (vi) Retaining consultants' services as authorized by Council in order to ascertain the best use of public facilities and channels of the system and for other consulting services.
 - (vii) Reporting to Council at Council's request.
 - (viii) Facilitating the activities of the Advisory Committee and providing assistance in its deliberation.
 - (ix) Attending regularly scheduled meetings of the Committee and participating thereon as a

nonvoting member.

- (x) Performing other duties assigned under the provisions of this Chapter or other legislation hereafter enacted by the Council or other duties as the Mayor assigns.
- (3) In matters pertaining to increases in basic subscriber rates, installation charges, distribution of facilities and changes in ownership of the agreement awarding a Franchise in accordance herewith, the Director may submit requests he or she receives to the Committee.
- (4) The Director shall make his or her recommendations, if any, to the Council and the Mayor concerning such requests within ninety (90) days of the receipt of such requests.
- (5) Council shall take no action on any legislation submitted on the recommendation of the Committee or the Director pertaining to the cable communications system unless it gives thirty (30) days' notice, in the manner provided by law, of its consideration of such legislation and serves a copy of the notice upon the Franchisee as provided in § 425.04. The Franchisee shall be an interested party to any hearing conducted with regard to its operation and maintenance of a cable communications system.
- (d) Nonenforcement by the City. Franchisee shall not be relieved of its obligation to comply with any of the provisions of this Chapter by reason of any failure of the City to enforce prompt compliance.
- (e) Amendment of Agreement. Other than pursuant to changes in law or the legitimate exercise of the City's police powers, Agreements entered into pursuant to this Chapter shall only be amended by mutual consent of both parties. Any such amendment must be in writing.
- (f) Governing Law and Choice of Forum. This Chapter and any Franchise Agreement granted pursuant to it, shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, regardless of the laws that might otherwise govern under applicable principles of the conflicts of law thereof. The parties hereto hereby consent to the jurisdiction of the state and federal courts sitting in Pittsburgh, Pennsylvania for the adjudication of any dispute arising with respect to this Chapter or a Franchise Agreement. In the event that any action should be brought by either party to enforce any of its rights under this Chapter or a Franchise Agreement, the prevailing party in such action shall be entitled to have its reasonable legal fees and court costs reimbursed by the other party hereto.
- (g) Severability. If any section, provision or clause of a Franchise is held by a court of competent jurisdiction to be invalid or unenforceable, or is preempted by federal or state laws or regulations, the remainder of the Franchise shall not be affected, except as is otherwise provided in the Franchise.
- (h) Publication of Notices. All public notices required to be published by City under this Chapter or any Franchise Agreement shall be published in a City newspaper of general circulation. Each Franchisee shall pay the costs for publication of its Franchise Agreement and any amendments thereto, as necessary, as such publication is required or authorized by law.