

## CHAPTER 11

### Franchises

#### Article I

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**ARTICLE I**  
**Cable Television Franchise**

**Sec. 11-1-10. Definitions.**

For the purpose of this Article, the following terms, phrases, words and their derivations shall have the meanings given herein. Words not defined shall be given their common and ordinary meaning.

*Access channels* means those channels set aside for specific access purposes, including, but not limited to, the following:

a. *Public access channel* means a specially designated noncommercial public access channel available on a first-come, nondiscriminatory basis for which the system shall maintain and have available for free public use at least the minimal equipment and facilities necessary for the production of programming for such a channel.

b. *Education access channel* means a specially designated channel for use by local educational authorities.

c. *Local government access channel* means a specially designated channel for local government use.

d. *Leased access channel* means portions of the system's nonbroadcast bandwidth, including unused portions of the specially designated channels for leased access services.

*Additional subscriber service* or *additional service* means any communications service, other than basic service, provided by the grantee to its subscribers, directly or as a carrier for its subsidiaries, affiliates or any other person engaged in communication services, including, but not limited to, pay television signals, data or other electronic intelligence transmission, meter reading and home shopping.

*Annual gross receipts* means any and all compensation, revenue and other consideration derived directly or indirectly, in any form whatsoever, by a franchisee, its affiliates, subsidiaries, parents, from, or in connection with, the operation of the cable television system, with no deductions whatsoever.

*Applicant* means the natural person, partnership, domestic or foreign corporation, association, joint venture or organization of any kind which applied for a franchise for cable television to be regulated hereunder.

*Application* includes all written proposals, in whatever form, made by the applicant to the County concerning construction, rendition of services, maintenance or any other matter pertaining to the cable television system contemplated herein.

*Basic service* means all subscriber services provided by the Company, including the delivery of broadcast signals, covered by the regular monthly charge paid by all subscribers, excluding additional service, for which a separate charge is made, and shall include, but not be limited to, the following:

- a. All signals of over-the-air television broadcasters as required by the F.C.C. to be carried by a community antenna television system as defined by the F.C.C.;
- b. Channels designated for special purposes by the Board of County Commissioners or its designate;
- c. Public, educational, local government, local organization and leased access channel signals; and
- d. Additional service as proposed by the Company in its application, or as it may hereafter provide.

*Board of County Commissioners* means the present governing body of the County or any successor to the legislative powers of the present Board of County Commissioners.

*Cable television service* means the delivery by the Company to television receivers, or any other suitable type of audio/video communication receivers, to all subscribers within the permit area of the County of all signals of over-the-air television broadcasters allowed by the F.C.C. to be carried by the television system as defined by the F.C.C.; all F/M radio stations carried on the system; local origination channels; educational channels; public access channels; leased access channels; pay television channels; and other services provided for in this Article and the Company's application.

*Cable television system, CATV system or community antenna television* means a system of antenna, cables, wires, lines, towers, wave guides or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing electrical signals, located in the permit area.

*Channel* means a band of frequencies six (6) megahertz (MHz) wide in the electromagnetic spectrum which is capable of carrying either one (1) audio/video television signal or a number of nonvideo signals.

*Company* means that permittee awarded a permit pursuant to this franchise for purposes of operating a cable television system with the County, or the successor, transferee or assignee of the original applicant for such franchise.

*Converter* means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and by use of an appropriate channel selector, also permits a subscriber to view all signals included in a basic service delivered at designated converter dial locations.

*Easement* shall be limited to those rights-of-way owned by the County, the terms, conditions or limitations upon which are not inconsistent with the erection, construction or maintenance of a CATV system, its structures or equipment.

*Equipment and apparatus* means manholes, underground conduits, poles, cables, boxes, wires, fixtures, conductors or other facilities necessary, essential or used or useful to and operated by the cable television system.

*F.C.C.* means the Federal Communications Commission of the United States government or its lawful successor.

*Fair market value* means the price that a willing buyer under no compulsion to buy would pay to a willing seller under no compulsion to sell.

*Franchise* means the nonexclusive rights granted pursuant to this Article to construct and operate a cable television system along the streets, alleys and public ways of the County.

*Gross revenue* means any and all revenue derived directly or indirectly by the Company, from or in connection with the operation of the cable television system. All revenues shall include, but not be limited to, basic subscriber services monthly fees, pay cable fees, leased channel fees, converter rentals, studio rental, production equipment and personnel fees, and advertising revenues; and shall not include any taxes on services furnished by the Company, imposed directly upon any subscriber or user by the State, County or other governmental unit and collected by the Company on the behalf of said governmental unit, and shall not include refunds or credits to subscribers.

*Initial service area* means all that area within the boundaries of the permit area as it may be changed from time to time, having at least fifty (50) dwelling units per street mile, and as set forth in the Company's application.

*Installation* means the connection of the system from feeder cable to subscribers' terminals.

*Party* means any person, firm, partnership, association, corporation, company or organization of any kind.

*Programmer* means any person who is transmitting or who produces or otherwise provides program material for transmission by audio, video, digital or other signals, either live or from recorded tapes, to subscribers by means of the cable television system.

*Property of the Company* means all property, real or personal, owned, installed or used within the permit area by the Company in the conduct of the cable television system business under the authority of a franchise granted pursuant to this Article.

*Public notice* means, unless otherwise defined herein, minimum public notice of any County public meeting relating to this Article or to any CATV franchise granted pursuant to this Article and shall be by publication at least once in a local newspaper of general circulation at least ten (10) days prior to the meeting. Commencing on the fifteenth day prior to the meeting, the Company shall notify its subscribers of the meeting by announcement on at least one (1) channel of its CATV system between the hours of 7:00 p.m. and 9:00 p.m. for ten (10) consecutive days.

*Public property* means any real property owned by the County other than a highway, sidewalk, easement or dedication.

*Return signals* means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the cable communications system. This may include "Class IV Channels" as defined by the F.C.C.

*Service* means all communications, maintenance, repair and installation services provided by the Company, including the delivery of broadcast signals and programming covered by the regular monthly charge paid by all subscribers, including such standard type of service that is normally furnished by CATV companies for a regular monthly charge and such additional communications services as are furnished as a part of the cable communications system in the way of two-way, return path services.

*Street* means the surface of and the space above and below any public street, road, highway, freeway, land, path, public way or place, alley, court, sidewalk, boulevard, parkway, drive or other easement now or hereafter held by the County for the purpose of public travel, and shall include such other easements or rights-of-way as shall be now held or hereafter held by the County which shall, within their proper use and meaning, entitle the County and the Company to the use thereof for the purpose of installing or transmitting signals over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a cable television system.

*Subscriber or user* means any person or entity receiving for any purpose any service of the Company including, but not limited to, the conventional cable television system service of retransmission of television broadcast, radio signals, the Company's original broadcasting, and the local government, educational, public access and leased channels and other services, including but not limited to, the leasing of channels, data and facsimile transmission, pay television and police, fire and similar public service communication and services associated with the production and presentation of access channel programming.

*System* means the broadband communications facility which is to be constructed, operated and maintained by the Company.

*Two-way capability* means the technical capacity for nonvoice return communications. (Weld County Codification Ordinance 2000-1)

**Sec. 11-1-20. Grant, acceptance and effective date of franchise.**

A. The franchise for CATV service granted by the County pursuant to this Article shall grant to the Company the right and privilege to erect, construct, operate and maintain in, upon, along, across, above, over and under the highways, sidewalks, easements, dedications and other public property now in existence and as may be created or established during its term, any poles, wires, cable, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation of the CATV system for the interception, sale, transmission and distribution of television programs and other audio/visual electrical signals and the right to transmit the same to and from the inhabitants of the County on the terms and conditions hereinafter set forth, provided that the Company shall obtain any road cut permits or other permits required by County regulations. Existing utility poles of other utilities may be used only if written approval from such utility is obtained and approved by the Board of County Commissioners. The initial term of the franchise shall be for a period of no more than fifteen (15) years.

B. Any franchise granted and regulated hereunder, together with the rights, privileges and authority granted thereby shall take effect and be in force from and after the effective date of the granting of the franchise and after the company has:

1. Filed with the Clerk and Recorder an unconditional acceptance of the franchise grant and enter into and execute such documents as required by the County consistent with the terms and provisions of this Article. Said acceptance shall be in a form as prescribed by the County and shall contain provisions that the Company, by its acceptance, agrees to provide all services specifically set forth in its application to provide CATV service within the confines of the permit area; and further, that its application is incorporated by reference and made a part of the franchise and this Article. In the event of conflict between such proposals and the provisions of this Article, that provision which provides the greatest benefit to the County, in the opinion of the Board of County Commissioners, shall prevail. Any acceptance filed by the Company pursuant to this Section shall be in writing, duly executed and sworn to by or on behalf of the Company, before a notary public or other authorized by law to administer oaths.

2. File certificates of insurance as set forth in Section 11-1-190 of this Article.

3. File such bonds, letters of credit and other sureties as required in Sections 11-1-160 and 11-1-170 of this Article.

4. Reimburse the County for the remaining balance of any costs incurred in conducting a public hearing in determining the grant of any franchise for CATV service.

5. Pay to the County an advance franchise fee of five hundred dollars (\$500.00) to be credited against sums due under Section 11-1-50 of this Article.

C. In the event the Company fails to comply in full with Subsection B above, then it shall be conclusively considered that the Company has abandoned its application and rights to such grant and award of the franchise, any such rights that the Company may have acquired under this Article or the grant of the franchise shall immediately terminate, and the Company shall have no right, privilege or authority whatsoever under this Article. In the event the Company has paid the initial franchise fee as required in Subsection B above, such fees shall be refunded to the Company if the Company has otherwise complied with said provisions. If it has not, the aforesaid costs of awarding the franchise shall be deducted therefrom and the balance refunded.

D. The Company shall have no recourse whatsoever against the County for or on account of any loss, cause, expense or damage arising out of any provisions or requirements of this Article and/or the grant of any franchise by the County.

E. The Company, by acceptance of any franchise awarded pursuant to this Article, acknowledges that it has relied upon its own investigation and understanding of the power and authority of the County to grant such a franchise.

F. It shall be the overriding duty of the Company receiving the franchise to take advantage of any new developments in the field of transmission of television and radio signals which would afford the Company an opportunity to be more efficient, or to more efficiently and economically serve its customers so that, at all times, said cable television system shall be no less advanced than any other system of comparable size, excepting only systems which are experimental, pilot or demonstration. It shall be the policy of the County that the CATV system shall, as practicable, maintain the current state of the art regarding CATV, and this Article may be amended when, in the opinion of the County, such amendment is necessary to facilitate the adoption and promotion of the use of new developments in the industry. (Weld County Codification Ordinance 2000-1)

**Sec. 11-1-30. Franchise required.**

No CATV system shall be allowed to occupy or use the right-of-way of the County or be allowed to operate without a CATV franchise.

**Sec. 11-1-40. Authority not exclusive.**

The right to use and occupy said streets for the purposes herein set forth shall not be exclusive, and the County reserves the right to grant a similar use of said streets to any person at any time during the period of this franchise.

**Sec. 11-1-50. Franchise application.**

A. Applications for franchise for cable television service pursuant to this Article shall be filed with the Clerk to the Board and shall at least contain the following:

1. The name and business address of the applicant, date of application and signature of the applicant or appropriate corporate officers.
2. A general description of the applicant's proposed operation including, but not limited to: business hours, operating staff, maintenance procedures, management and marketing staff complement and procedures, rules of operation for public access, a statement of services to be provided, a description of the system design and proposed programming.
3. A statement setting forth a description of any automated services proposed, as well as a description of the production facilities to be made available by the applicant for public, municipal and educational access channels.
4. A statement explaining any assistance, in terms of personnel, equipment or capacity, to be designated for the programming or programming assistance for the public, educational and governmental access channels.
5. A statement of the applicant's proposed rates in conformity with this Article.
6. A description of the applicant's organization and structure, including:
  - a. If the applicant is an individual, partnership or unincorporated association, it shall state the names and addresses of all persons (including corporations) having a proprietary or equitable interest in and to the prospective franchise, if awarded. The term *equitable interest* shall include all assignments for value, as well as all contingent assignments of any right or privilege under the prospective franchise, and shall also include any benefit, payment or emolument whatsoever resulting from the grant of a franchise by the County.

- b. If the applicant is a nonpublic corporation, the application shall state, additionally, the names and addresses of the officers, directors and shareholders of said corporation, together with the number of shares held by each shareholder, the date of incorporation, the date of the last annual report and a statement as to whether or not the corporation is licensed to do business in the State.
  - c. If the applicant is a publicly held corporation as defined by the Rules and Regulations of the Securities and Exchange Commission, the statement shall contain the states in which the corporation is incorporated and/or qualified to do business, the names and addresses of the officers and directors of the corporation, and the names, addresses and number of shares owned by all stockholders, both nominal and beneficial, owning one percent (1%) or more of the outstanding stock of the applicant.
  - d. A full disclosure of the ownership of the facilities to be used in rendering the service.
7. A statement describing all intracompany relationships of the applicant, including parent, subsidiary or affiliated companies.
  8. A statement setting forth all agreements and understandings, whether written or oral, existing between the applicant and any other person, firm, group or corporation with respect to any franchise awarded and the conduct of the operation thereof existing at the time the application is made.
  9. Audited financial statements for the applicant's two (2) latest fiscal years unless the applicant has not been in existence for at least two (2) years, in which case the applicant shall furnish audited financial statements for such lesser period of time covering the period that the applicant has been in existence. If the applicant is a partnership, audited financial statements shall include copies of the *Federal Partnership Income Tax Return* for its latest two (2) fiscal years or such lesser period of time that said partnership has been in existence.
  10. A technical description of the type of network proposed by the applicant, including, but not limited to, network configuration (i.e., hub), network capacity, two-way operation capability and service to be provided and a description of the studio or studios, studio equipment, planned hours of operation and hours of availability, if any, that will be made available to governmental, public and/or educational institution or agencies.
  11. A statement from the applicant's senior technical staff member or consultant, advising that he or she has reviewed this franchise and that the applicant's planned network and operations thereof will meet all of the requirements set forth herein.
  12. A statement of existing franchises held by the applicant indicating, with particularity, when the franchises were issued or awarded and when the systems were constructed, together with the name, address and phone number of a governmental official knowledgeable of the applicant and its performance in each such franchise area.
  13. A statement as to whether the applicant or any of its officers or directors has, in the past, been convicted of any felony.
  14. A statement detailing the prior CATV experience of the applicant, including that of the applicant's officers, management and staff to be associated with the proposed operation.
  15. If an application is for renewal of the franchise, the proposal must include, in addition to the information required in Subsections 1 through 14 above:
    - a. A summary of the technical, financial and programming history of the network since the granting of the original franchise.

b. A statement and timetable that outlines all proposed changes, expansion or improvements in the network as to services, programming or technical specifications during the forthcoming ten-year period.

16. A description of the boundaries of the proposed area of service and areas adjacent thereto, along with supporting evidence that cable service will not be denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.

B. The County reserves the right to require such supplementary, additional or other information that it deems reasonably necessary for its determination under this Article.

C. Notwithstanding any other requirement, each applicant for a CATV franchise must accompany, with its application, a certified check for five hundred dollars (\$500.00) made payable to the County. No application for a franchise will be considered without the accompaniment of said check.

1. All checks received will be deposited to an account of the County and will serve to recover all expenses incurred by the County in granting the franchise. Said expenses shall include, but not be limited to, consultants' expenses, reasonable value of services performed by the County's employees, agents or contractors, and the cost of elections or otherwise, for the granting of said franchise. In addition, the applicant shall pay all advertising and publication charges incurred by the County.

2. Any funds remaining after all expenses have been paid will be refunded to the applicant. The County shall not guarantee any amounts to be refunded.

3. In the event that the expenses exceed the total amount of the fees collected from the applicant, the applicant shall pay to the County the excess amount within thirty (30) days of the award of the franchise, as certified to the applicant by the County. (Weld County Codification Ordinance 2000-1)

**Sec. 11-1-60. Time of the essence.**

Whenever this Article shall set forth any time for an act to be performed by or on behalf of the Company, such time shall be deemed to be of the essence, and any failure by the Company to perform within the time set forth shall constitute a material breach of the terms of this Article and shall entitle the County to invoke all penalties and remedies prescribed in this Article, as well as all other legal or equitable remedies available to the County.

**Sec. 11-1-70. Franchise territory.**

The Company shall not be required hereunder to extend its service to any area unless there exists in that area a potential of at least fifty (50) dwelling units per street mile. When the potential of fifty (50) dwelling units per street mile does not exist, the Company shall make a charge for installation at actual cost, including labor and material, for cable extension, for servicing this portion of the system.

**Sec. 11-1-80. Local business office.**

The Company shall maintain a local business office within thirty (30) miles of the permit area for the purpose of receiving inquiries, complaints and requests for repairs or adjustments from its customers and the general public. Said office shall also be operated so that complaints and requests for repairs or adjustments may be received and processed with a minimum delay. Provisions shall also be made for telephonically receiving service interruption calls on a twenty-four-hour basis on a nontoll line.

**Sec. 11-1-90. Service maintenance standards.**

A. The Company shall maintain a repair and maintenance crew capable of responding to subscriber complaints and requests for service at normal service intervals. When the basis of the complaint is a defect or problem existing in Company-owned,

installed or maintained equipment, there shall be no charge to the subscriber for this service. Normal service interval, for purposes of this Article, shall mean the period between the time that the Company is notified by the subscriber of a service deficiency and the close of the third business day following the receipt of such notice, provided that the subscriber or his or her representative is available during the period, at the premises. This provision shall not apply to new requests for service until initial construction of the system is substantially completed.

B. Any verbal, telephone or written complaint relating to the quality or continuity of service shall be attended to within a normal service interval. In the event that such complaints are not responded to or that service is not restored to the levels required by the F.C.C. or by the terms of this Article during said normal service interval, the subscriber shall be entitled to a rebate of one-fifteenth ( $1/15$ ) of his or her normal monthly service charge for each day or part thereof between the end of the normal service interval and the time service is restored to set standards. This provision shall not apply if such delay is occasioned because of an act of God, strike, national emergency or any other circumstance beyond the control of the Company. Similarly, this provision shall not apply to service requests or complaints pertaining to television set malfunction or other breakdowns not related to the operation of the cable television system. (Weld County Codification Ordinance 2000-1)

#### **Sec. 11-1-100. Complaint procedures.**

A. The Company shall establish procedures for receiving, acting upon and resolving subscriber complaints. The Company shall furnish notice of such procedures to each subscriber at the time of initial subscription to the system. In addition, the Company shall maintain a written record or log listing date and time of customer complaints, identifying the subscriber and describing the nature of the complaints and what action was taken by the Company in response thereto. Such information as the County may require regarding said complaints shall be transmitted to the Clerk to the Board no less than a defect or problem existing in Company-owned, monthly or as otherwise specified herein. Said records shall be kept at the Company's local office reflecting the operations to date and shall be available for inspection during regular business hours.

B. In the event complaints of a similar nature are made, or where there exists other evidence which, in the judgment of the County, casts a doubt on the reliability or quality of the cable service provided, the County shall have the right to test, analyze and report on the performance of this system. Such reports shall be delivered to the County no later than fourteen (14) days after the County formally notifies the Company 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 the procedures employed in testing; the results of such tests; the methods in which said complaints were resolved, if applicable; and any and all additional information deemed relevant by the County.

C. Any tests or analyses required hereunder shall be supervised by a registered professional engineer not on the permanent staff of the Company and selected by the County. Said engineers shall sign all records of special tests and forward to the County such records with a report interpreting the results of the test and recommending action to be taken by the County. Costs of said engineer shall be borne by the Company.

#### **Sec. 11-1-110. Compliance with state and federal laws.**

Notwithstanding any other provision in this Article to the contrary, the Company shall, at all times, comply with all laws and regulations of the state and federal governments or any administrative agencies thereof. However, if any such state or federal law or regulation shall prohibit the Company from performing any service in conflict with the terms of this Article or of any law or regulation of the County, then as soon as possible following knowledge thereof, the Company shall notify the County of the point of conflict believed to exist between such regulation or law and the laws or regulations of the County or this Article.

**Sec. 11-1-120. Police powers.**

Nothing in this Article or in any agreement or ordinance in accordance herewith shall be construed as an abrogation by the County of any of its police powers.

**Sec. 11-1-130. Partial listing of County rights.**

A. The County reserves such rights and powers which, under applicable federal or state law or regulations, the County must reserve and maintain. The Company shall comply with any action or requirements of the County in the exercise of such rights and powers which either have been or shall be, subsequent to the grant of the franchise, enacted or established.

B. The County may inspect all construction or installation work performed pursuant to any CATV franchise.

C. The County may grant additional franchises within the permit area to other persons for the conduct of cable television systems.

**Sec. 11-1-140. Notice.**

All notices from the Company to the County pursuant to this Article shall be to the Clerk to the Board or to such other officers designated by the Board of County Commissioners. The Company shall maintain with the County throughout the term of this franchise an address for service of all notices by mail.

**Sec. 11-1-150. Conditions of street occupancy.**

A. The Company shall have the right and privilege of constructing, erecting, operating and maintaining a cable television system, equipment and apparatus, upon, through, along, under and over the streets within the permit area subject to the provisions hereof, and to all powers (including police powers) inherent in and conferred upon or reserved to the County.

B. No pavements, sidewalks, curbs, gutters or other such street installation shall be disturbed and no excavation in any of said streets will be made, or any poles installed, except with the express written permission of the County. All equipment and apparatus shall be located in such portion of said streets as may be designated by the County, and the Company shall repair any disturbance or excavation to the extent that the pavement, sidewalk, curb, gutter or other street installation is returned to condition as it existed prior to said disturbance or excavation.

C. The Company shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place or remove from the street or other public place any property of the Company when required by the County by reason of traffic conditions, public safety, street vacation, street construction, change in establishment of street grade, installation of sewer, drains, water pipes, tracks or any other type of structural improvement by any public agency.

D. All wires, conduits, cables and other property and facilities of the Company shall be so located, constructed, installed and maintained so as not to endanger or unnecessarily interfere with the usual and customary trade, traffic and travel upon the streets and public places of the County. The Company shall keep accurate maps and records of all its facilities and furnish copies of said maps and records as requested by the County. The Company shall not place poles or other equipment where they will interfere with the rights or reasonable convenience of adjoining property owners, with any gas, electric or telephone fixtures, or with any water hydrants or sewer and water mains. All poles and other fixtures placed in the streets shall be placed in the right-of-way between the roadway and the property, as specified by the County.

E. All wires, cables, amplifiers and other property shall be constructed and installed in an orderly and workmanlike fashion. All cables and wires shall be installed parallel with existing telephone and electric wires whenever possible. Multiple cable

configurations shall be arranged in parallel and be bundled, with due respect for engineering and safety considerations. All installation shall be underground in those areas of the County where all public utilities (those providing telephone or electric service) are underground. In areas where both telephone and electric facilities are aboveground at the time of installation, the Company may install its service above ground; provided, however, that at such time as those facilities are required to be placed underground by the County, the Company shall likewise place its service underground without additional cost to the residents of the County other than as may be granted by the provisions of this Article.

F. The County shall give the Company reasonable notice of plans for street improvement where paving or resurfacing of a permanent nature is involved. The notice shall give the Company sufficient time to make any additions, alterations or repairs to its facilities as it deems necessary in advance of the actual commencement of the work, so as to permit the Company to maintain continuity of service.

G. The Company shall, at the request of any person holding a building moving permit, temporarily raise or lower its wires to permit the moving of said building. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Company shall have the authority to require such payment in advance.

H. The Company shall have the authority to trim trees overhanging upon streets, alleys, sidewalks and any other public places of the County so as to prevent the branches of such trees from coming in contact with the wires and cables of the Company. All trimming is to be done under the supervision and direction of the County and at the expense of the Company. The Company shall make every effort to preserve the aesthetic beauty and viability of any trees or shrubbery trimmed. The Company may contract for such services; however, any firm or individual shall obtain County approval prior to commencing such activity. Any property owner whose property may be affected shall be given written notice of the Company's intent to undertake such actions at least ten (10) days prior to such trimming, in order that said property owner may undertake the required trimming himself or herself and to consult with the Company in that regard. All tree limbs and other refuse shall be removed by the Company and at its expense.

I. Public buildings shall be connected to the cable system at no charge upon the direction of the County. Such requests for service shall be initiated by any local government through the County. There shall be no monthly charges for providing basic subscriber services to said facilities.

**Sec. 11-1-160. Letter of credit or cash deposit.**

A. Within ten (10) days after the award of any franchise for a cable television operation granted pursuant to this Article, the Company shall deposit with the County cash, an irrevocable letter of credit or an irrevocable performance bond, in the amount of two thousand dollars (\$2,000.00), the form and content of which shall be approved by the County Attorney. The letter of credit shall be used to insure: the faithful performance by the Company of all provisions of the franchise, this Article and the Company's proposal; compliance with all orders, permits and directions of any agency, commission, board, department, division or office of the County having jurisdiction over this Article; and the payment by the Company of any claims, liens and taxes due the County which arise by reasons of the construction, operation or maintenance of the system.

B. The deposit shall be maintained at two thousand dollars (\$2,000.00) during the entire term of the franchise, even if amounts have to be withdrawn pursuant to Subsection A or C of this Section.

C. If the Company: fails to pay to the County any compensation within the time fixed herein; fails after ten (10) days' notice to pay to the County any taxes due and unpaid; fails to repay to the County

within ten (10) days any Damages, costs or expenses which the County is compelled to pay by reason of any act or default of the Company in connection with this franchise; or fails, after three (3) days' notice by the County of such failure to comply with any provision of this franchise which the County reasonably determines can be remedied by demand on the letter of credit or cash deposit, the County may immediately request payment of the amount thereof, interest penalties and interest at the then-prevailing legal rate from said letter of credit or deduct said amounts from the cash deposit. Upon such request for payment or deduction, the County shall notify the Company of the amount and date thereof.

D. The rights reserved to the County with respect to the letter of credit or cash deposit are in addition to all of the other rights of the County, whether reserved by this Article or authorized by law, and no action, proceeding or exercise of a right with respect to such cash deposit or letter of credit shall affect any other right the County may have. (Weld County Codification Ordinance 2000-1)

#### **Sec. 11-1-170. Construction bond.**

A. Within thirty (30) days after the award of this franchise, the Company shall obtain and maintain at its cost and expenses, and file with the Clerk to the Board, a corporate surety bond from a company authorized to do business within the State and found acceptable by the County Attorney, in an amount to be determined by the County to guarantee the timely construction and full activation of this cable television system.

B. The bond shall provide, but not be limited to, the following conditions: There shall be recoverable by the County, jointly and severally, from the principal and surety, any and all damages, loss or costs suffered by the County resulting from the failure of the Company to satisfactorily complete and fully activate the CATV system throughout the franchise area where the CATV system will be initially available to subscribers pursuant to the terms and conditions of Section 11-1-230 of this Article.

C. Any extension to any prescribed time limit must be authorized by the Board of County Commissioners. Such extension shall be authorized only when the Board of County Commissioners finds that such extension is necessary and appropriate due to causes beyond the control of the Company.

D. The construction bond shall be terminated only after the Board of County Commissioners finds that the Company has satisfactorily completed initial construction and activation of the CATV system pursuant to the terms and conditions of Section 11-1-230 of this Article.

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

F. 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 thirty (30) days after receipt by the County, by certified mail, a written notice of intent to cancel or not renew."

(Weld County Codification Ordinance 2000-1)

#### **Sec. 11-1-180. Indemnification.**

A. The Company shall, at its sole cost and expense, fully indemnify, defend and hold harmless the County, its officers, boards, commissions and employees against any and all claims, suits, actions, liability and judgments for damages (including but not limited to, expenses for reasonable legal fees and disbursements and liabilities assumed by the County in connection therewith):

1. To persons or property, in any way arising out of or through the acts or omissions of the Company, its servants, agents or employees or to which the Company's negligence shall in any way contribute;
2. Arising out of any claim for invasion of the right of privacy, for defamation of any person for violation of infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person (excluding claims arising out of or relating to County programming);
3. Arising out of the Company's failure to comply with the provisions of any federal, state or local statute, regulation or ordinance applicable to the Company in its business hereunder; and
4. Any liability which may arise with regard to a claim for violation of any federal, state or local statute, regulation or ordinance dealing with civil rights or antitrust.

B. In accordance with the foregoing indemnity, the County shall give the Company prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section. Nothing herein shall be deemed to prevent the County from cooperating with the Company and participating in the defense of any litigation by its own counsel at its sole cost and expense. No recovery by the County of any sum by reasons of the letter of credit required in Section 11-1-160 of this Article shall be any limitation upon the liability of the Company to the County under the terms of this Section, except that any sum so received by the County shall be deducted from any recovery which the County might have against the Company under the terms of this Section.

**Sec. 11-1-190. Liability and insurance.**

A. The Company shall maintain, throughout the term of the franchise, liability insuring the County and the Company in the minimum amount of:

1. One hundred thousand dollars (\$100,000.00) for property damage to any one (1) person;
2. Three hundred thousand dollars (\$300,000.00) for property damage in any one (1) accident;
3. Three hundred thousand dollars (\$300,000.00) for personal injury to any one (1) person; and
4. One million dollars (\$1,000,000.00) for personal injury in any one (1) accident.

B. The insurance policy obtained by the Company in compliance with this Section must be approved by the County Attorney, and such insurance policy, along with written evidence of payment of required premiums, shall be filed and maintained with the Clerk and Recorder during the term of the franchise, and may be changed from time to time to reflect changing liability limits. The Company shall immediately advise the County Attorney of any litigation which may develop that would affect this insurance.

C. Neither the provisions of this Section nor any damages recorded by the County thereunder shall be construed to limit the liability of the Company under any franchise issued pursuant to this Article.

D. All insurance policies maintained pursuant to the franchise shall contain the following endorsement:

"It is hereby understood and agreed that this insurance policy may not be cancelled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the County by certified mail of a written notice of such intention to cancel or not to renew."

(Weld County Codification Ordinance 2000-1)

**Sec. 11-1-200. Rates; special monthly service rates; deposits.**

A. The Board of County Commissioners may, by separate ordinance, approve a schedule for maximum rates for services which the Company may charge. In the absence of any such rate setting by ordinance, the rates as proposed by the Company in its application shall control. The absence of such rate setting by the Board of County Commissioners at any time shall not preclude the Board of County Commissioners from taking such action at such time and to such extent as is deemed appropriate by the Board of County Commissioners.

B. The Board of County Commissioners may set maximum rates, by separate ordinance, for any or all of the Company's services, including, but not limited to:

1. Installation;
2. Converter rental;
3. Converter deposit;
4. Basic monthly service;
5. Additional outlets;
6. Project rewiring;
7. Institutional service;
8. Transfers;
9. Reconnection;
10. Relocation;
11. Service calls; and
12. Undergrounding.

C. The Company may, without an application for rate revision, increase its rates by an amount not to exceed five percent (5%) per year.

D. The Company may make application for revision of the rate schedule at any time in accordance with the following procedures:

1. The Company may petition the Board of County Commissioners for a change in rates by filing a revised rate schedule including its justification for said proposed new schedule.

2. Within fourteen (14) days of notification by the Board of County Commissioners of the place and time established for a hearing regarding the rate change, the Company shall notify its subscribers of the date and time of said hearing by announcement on at least one (1) channel of its system, between the hours of 7:00 p.m. and 9:00 p.m. for ten (10) consecutive days immediately prior to the hearing.

3. Within thirty (30) days of the filing of said petition for rate changes, the Board of County Commissioners shall hold a public hearing to consider the proposed rate change, at which hearing all persons desiring to be heard, including the Company, shall be heard on any matter, including, but not limited to, the performance of this franchise, the Company services and the proposed new rates.

4. Within thirty (30) days after said hearing, the Board of County Commissioners shall render a written decision on the Company's petition, either accepting, rejecting or modifying the same and reciting the basis of its decision.

5. The criteria for the Board's decision on such matters shall be the establishment of rates which are "fair and reasonable" to both the Company and its subscribers and shall be generally defined as the minimum rates necessary to meet all applicable costs of service, including fair return on all invested capital, all assuming efficient and economical management.

6. In order for the Board of County Commissioners to determine whether proposed rate changes comport with the criteria established in Subparagraph 5 above, the following financial reports shall be included:

- a. Balance sheet;
- b. Income statement;
- c. Cash flow statement;
- d. Statement of sources and application of funds;
- e. Detailed supporting schedules of expenses, income, assets and other items as may be required; and
- f. Statement of current and projected subscribers and penetration.

The Company's accounting records applicable to this system shall be available for inspection by the County at all reasonable times. The County shall have access to records of financial transactions for the purpose of verifying burden rates or other indirect costs.

7. The Board of County Commissioners may extend its time for rendering a decision regarding the Company's petition for up to thirty (30) days, by resolution. If the Board of County Commissioners fails to act within the initial thirty-day period of any extension, the Company's petition shall be deemed to have been granted.

E. The Company may charge special lower monthly service rates to hotels, motels, nursing homes, hospitals and other similar buildings where there is one hundred percent (100%) subscription, as may be established by the Board of County Commissioners by separate ordinance.

F. The Company may provide service to full-time dealers and television sales and service without a monthly charge.

G. The Company may require an advance deposit of all, or a part of all, of the estimated costs for installation. The Company may require subscribers to pay for each month of basic service in advance at the beginning of each month. No other advance payment or deposit of any kind shall be required by the Company for basic subscriber service. (Weld County Codification Ordinance 2000-1)

**Sec. 11-1-210. Franchise fees.**

A. The Company shall pay to the County, for use of the streets and other facilities of the County in the operation of the cable television system and for the supervision thereof during the life of the franchise, a sum equal to five percent (5%) of the annual gross revenues of the Company. The Company shall file with the County, within thirty (30) days after the expiration of each of the Company's fiscal quarters, a financial statement clearly showing the gross revenues received by the Company during the preceding quarter. Payment of the quarterly portion of the franchise fee shall be rendered to the County at the time such statement is filed. The Company shall also file, within ninety (90) days following the conclusion of each fiscal year of the Company, an annual report prepared and audited by an officer of the Company showing the year's total gross revenues, franchise payments made to the County and any further relevant financial information with regard to the Company as may be required by the County.

B. In the event this franchise should be terminated or forfeited prior to the end of the basic fifteen-year term, the Company shall immediately submit to the County an audited financial statement showing the gross revenue of the Company for the time elapsed since the last quarter for which the Company has paid to the County the required percentage of gross annual revenues. The Company shall pay to the County, not later than thirty (30) days following the termination of the franchise, a like percentage of such gross revenue.

C. In the event that any payment is not made on or before the applicable date fixed in Subsections A and B hereof, the Company shall be subject to penalty.

D. The County shall have the right to inspect the Company's records showing the gross revenues from which its franchise payments are computed. The right of audit and recomputation of any and all amounts paid under this franchise shall always be accorded to the County. No acceptance of any payment by the County shall be construed as a release of or an accord and satisfaction of any claim the County might have for further or additional sums payable under the terms of this Article or for any other performance or obligation of the Company hereunder.

E. Payments of compensation made by the Company to the County pursuant to the provisions of this Article shall be considered in addition to and exclusive of any and all taxes, business license fees or other levies or assessments which are now or which may hereafter be authorized by the laws of the United States, State or County.

**Sec. 11-1-220. Technical standards and specifications and system channel capacity.**

A. All construction, installation and maintenance of equipment related to the Company CATV system shall comply with the following:

1. National Electric Safety Code as adopted by the County.
2. National Electrical Code of the National Fire Protection Association.
3. National Bureau of Standards Handbook 81 (Part 2).
4. Structural standards for steel antenna towers and antenna supporting structures, EIA Standards RS-222-C as published by the Engineering Department of the Electronic Industries Association, 2001 I Street NW, Washington, DC 20006.
5. Bell Telephone System Code of Pole Line Construction.
6. Applicable F.C.C. or other federal, state and local regulations and technical standards.
7. With regard to any tower constructed for use in the County's cable television system, Federal Aviation Agency regulations, including, but not limited to, Objectives Affecting Navigable Airspace, 14 CFR 77.1, et seq., February 1965, and Construction, Marking and Lighting of Antenna Structures, 47 CFR 17.1, et seq., September 1967.
8. Federal Communications Commission Regulations, Technical Rules and Standards, 47 CFR 76.601-76.613 (1972).

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

C. All working facilities and conditions used during construction, installation and maintenance of the CATV system shall comply with the standards of the Occupational Safety and Health Administration.

D. Stray radiation (Rf leakage) shall be checked at reception locations for emergency radio services to provide that no interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no interference to airborne navigational reception in the normal flight patterns.

E. The CATV system shall be capable of delivering all National Television Systems Committee color and monochrome standard signals (developed and presented to the F.C.C. on July 21, 1953) to standard Electronic Industries Association approved television receivers without noticeable degradation.

F. The CATV system shall meet all performance criteria over the ambient temperature range prevailing in the franchise area.

G. The Company shall construct a cable television system that shall have not less than thirty-five (35) video channels or an equivalent amount of bandwidth capacity.

**Sec. 11-1-230. Construction timetables.**

A. Upon the granting of the CATV franchise, the Company shall, within thirty (30) days, file any and all documents required to obtain all necessary federal, state and local licenses, permits and authorizations required for the conduct of its business (except for building permits), and shall, upon request of the County, submit reports to the Board of County Commissioners on progress in this respect until all documents are in hand.

B. Construction of the cable system within the franchised areas of the County will be completed:

1. At the same time and under the same schedule constraints as the adjoining municipality; or
2. Within thirty (30) days after the effective date of the franchise.

**Sec. 11-1-240. Power to contract; pole usage.**

The Company may enter into contracts with any public utility companies or any other owners or lessee of any poles located within or without the County to whatever extent such contracts may be expedient and of advantage to the Company for use of poles and posts necessary for proper installation of the system, obtain right-of-way permits from appropriate state, county and federal officials necessary to cross highways or roads under their respective jurisdictions to supply main trunk lines from the Company's receiving antennas, obtain permission from the Federal Aviation Administration to erect and maintain antennas suitable to the needs of the system and its subscribers, and obtain whatever other permits the County, state or federal officials may require.

**Sec. 11-1-250. Disconnection.**

A. There shall be no charge for disconnection from any cable television system. If a user or subscriber had failed to pay properly due monthly fees, or if a user or subscriber disconnects for seasonal periods, the Company may require, in addition to full payment of delinquent fees, a reasonable fee for reinstatement.

B. If a user or subscriber fails to pay a properly due monthly subscriber fee, or any other properly due fee or charge, the franchisee may disconnect the subscriber's service outlet upon a ten-day written notice. If the subscriber pays within ten (10) days after payment is due and after notice of disconnection has been given, the Company shall not disconnect the subscriber's service.

**Sec. 11-1-260. Change application procedure.**

Except as otherwise specifically provided herein, all applications by the Company for changes in service, construction schedules, transfer or ownership, proposed changes in regulations or ordinances, etc., shall be made and processed according to the following procedure:

A. Applications shall be in a form as prescribed by the County;

B. An application may be rejected for inadequacy by the County if it contains an inadequate description of what is being applied for, is not in an acceptable form or contains insufficient facts or information for adequate consideration;

C. A rejection of an application for an inadequacy shall be in writing and shall state the nature of said deficiencies;

D. Upon acceptance, the County shall review the application regarding the necessity of further staff study and reports. The Clerk to the Board shall submit the application to the Board of County Commissioners if the Clerk to the Board

deems it adequate and complete and in need of no further staff study or report. Upon submittal to the Board of County Commissioners, notice shall be given to the Company of the date, time and place that the matter will be considered. All such matters shall be considered at a public hearing with notice being given to the public as described herein. In no event shall the application be submitted to the Board of County Commissioners later than thirty (30) days from acceptance by the Clerk to the Board.

E. Following a public hearing, the Board of County Commissioners may submit the application for further study and information and may request that additional documents and provisions be provided, in which case a new hearing date shall be established.

F. Following the public hearing and the receipt of any additional information requested, the Board of County Commissioners may approve, disapprove or modify the change requested by the Company. (Weld County Codification Ordinance 2000-1)

**Sec. 11-1-270. Company services.**

A. The Company shall provide all subscribers with all television signals required to be carried pursuant to F.C.C. Rules and Regulations and all local access channels as defined herein.

B. The Company shall maintain, as a minimum, the following (access channels): At least one (1) specially designated, noncommercial public access channel to be used by the County.

C. The Company shall have available equipment for local production and presentation of cable cast programs other than automated services and shall permit its use for the production and presentation of public access programs.

D. The Company may charge for the use of such facilities as contemplated in Subsections B and C above according to such rates as approved by the Board of County Commissioners. (Weld County Codification Ordinance 2000-1)

**Sec. 11-1-280. Emergencies.**

A. In the event of an emergency or disaster, the Company shall, upon request of the County, make available its facilities to the County, state or federal governments at no cost for emergency use during the period of such emergency or disaster and shall provide such personnel as necessary to properly operate the system under said circumstances.

B. The Company shall incorporate into its facilities the capability for an emergency override alert whereby the County, in times of crisis, may be able to introduce a bulletin on all channels simultaneously.

C. If, at any time, in the case of fire or disaster in the County, it shall be necessary, in the reasonable judgment of the County Engineer, to cut or move any of the wires, cables, amplifiers or other appurtenances to the network of the Company, such cutting or removing may be done and any repairs necessary thereby shall be made by the Company at its sole expense, provided that such repairs are not necessitated by a negligent act of the County, in which case, costs of repairs shall be borne by the County.

**Sec. 11-1-290. Continuity of service.**

A. The Company shall be required to provide continuous service to all subscribers in return for payment of the established fee.

B. If the Company elects to overhaul, rebuild, modify or sell or determines to abandon the system, if the County removes or fails to renew the franchise, elects to purchase the system, or if the franchise becomes void, the Company is required, as part of its franchise, to continue to operate the system and provide continuous, uninterrupted service until an orderly and lawful change of operation is effectuated regardless of the circumstances. Under no circumstances shall this period of operation exceed three (3) months from the date of occurrence of any of the above events.

**Sec. 11-1-300. Refunds to subscribers and users.**

A. If the Company fails to provide any reasonable service request by a subscriber or user, the Company shall, after being afforded reasonable opportunity to provide the service not to exceed thirty (30) days, promptly refund all deposits or advance charges paid for the service in question by said subscriber or user. This provision shall not alter the Company's responsibility to subscribers and users under any separate contractual agreements the Company may have with said subscribers or users.

B. If any subscriber terminates any monthly service during the first twelve (12) months of said service because of failure of the Company to render the service in accordance with the standards set forth in this Article, the Company shall refund to said subscriber an amount equal to the installation or reconnection charge paid by the subscriber multiplied by the fraction of the twelve-month period for which the subscriber will not be receiving the service. In the event that said subscriber has made an advance payment, the amount paid shall be refunded by the Company. This provision shall not relieve the Company of liability established in other provisions of this Article.

C. If any subscriber terminates, for personal reasons, any monthly service prior to the end of a prepaid period, a pro-rata portion of any prepaid subscriber's service fee, using the number of days as a basis, shall be refunded to the subscriber by the Company within thirty (30) days.

**Sec. 11-1-310. Company rules and regulations.**

The Company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and performance obligations under this Article and the franchise, and to insure an uninterrupted service to each and all of its customers; provided, however, that its rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations.

**Sec. 11-1-320. Modification.**

During the period a franchise is in effect, modification thereto may be made:

A. By the Company in accordance with Section 625 of the Cable Communications Policy Act of 1984, which Section is incorporated by reference herein.

B. By the County of any waivers granted pursuant to Section 11-1-460, after notice to the Company and a hearing held pursuant thereto, establishing by a preponderance of the evidence that the finding relied on in granting said waiver has substantially changed.

**Sec. 11-1-330. Rights of individuals.**

A. The Company shall not initiate or use any form, procedure or device for procuring information or data from the subscriber's premises by use of the cable system without prior valid written authorization from the subscriber so affected. Valid authorization shall mean written approval from the subscriber for a period of time not to exceed one (1) year, and said authorization shall not have been obtained from the subscriber as a condition for providing service not requiring return path monitoring. Further, it shall be unlawful for the Company, without such authorization, to activate and/or utilize return signals in any manner from the subscriber's premises. In any case, the subscriber shall have the right and opportunity to deactivate the return path from his or her premises.

B. Neither the County nor the Company shall, without prior valid written authorization from each subscriber so affected, provide any data identifying subscribers' names or addresses to any other party, and said authorization shall not have been obtained from the subscriber as a condition for providing service not requiring return path monitoring.

C. No person shall procure information or data from subscribers' premises by use of the cable system without prior written authorization from each subscriber affected. Valid authorization shall mean written approval from the subscriber for a period of time not to exceed one (1) year and shall not have been obtained as a condition for providing service not requiring return path monitoring.

D. No authorization for procurement or dissemination of subscriber identifiable information or data shall be valid unless it specifies:

1. The type or types of information or data covered.
2. The parties authorized to collect, receive, store, record, transmit or otherwise convey this information or data.

Further, all authorizations shall specify the maximum period of time that any subscriber identifiable information or data shall be preserved in any manner or form.

E. A written copy of all subscriber identifiable information or data which is retained and/or disclosed and the disposition of this information or data, together with any explanation necessary to make it understandable to the subscriber, shall be provided to the affected subscriber within thirty (30) days of procurement. Further disclosures shall be fully detailed in writing to the affected subscriber within thirty (30) days of such disclosure.

F. Nothing contained herein shall prohibit the Company from conducting system-wide or individually addressed "sweeps" for the purpose of verifying system integrity, controlling return path transmission or billing for pay services. (Weld County Codification Ordinance 2000-1)

#### **Sec. 11-1-340. Fiscal reports.**

The Company shall file annually with the Clerk to the Board, no later than one hundred twenty (120) days after the end of the Company's fiscal year, a summary of income relative to the County operating system in the County, upon which franchise fees are determined, for the preceding twelve (12) months. There shall be submitted along with such report other information reasonably available regarding the Company's properties and expenses relative to its operations within the County.

#### **Sec. 11-1-350. Access to books and records.**

A. Copies of all petitions, filings, applications and correspondence submitted by the Company to the F.C.C., Securities and Exchange Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting Cable Television operations, shall be submitted simultaneously to the County.

B. The Company shall fully cooperate in making available at reasonable times, and the County shall have the right to inspect the books, records, maps, plans and other like materials of the Company applicable to the permitted CATV system, at any time during normal business hours; provided that where volume and convenience necessitate, the Company may require the inspection to take place on Company premises.

#### **Sec. 11-1-360. Transfer of ownership or control.**

All of the rights and privileges and all of the obligations, duties and liabilities created by this franchise shall pass to and be binding upon the successors of the County and the successors and assigns of the Company. The Company shall notify the County of any transfer of ownership.

#### **Sec. 11-1-370. Forfeiture and termination.**

A. In addition to all other rights and powers retained by the County under this franchise or otherwise, the County reserves the right to declare a forfeiture and terminate the franchise and all rights and privileges of the Company hereunder in the event of a substantial breach of its terms and conditions. A substantial breach by the Company shall include, but not be limited to, the following:

1. Violation of any material provisions of the franchise, this Article or any rule, order, regulation or determination of the County made pursuant to the franchise and this Article.
2. Attempt to evade any material provision of the franchise or existence of any fraud or deceit practiced upon the County or its subscribers or customers.
3. Failure to begin or complete system construction or extension as provided under this Article or according to the Company's application or proposal.
4. Failure to provide the types of service promised or required hereunder.
5. Failure to restore service after ninety-six (96) consecutive hours of interrupted service, except where approval of such interruption is obtained from the County; or
6. Material misrepresentation of fact in the application for said franchise.

B. Any of the above mentioned shall not constitute a major breach if the violation occurs but is without fault of the Company or occurs as a result of circumstances beyond its control. The Company shall not be excused by mere economic hardship, by misfeasance or malfeasance of its directors, officers or employees.

C. The County may make a written demand that the Company comply with any such provision, rule, order or determination under or pursuant to its franchise and/or this Article. If the violation by the Company continues for a period of thirty (30) days following such written demand without written proof that corrective action has been taken or is being actively or expeditiously pursued, the issue of termination of franchise may be placed before the Board of County Commissioners. The County shall cause to be served upon the Company, at least twenty (20) days prior to the date of such Board hearing, a written notice of the intent to request such termination and the date and place of the hearing. Public notice shall be given of the hearing and issue which the Board of County Commissioners is to consider.

D. At the public hearing, the Board of County Commissioners shall hear and consider the issue and shall hear any person interested therein to determine whether or not a violation by the Company has occurred.

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

F. The issue of forfeiture and termination shall automatically be placed on the Board agenda at the expiration of the time set for compliance. The Board of County Commissioners may then terminate the franchise forthwith upon finding that the Company has failed to achieve compliance or may further extend the period in its discretion for good cause. (Weld County Codification Ordinance 2000-1)

#### **Sec. 11-1-380. Foreclosure and receivership.**

A. Upon the foreclosure or other judicial sale of all or a substantial part of the cable communication system, or upon the termination of any lease covering all or a substantial part of the system, the Company shall notify the County of such fact, and such notification shall be treated as a notification that a change in control of the Company has taken place, and the requirements of this Article governing the consent of the Board of County Commissioners to such change in control of the Company shall apply.

B. The Board of County Commissioners shall have the right to cancel the franchise one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of

the Company, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

1. Within one hundred twenty (120) days after his or her election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Article and remedied all defaults thereunder; and
2. Such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement duly approved by the Court having jurisdiction in the matter, whereby such receiver or trustee assumes or agrees to be bound by each and every provision of this Article and the franchise granted to the Company.

**Sec. 11-1-390. Nondiscrimination.**

A. The Company shall not deny service, access or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, religion, national origin or sex. The Company shall strictly adhere to the Equal Employment Opportunity requirements of the F.C.C.

B. The Company shall comply, at all times, with all other applicable federal, state and County ordinances and laws, and all executive and administrative orders relating to nondiscrimination.

**Sec. 11-1-400. Abandonment and removal of facilities.**

A. In the event that the use of any part of the system is discontinued for any reason by the Company for a continuous period of twelve (12) months, or in the event such system or property has been installed in any street or public place without complying with the requirements of this Article, or the rights granted hereunder have been terminated or cancelled or have expired, the Company shall promptly remove from the streets and public places all such property and poles of such system, other than any which the County may permit to be abandoned in place. In the event of such removal, the Company shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the County. Any property of the Company to be abandoned in place shall be abandoned in such manner as the County may prescribe. Upon a permanent abandonment of property of the Company in place, the Company shall submit to the County an instrument, to be approved by the County, transferring to the County the ownership of such property.

B. If the Company fails to remove any property as herein requested, the County may perform the work at the Company's expense.

**Sec. 11-1-410. Rules and regulations.**

In addition to the inherent powers of the County to regulate and control this franchise for cable television service and those powers expressly reserved by the County or agreed to and provided for herein, the right and power is hereby reserved by the County to promulgate such additional regulations as it shall find necessary in the exercise of its lawful powers and in the furtherance of the terms and conditions of this Article. Such additional regulations may be promulgated by resolution of the Board of County Commissioners.

**Sec. 11-1-420. Renewal.**

A. Commencement of renewal. During the six-month period which begins with the thirty-sixth month before the franchise expiration, the County may, on its own initiative, and shall, at the request of the Company, commence proceedings which afford the public in the franchise area appropriate notice and participation for the purpose of:

1. Identifying the future cable-related community needs and interest; and
2. Reviewing the performance of the Company under the franchise during the then-current franchise term.

**B. Submittal of proposal.**

1. Under Subsection A above, the Company may, on its own initiative or at the request of the County, submit a proposal for renewal.
2. Any such proposal shall contain such material as the County may require.
3. The County may establish a date by which such proposal shall be submitted.

**C. Review process.**

1. Upon submittal by the Company of a proposal to the County for the renewal of a franchise, the County shall provide prompt public notice of such proposal and, during the four-month period which begins on the completion of any proceedings under Subsection A, renew the franchise or, at the request of the Company or on its own initiative, commence an administrative proceeding, after providing prompt public notice of such proceeding, in accordance with applicable law to consider whether:

- a. The Company has substantially complied with the material terms of the existing franchise and with applicable law;
- b. The quality of the Company's service, including signal quality, response to consumer complaints and building 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 Company has the financial, legal and technical ability to provide the services, facilities and equipment as set forth in the Company's proposal; and
- d. The Company'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.

2. In any proceeding under Paragraph 1 above, the Company shall be afforded adequate notice and the fair opportunity for full participation, including the right to introduce evidence (including evidence related to issues raised in the proceeding under Subsection A), to require the production of evidence and to question the witnesses. A transcript shall be made of any such proceeding.

3. If a violation of Subparagraph 1.a or 1.b above is found to exist, the hearing shall be continued for a period not to exceed sixty (60) days during which the Company shall have the right to cure such violation; provided, however, that no right to cure shall exist if it is established at said proceeding, by a preponderance of the evidence, that the County has previously provided the Company with reasonable notice thereof and the opportunity to cure.

4. At the completion of a proceeding under this Subsection C, the County 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, together with the reasons therefor, to the Company.

**D. Basis for denial.** Any denial of a proposal for renewal shall be based on one (1) or more adverse findings made with respect to the factors described in Subparagraphs a through d of Paragraph C.1 above, pursuant to the record of the proceedings under Subsection C.

**E. Appeal.** If the Company's application for renewal has been denied by a final decision of the County made pursuant to this Section or has been adversely affected by a failure of the County to act in accordance with procedural requirements of this Section, the Company may appeal such final decision or failure pursuant to the provisions of the Cable Communications Policy Act of 1984.

**F. Time limit for proposal.** Notwithstanding the time limit contained in Subsection A above, the Company may submit a proposal for the renewal of a

franchise no later than four (4) months prior to the expiration of the initial franchise term; except that Paragraph C.3 and Subsection E hereof shall not apply to such renewal application; and any appeal of a decision adverse to the Company shall be governed by Rule 106 of the Colorado Rules of Civil Procedure, rather than in accordance with Subsection E above.

G. Renewal period. A franchise for cable television service shall, upon application by the Company, be renewed by the Board of County Commissioners for a period not to exceed ten (10) years.

H. Award of other franchise. No renewal under this Section is to, in any way, limit or restrict the ability to award other franchises for cable television services pursuant to this Article.

I. Renewal standard. Any renewal of the franchise pursuant to this Section shall be done in accordance with the then-existing rules and regulations of the F.C.C. (Weld County Codification Ordinance 2000-1)

#### **Sec. 11-1-430. Landlord/tenant relationships.**

A. Neither the owner of any multiple-unit residential dwelling nor his or her agent or representative shall interfere with the right of any tenant or lawful resident thereof to receive cable television service, cable installation or maintenance from a cable communication company regulated by and lawfully operating under a valid and existing cable television franchise issued by the County.

B. Neither the owner of any multiple unit residential dwelling nor his or her agent or representative shall ask, demand or receive any payment, service or gratuity in any form as a condition for permitting or cooperating with the installation of a cable television service to the dwelling unit occupied by a tenant or resident requesting service.

C. Neither the owner of any multiple unit residential dwelling nor his or her agent or representative shall penalize, charge or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident, or discriminate in any way against such tenant or resident who requests or receives cable communication service from a company operating under a valid and existing cable television franchise issued by the County.

D. No person shall resell, without the expressed written consent of both the Company and the County, any cable service, program or signal transmitted by a cable television company operating under a franchise issued by the County.

E. Nothing in this Article shall prohibit a person from requiring that cable television system facilities conform to laws and regulations and reasonable conditions necessary to protect safety, functioning, appearance and value of premises or the convenience and safety of persons and property.

F. Nothing in this Section shall prohibit a person from requiring a cable communication company from agreeing to indemnify the owner or his or her agents or representatives for damages or from liability for damages caused by the installation, operation, maintenance or removal of cable television facilities.

#### **Sec. 11-1-440. Censorship prohibited.**

A. The County shall not prohibit or limit any program, class or type of program or otherwise censor the communications or signals by the Company or other parties over the cable communications system, other than programs on the designated government access channel or channels, and shall not promulgate any regulation or condition which would interfere with the right of free speech by means of cable television.

B. The Company shall not prohibit or limit any program, class or type of program presented over any channel made available for public access, educational access, government access or leased access purposes.

**Sec. 11-1-450. Company not to contest validity of ordinance or franchise.**

By acceptance of the grant of any franchise pursuant to this Article for cable television service, the Company covenants and agrees that it will not, at any time or in any manner or proceeding, set up against the County any claim or proceeding challenging this Article or the grant of the franchise pursuant to this Article as being unreasonable, arbitrary, voidable or void, nor that the County did not have the power or authority to make such term or condition, and shall be required to accept the validity of this Article in its entirety.

**Sec. 11-1-460. Waiver of requirements.**

If the Company proposes to serve and does serve less than five hundred (500) subscribers, upon the Company's request, the Board of County Commissioners may waive any of the foregoing requirements of this Article.