

TITLE 27
CABLE TELEVISION SYSTEMS¹

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Chapter 27.04

GRANT OF NONEXCLUSIVE REVOCABLE PERMITS AND GENERAL PROVISIONS

Sec. 27.04.010. Title of Title.

This Title shall be known and may be cited as the "Aspen Cable Television System Ordinance." (Code 1971, § 25-1; Ord. No. 64-1983, § 1)

Sec. 27.04.020. Definitions.

For the purpose of this Title, certain words or phrases are defined as follows:

When not inconsistent with the context, words used in the present tense include the future; words in the singular number include the plural; words in the plural number include the singular; and the masculine includes the feminine. The word "shall" is mandatory; the word "may" is permissive; words not defined shall be given their common and ordinary meaning.

(1) *Additional subscriber services* (or additional service). Any communication service, other than basic service provided by a permittee 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.

(2) *Applicant*. Any person applying for a permit to operate a cable television system in the City or for approval when required by this Title.

(3) *Application*. Any application to operate a cable television system in accordance with the provisions of this Title, including all written proposals, in whatever form, made by an applicant or permittee to the City concerning construction, maintenance or any other matter pertaining to the cable television system contemplated or operating.

(4) *Basic service*. Subscriber services provided by a permittee covered by regular monthly charge paid by all subscribers. Basic service shall not include receipts for installation fees, converter charges or taxes collected upon the sale of various services, goods or additional services for which a separate charge is made.

(5) *Cable television system (or CATV, cable system or system)*. A system of coaxial cables or other electrical signals or conductors and reception and transmission equipment used or to be used primarily to receive television or radio signals directly or indirectly off-the-air and transmit them and other electronic intelligence services to and/or from subscribers for a fee.

(6) *City*. When used in this title, the term *City* shall mean the City of Aspen, Colorado and shall encompass, when appropriate, its officers and employees, including the City Council and the designees of the City Council.

(7) *Class IV channel*. A signaling path provided by a cable television system to transmit signals of any type from a subscriber terminal to another point in the cable television system.

(8) *Community channel*. A specifically designated nonprofit radio or television channel maintained within any cable television system for the use of educational and/or governmental authorities, in addition to the general public.

(9) *Converter*. An electronic device capable of receiving and converting any authorized signal from a cable television system to an output frequency compatible with the receiver of a subscriber.

(10) *Equipment and apparatus*. When used in this Title, the term *equipment and apparatus* shall mean and include all manholes, underground conduits, poles, cables, boxes, wires, fixtures, conductors or other facilities necessary, essential or used or useful to and operated in connection with an authorized cable television system.

(11) *Fair market value*. The price that a willing buyer under no compulsion to buy would pay to a willing seller under no compulsion to sell. *Fair market value* shall not include a valuation of "goodwill" or of any right or privilege under any permit issued pursuant to this Title.

(12) *FCC*. The Federal Communications Commission of the United States government or its lawful successor.

(13) *Gross revenues*. All revenue derived directly or indirectly by a permittee, its affiliates, subsidiaries parent or any person in which the permittee has an ownership interest, from or in connection with the operation of a cable television system pursuant to this Title; provided, however, all revenues shall include, but not be limited to, basic subscriber service monthly fees, pay cable fees, installation and reconnection fees, leased channel fees, converter sales and rentals and advertising revenues; and provided further that this shall not include any taxes on services furnished by permittee imposed directly upon any subscriber or user by any governmental entity and collected by permittee on behalf of any governmental entity.

(14) *Installation*. The connection of any cable television system from feeder lines to subscribers' receivers and/or converters.

(15) *Monitoring*. The observance of a communication signal or the absence of a signal where the observer is neither the subscriber nor the programmer, whether the signal is observed by visual or electronic means, for any purpose whatsoever. *Monitoring* shall also include system-wide, nonindividually addressed sweeps of the system for purposes of verifying system integrity, controlling return path transmissions or billing for pay services.

(16) *Permit*. The nonexclusive revocable right and franchise to construct and operate a cable television system along the streets, alleys, rights-of-way and public ways of the City.

(17) *Permit area*. That area within the boundaries of the City.

(18) *Permittee*. Any person who has applied for and has received a permit to operate a cable television system within the City pursuant to the requirements of this Title.

(19) *Person*. When used in this Title the word *person* shall include any individual, firm, partnership, association, corporation, company or organization of any kind.

(20) *Programmer*. Any person who is 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 cable television system.

(21) *Public easement*. When used in this Title the term *easement* shall be limited in meaning to those rights-of-way owned by the City, the terms, conditions or limitations upon which are not inconsistent with the erection, construction or maintenance of a cable television system, its structures or equipment.

(22) *Public way* or (*public right-of-way*). When used in this Title, the term *public way* or (*public right-of-way*) shall mean and include all public property easements, sidewalks, streets, alleys, trails and City-owned utility poles.

(23) *Return signals*. A signaling path provided by a cable television system to transmit signals of any type from a subscriber terminal to another point in the cable television system, which may include *Class IV channels* as defined in this Title. (Code 1971, § 25-2; Ord. No. 64-1983, § 1)

Sec. 27.04.030. Grant of authority.

Any permit to operate a cable television system granted pursuant to the provisions of this Title shall grant to the permittee the right and privilege to erect, construct, operate and maintain in, upon, along, across, above, over and under the streets, sidewalks, easements and dedications including the right to attach to City-owned poles now in existence and as may be created or established during the term of the permit, poles, wires, cable, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation of a cable television system for the interception, sale, transmission and distribution of television programs and other electronic intelligence and the right to transmit the same to inhabitants of the City. (Code 1971, § 25-3; Ord. No. 64-1983, § 1)

Sec. 27.04.040. Nonexclusive revocable permit.

The rights granted by permit in accordance with this title shall be nonexclusive and revocable pursuant to its terms and the City shall reserve the right to grant similar permits to such other applicants as the City Council may deem to be in the best interest of the City; provided, however, nothing in this Title shall be construed or deemed to require the granting of additional cable television system permits if, in the judgment of the City Council, such additional permits would not be in the best interest of the City and its inhabitants. (Code 1971, § 25-4; Ord. No. 64-1983, § 1)

Sec. 27.04.050. Acceptance and term of permit.

Any permit and the rights, privileges and authority granted pursuant thereto shall become effective thirty (30) days after approval of the electors of the City voting at a special or general election, provided that within said thirty-day period the applicant files with the City Clerk its unconditional acceptance of and promise to comply with the provisions, terms and conditions of this Title and the granting of a permit as approved by ordinance of the City Council and subsequently by the electors. Acceptance and promise by applicant shall be in writing duly executed and sworn to by the applicant before a notary public or other officer authorized by law to administer oaths and shall contain a provision that the permit, by its terms, shall be binding on the heirs, successors and assigns of the applicant. All permits issued hereunder shall be for a term of not more than fifteen (15) years. (Code 1971, § 25-5; Ord. No. 64-1983, § 1)

Sec. 27.04.060. Fees.

For the reason that the streets and public rights-of-way to be used in the operation of a cable television system are valuable public properties acquired and maintained by the City at great expense and that permission to use said streets and rights-of-way is a valuable property right without which any permittee would be required to invest substantial capital in rights-of-way costs and acquisitions and because the City will incur costs in regulating and administering any permit issued in accordance with this Title, compliance with the following requirements with respect to fees shall be a prerequisite to the maintenance of a permit issued in accordance with this Title.

(a) A permit fee shall be paid to the City by the permittee in an amount equal to two percent (2%) of permittee's gross revenue on an annual basis from all sources attributable to the operations of the permittee within the boundaries of the City.

(b) The permit fee and any other costs assessed to permittee shall be payable annually at the office of the Finance Director. The permittee shall file a complete and accurate verified statement of all gross revenue accruing as a result of its operations within the City during the permittee's preceding fiscal year and said annual fees and charges shall be paid to the City not later than ninety (90) days from the close of permittee's preceding fiscal year.

(c) The City shall have the right to inspect the permittee's gross revenue records and the right to audit and to recompute any amounts determined to be payable as required by this Title; provided, however, that such audit covering any year shall take place within thirty-six (36) months following the close of such fiscal year. Any additional amount due to the City as a result of the audit shall be paid within thirty (30) days following written notice to the permittee by the City, which notice shall include a copy of the audit report. The cost of said audit shall be borne by the permittee if it is properly determined by the City Council that the permittee's annual payment to the City for the audited year is increased by more than five percent (5%).

(d) In the event that any payment or recomputed amount, cost or penalty, is not made on or before the dates said payments are due and payable, interest thereon shall accrue and be charged from the date said payments are due, at a rate of five percent (5%) above the prime interest rate charged by the Central Bank of Denver, Denver, Colorado during the period the payments are in arrears. (Code 1971, § 25-6; Ord. No. 64-1983, § 1)

Sec. 27.04.070. Acknowledgement of police power.

Acceptance of any permit issued pursuant to this Title shall constitute an acknowledgement by the permittee, its heirs, successors and assigns that its rights under its permit are subject to the police power of the City to adopt and enforce general ordinances necessary for the health, safety and welfare of the public and an agreement that permittee shall comply with all applicable general laws and ordinances enacted by the City pursuant to such power as they may be amended from time to time.

Any conflict between the provisions of any permit and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application or applies exclusively to any cable television system which contains provisions inconsistent with any permit shall prevail only if upon such exercise, the City finds an emergency exists constituting a danger to health, safety, property or general welfare or such exercise as mandated by law. (Code 1971, § 25-7; Ord. No. 64-1983, § 1)

Sec. 27.04.080. Costs.

Every applicant shall bear the costs attributable to the issuance of a permit pursuant to this Title, including, but not limited to, all costs of publication of any ordinance specifically authorizing a permit, the costs attributable to any special election scheduled solely for the purpose of requiring approval by the electors of the permit, the costs of all notices of any public meeting required by this Title and the costs incurred by the City in its study, preparation of permit documents, evaluation of the application and evaluation of the applicant's qualifications, not including permanent staff time. (Code 1971, § 25-8; Ord. No. 64-1983, § 1)

Sec. 27.04.090. Notices.

All notices from any permittee to the City shall be made to the City Manager or such person designated in writing by the City Manager. Permittee shall maintain with the City, throughout the term of its permit, an address for service of notices by mail. Permittee shall also maintain within the County a local office and telephone number for the conduct of matters related to its permit during normal business hours. (Code 1971, § 25-9; Ord. No. 64-1983, § 1)

Sec. 27.04.100. Financial guarantees.

In order to insure the faithful performance of all of the provisions of this Title and the provisions of any permit issued pursuant to this Title, all cable television system permits shall be conditioned upon compliance with the provisions of this Section pertaining to financial guarantees:

(a) Within ten (10) days after the award and voter approval of any permit, the permittee shall deposit with the City a letter of credit from a Colorado financial institution in the amount of fifty thousand dollars (\$50,000.00) or such lesser amount as the City Council may find, by resolution, to reasonably and adequately insure faithful performance by permittee. The form and content of such letter of credit shall be approved in writing by the City Attorney. The letter of credit shall be used to insure the faithful performance of all of the provisions of the permit and compliance with all requirements of this Title and orders, directions of any agency, commission, board, department, division or office of the City having jurisdiction over the acts or defaults of permittee under the permit and payment by the permittee of any claims, liens and taxes due the City which arise by reason of the construction, operation or maintenance of the system.

(b) The letter of credit shall be maintained at an equivalent fifty thousand dollars (\$50,000.00) or such lesser amount as may be determined by the City Council, indexed to 1983 dollars during and continuing for the entire term of the permit even if amounts have to be withdrawn pursuant to the provisions of this Section.

(c) If the permittee fails to pay the City any compensation within the time fixed herein or fails, after thirty (30) days' notice to pay the City any taxes due unpaid; or fails to repay the City within thirty (30) days any damages, costs or expenses which the City is compelled to pay by reason of any act or default of the permittee in connection with the permit; or, fails, after ten (10) days' notice by the City of such failure to comply with any provision of the permit which the City reasonably determines can be remedied by demand on letter of credit, the City Manager may immediately request payment of the amount thereof from the letter of credit, together, with interest and any penalties. Upon such request for payment, the City shall notify the permittee of the amount and date thereof. Permittee may appeal such demands for payment to the City Council by submitting a written request for appeal to the City Clerk within ten (10) days after receipt of the demand.

(d) Any rights reserved to the City with respect to the letter of credit are in addition to all other rights of the City, whether reserved by the permit or authorized by law and no action, proceeding or exercise of a right with respect to such letter of credit shall affect any other right the City may have.

(e) All letters of credit required by this Section shall contain the following endorsement:

"It is hereby understood and agreed that this letter of credit may not be cancelled by the surety nor the intention not to renew be stated by the surety until sixty (60) days after receipt by the City, by registered mail, a written notice of such intention to cancel or not to renew." (Code 1971, § 25-10; Ord. No. 64-1983, § 1)

Sec. 27.04.110. Indemnification, liability and insurance.

In addition to all other requirements of this Title, any permit granted shall be conditioned upon full compliance with the requirements of this Section pertaining to indemnification, liability and insurance:

(a) Permittee shall indemnify and save harmless the City, its officers, employees and agents against any and all claims for damages to property or injuries to or death of any person or persons, including property and employees or agents of the City, its officers, employees and agents, from any and all claims, costs, demands, suits, actions or proceedings of any kind or nature resulting from or arising out of permittee's operations in connection with the permit, including operations of subcontractors and acts or omissions of employees or agents of the permittee.

(b) Permittee shall pay and by its acceptance of a permit shall thereby agree that it will pay all reasonable expenses incurred by the City in defending itself with regard to all damages and penalties mentioned in Subsection (a) above. These expenses shall include all out-of-pocket expenses, such as attorney's fees and shall also include the reasonable value of any services rendered by the City Attorney or his or her assistants or any employees of the City or its agents.

(c) Permittee shall maintain and by its acceptance of a permit shall specifically agree that it will maintain throughout the term of the permit, liability insurance insuring the City and the permittee with regard to all damages mentioned in Subsection (a) of this Section, in the minimum amount of not less than the limits of liability set forth in Section 24-10-114, C.R.S., as it may be amended from time to time and at least in the following amounts:

- (1) Two hundred fifty thousand dollars (\$250,000.00) for property damage to any one (1) person;
- (2) One million dollars (\$1,000,000.00) for property damage in any one (1) accident;
- (3) Five hundred thousand dollars (\$500,000.00) 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.

(d) Any insurance policy obtained by permittee in compliance with this Section must be approved in writing by the City Attorney and such insurance policy, along with written evidence of payment of required premiums, shall be filed and maintained with the City Clerk during the term of the permit and may be required by the City to be changed from time to time to reflect changing liability limits. The permittee shall immediately advise the City Clerk and City Attorney of any litigation that may develop which would affect this insurance.

(e) Neither the provisions of this Section nor the payment of any damages required by the City hereunder shall limit or be construed to limit, the liability of permittee under any permit issued hereunder.

(f) All insurance policies maintained pursuant to this Section 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 sixty (60) days after receipt by the City, by registered mail, a written notice of such intention to cancel or not to renew." (Code 1971, § 25-11; Ord. No. 64-1983, § 1)

Sec. 27.04.120. Rights of individuals.

In addition to all other requirements of this Title, any permit granted shall be conditioned upon full compliance and acknowledgement of the rights of individuals as required by this Section.

(a) Permittee shall not deny service, deny access or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, religion, national origin or sex. Permittee shall comply with all times with applicable federal, state and local laws and regulations and all executive and administrative orders relating to nondiscrimination which shall be incorporated and made a part of any permit by reference.

(b) Permittee shall strictly adhere to the Equal Employment Opportunity Requirements of Federal, State and Local regulations, as they may be amended from time to time.

(c) No signals of a Class IV cable communications channel shall be transmitted from a subscriber terminal for the purpose of monitoring individual viewing patterns or practices without the express written permission of the subscriber. Requests for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of this Section. The authorization shall be revocable at any time, in writing, by the subscriber without penalty of any kind whatsoever. Such authorization is required for each type or classification of Class IV cable communications activity planned for such purpose, provided, however, that the permittee shall be entitled to conduct system-wide or individually addressed "sweeps" for the purpose of verifying system integrity, controlling return-path transmission or billing or additional services.

(d) It shall be unlawful for any person, including permittee or any of its agents or employees, without the specific written authorization of the subscriber involved, to sell or otherwise make available to any party:

(1) A list of the names and addresses of a permittee's subscribers or

(2) Any information which identifies the individual viewing habits of subscribers, with the exception of information pertaining to billing which shall be used for billing purposes only. (Code 1971, § 25-12; Ord. No. 64-1983, § 1)

Sec. 27.04.130. Selection of a permittee.

All applications seeking a cable television system permit shall address the various provisions of this Title and prior to being referred to the electors shall be evaluated and approved by the City Council according to the following general criteria:

(1) Installation plan. Preference may be given to an installation plan that would provide flexibility needed to adjust to new developments, maintenance practices and services that would be available to the subscriber and the community immediately and in the future. Preference may be given for total system construction in the shortest time.

(2) Rate schedule. Preference may be given to companies with the most reasonable installation and subscriber rate schedule.

(3) Financial soundness and capability. The evidence of financial ability required in any application shall be such as to assure ability to complete the entire system within the proposed schedule.

(4) Demonstrated experience in operating a cable television system. Preference may be given upon evidence of the applicant's experience in operating a cable television system under any City franchise or permit, where such evidence would show or tend to show or confirm the ability of the applicant to furnish sufficient and dependable service to the potential public and private users. Prior to

accepting any applicant and forwarding the same to the voters for approval, a public fact-finding hearing shall be held on the application and approval thereof shall be by ordinance of the City Council. The decision to approve an application shall be at the discretion of the City Council within the requirements of this Title. No permit shall be granted unless approved by a majority vote of the electors of the City voting thereon. (Code 1971, § 25-13; Ord. No. 64-1983, § 1)

Sec. 27.04.140. Permit area.

The requirements of this Title shall apply to the present territorial limits of the City and any area hereinafter added during the period of any permit. The permittee shall be required to extend service to all sections of the City as corporate limits of the City now exist and shall be required to extend service to all sections of the City annexed or added to the City after the date of final passage of this Title; provided, that there is a density in such area to be served of not less than twenty (20) dwelling units per one-quarter (¼) mile if underground installation is utilized and not less than fifteen (15) dwellings per one-quarter (¼) mile if aerial installation is utilized. (Code 1971, § 25-14; Ord. No. 64-1983, § 1)

Chapter 27.08

SYSTEM CONSTRUCTION, OPERATIONS, STANDARDS AND PROCEDURES

Sec. 27.08.010. Construction map and schedule.

No construction shall occur unless the permittee obtains the written approval of the City Engineer in accordance with the following procedures:

(a) Prior to any construction permittee shall submit a construction plan. The construction plan shall consist of a map of the entire permit area and clearly delineate the following:

(1) The areas within the permit area where the cable television system will be available to subscribers.

(2) Those areas within the permit area where extension of the cable television system could not reasonably be constructed due to a lack of present or planned development. These areas and the reasons for not serving them must be clearly identified on the map.

(3) By use of reference to specific areas describe the construction timetable showing which areas will be built and the date by which construction and system activation will occur.

(b) No permit for construction shall be issued until the construction plan has been reviewed and approved by the City Engineer. Any substantial changes in the construction schedule that involve delaying construction within any area shall only be permitted pursuant to approval in accordance with the application procedure of Section 27.12.020. The City Manager is authorized to determine in writing whether a change is substantial thereby requiring approval in accordance with such application procedure.

(c) Copies of the approved plan and any changes thereto shall be filed with the office of the City engineer and a copy shall also be made available for public inspection during normal business hours at the permittee's local office at permittee's expense.

(d) Nothing in this Section shall prevent the permittee from constructing the system earlier than planned. However, no construction shall be permitted beyond the time specified in the plan unless and until an application therefor and consent has been obtained. Time period extensions shall be granted

upon a showing by the permittee that there is good cause therefor and the City Council may attach reasonable conditions to assure performance. (Code 1971, § 25-21; Ord. No. 64-1983, § 1)

Sec. 27.08.020. System construction.

Construction of the cable television system shall only occur in accordance with the following requirements:

(a) Permittee shall comply with the construction plan including the approved construction timetable.

(b) In those sections of the City where cables, wires or other like facilities of public utilities are placed underground, the permittee shall place its cable, wires or other like facilities underground to the maximum extent permissible under existing technology. If at any time, the City determines that existing aboveground wires, cables or other like facilities of public utilities anywhere in the City shall be changed from an overhead to an underground installation, permittee shall also, at permittee's sole expense, convert its system to underground installation. Permittee shall be obligated to pay only those costs of construction or conversion associated with the underground installation of permittee's own equipment.

(c) In any subdivision approved by the City after the effective date of this Title in which telephone and electrical utility lines are placed underground, permittee shall execute with the subdivider a written purchase order for the installation of such underground transmission and distribution of cable television services to residents of the subdivision. Permittee shall not charge a subdivider more than permittee's actual cost for time and materials for the construction and installation of the underground facilities. The amount due may be made payable to permittee sixty (60) days prior to the date that cable television service is actually made available to the lots (if undeveloped) or dwelling units in the subdivision.

(d) Necessary excavation permits shall be obtained from the City for the installation of all underground lines and appurtenances installed in any City right-of-way. All underground installations shall comply with the requirements of construction and excavation within public rights-of-way required by this Code. Plants and shrubbery shall be restored or replaced to as near original state as possible.

(e) Underground installation of distribution lines shall initially be at a minimum of twelve-inch depth.

(f) Permittee shall respond to all requests for line locations within forty-eight (48) hours. If the permittee fails to respond or fails to locate the line installed by permittee the requesting party shall not be responsible for damage that may result. Unless the lines are properly located and marked by permittee in a timely fashion, the party responsible for any subsequent damage will not be responsible for the cost of necessary repairs.

(g) Whether service drops to subscribers are installed by overhead or underground methods, no permanent service drops shall be left lying exposed on the ground.

(h) In areas of the City where electrical or telephone systems are installed on poles above the ground, the permittee shall have the option of installing its system in like manner above the ground or underground.

(i) Permittee shall construct, install, operate and maintain its system in a manner consistent with all laws ordinances, construction standards, governmental requirements, FCC technical standards and detailed standards submitted by permittee. In addition, permittee shall provide the City, upon request,

with a written report of the results of permittee's annual proof of performance test conducted pursuant to FCC standards and requirements.

(j) Whether performed on private property or public rights-of-way, all construction, installation and maintenance of permittee's cable television 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 bundled with due respect for engineering considerations.

(k) The cable television system shall not endanger or interfere with the safety of persons or property in the permit area.

(l) Any antenna structure used in permittee's cable television system shall comply with construction, marking and lighting of antenna structure required by the United States Department of Transportation.

(m) Incorporated within any cable television system shall be a capability permitting the City in times of emergency to override the audio portion of all channels simultaneously. Permittee shall also designate a channel which will be used for emergency broadcasts of both audio and video. Permittee shall cooperate with the City in the use and operation of the emergency alert over its system.

(n) All necessary easements over and under private property shall be arranged by the permittee. If permittee has difficulty obtaining necessary easements, the City will cooperate to assist permittee in obtaining necessary easements through the use of the City's condemnation powers, to the extent permitted by law and at permittee's expense.

(o) No poles or other fixtures shall be placed where the same will interfere with any gas, electric or telephone facilities, traffic-control signalization, streetlights, fire lines or communications lines or obstruct or hinder in any manner the various utilities serving the residents of the City. All such poles or other fixtures placed in any street, alley or public way shall be placed as close as possible to the line of the lot abutting thereupon and in such manner as not to interfere with the usual traffic on such streets, alleys and public ways. (Code 1971, § 25-22; Ord. No. 64-1983, § 1)

Sec. 27.08.030. Construction bond.

Within thirty (30) days after the award of any permit and prior to construction, permittee shall obtain and maintain at its own cost and expense and file with the City Clerk, a construction bond provided by a company authorized to do business in the State and in a form acceptable to the City Attorney, in the amount of five hundred thousand dollars (\$500,000.00) or at such lesser amounts as the City Council may by resolution find to be satisfactory, to guarantee the timely construction, full activation and proper installation of permittee's cable television system. Such bond shall satisfy the following requirements:

(a) There shall be recoverable by the City, jointly and severally from the principal and surety, any and all damages, loss or costs suffered by the City resulting from the failure of the permittee to satisfactorily complete and fully activate the system throughout the permit area.

(b) The bond shall specify that any extension to the prescribed construction time limit shall be authorized by the City.

(c) The construction bond shall be terminated only after the City Council finds that the permittee has satisfactorily completed construction and activation of its system pursuant to the terms and conditions of this Title and its permit.

(d) An acknowledgement shall be contained within the bond that the rights reserved to the City with respect thereto are in addition to all other rights of the City, whether established and reserved pursuant to this title or otherwise authorized by law and no action, proceeding or exercise of any right with respect to such construction bond shall affect any other rights the City may have.

(e) The bond shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be cancelled by the surety nor the intention not to renew be stated by the surety until sixty (60) days after receipt by the City, by registered mail, a written notice of such intent to cancel or not to renew." (Code 1971, § 25-23; Ord. No. 64-1983, § 1)

Sec. 27.08.040. Use of streets and public rights-of-way.

In addition to all other requirements of this Title, any permit granted shall be conditioned upon full compliance with the following requirements pertaining to use of streets and public rights-of-way:

(a) Interference with persons and improvements. Permittee's system, poles, wires and appurtenances shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of persons or interfere with any improvements the City may deem proper to make or unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, public easements or public property.

(b) Minimum interference with public ways. All transmission and distribution structures, lines and equipment erected by the permittee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places.

(c) Restoration to prior condition. In case of any disturbance by permittee to any public easement, pavement, sidewalk, driveway, landscaping, street, alley, public way or other surfacing, the permittee shall, at its own cost and expense and in a manner approved by the City Engineer, replace and restore such public easement, paving, sidewalk, driveway or surface of any street, alley or public way disturbed, in as good condition as before said work was commenced in accordance with standards for such work set by the City Engineer.

(d) Relocation of facilities. In the event that at any time during the period of any permit, the City shall lawfully elect to alter or change the grade of any street, alley or other public ways, permittee, upon reasonable notice by the City, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

(e) Cooperation with building movers. Permittee shall, on the request of any person holding a building moving permit, issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same and permittee shall have the authority to require such payment in advance. Permittee shall be given not less than five (5) days' advance notice to arrange for such temporary wire changes.

(f) Tree trimming. Permittee shall have the same right as may be reserved to the City, subject to the approval of the Director of Parks, to trim trees upon and overhanging the streets, alleys, sidewalks and public ways and places of the City so as to prevent parts of such trees from coming in contact with the equipment and apparatus of permittee. Permittee shall undertake reasonable efforts to notify the

owner of any property upon which the trees are located prior to undertaking such work. At a minimum, notice shall be posted on the nearest exit door of any dwelling unit located on such property at least twenty-four (24) hours prior to the commencement of work. If the property is vacant, a reasonable effort shall be made to locate the owner. Notwithstanding the foregoing, in the event of any emergency or interference with the transmission of signals through the system by reason of a tree having contact with the equipment and apparatus of the permittee, permittee shall be entitled to trim the tree as necessary to prevent injuries, damage to property or any person, including permittee or as necessary to restore or insure continued transmission of signals through the permittee's equipment. (Code 1971, § 25-24; Ord. No. 64-1983, § 1)

Sec. 27.08.050. System maintenance standards.

In addition to all other requirements of this Title, any permit granted shall be conditioned upon compliance with the following maintenance standards:

(a) All parts of the system shall be maintained in good condition throughout the entire permit area and during the entire term of the permit. In this regard, permittee shall agree to be bound by and comply with the following requirements to assure continuity of service:

(1) It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the permittee are honored. In the event that permittee elects to overbuild, rebuild or modify the system, permittee shall act so as to insure that all subscribers receive continuous, uninterrupted service, regardless of the circumstances.

(2) In the event that permittee fails to operate the system for four (4) consecutive days without prior approval of the City or without just cause, the City may, at its option, operate the system and receive the revenues therefrom or designate an operator until such time as permittee restores service under conditions acceptable to the City or a permanent operator is selected. If the City is required to fulfill this obligation for the permittee, permittee shall reimburse the City for all reasonable costs or damages in excess of revenues from the system received by the City during the course of its operation that are the result of permittee's failure to perform.

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

(c) The operation of the system shall not interfere with television reception of persons not served by permittee.

(d) Throughout the term of any permit, a cable television system shall comply with the technical standards and quality of service set forth in this Title. Should the City find that the permittee has failed to maintain substantial compliance with the technical standards and quality of service required by this Title and the permit and should it specifically enumerate feasible corrections to be made, permittee shall make such corrections. Failure to make such corrections within three (3) months shall constitute a material breach of condition by permittee.

(e) RF leakage shall be checked at reception locations for emergency radio services to prove 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 and normal flight patterns. FCC rules and regulations shall govern. (Code 1971, § 25-25; Ord. No. 64-1983, § 1)

Sec. 27.08.060. Complaint procedure.

In addition to all other requirements of this Title, any permit granted shall be conditioned upon full compliance of the requirement of this Section pertaining to complaints regarding the quality of service, equipment malfunctions and similar matters:

(a) Permittee's office shall be open to receive inquiries or complaints of subscribers during normal business hours, Monday through Friday, excluding legal holidays. The office shall be reachable by local telephone call and permittee shall provide the means to accept complaint calls twenty-four (24) hours a day, seven (7) days a week. Permittee shall designate an agent to receive complaints and shall provide the City with such agent's name, address and telephone number.

(b) Any service complaints from subscribers shall be investigated and acted upon as soon as possible. All service complaints shall be resolved within three (3) working days.

(c) Upon request by a subscriber, permittee shall credit a subscriber's account on a pro rata basis for loss of service commencing forty-eight (48) hours after notification.

(d) Permittee shall keep a maintenance service log which will indicate the nature of each service complaint, the date and time it was received, the disposition of said complaint and the time and date thereof. The log shall maintain complaints for a minimum period of two (2) years and shall be made available for periodic inspection by the City.

(e) As subscribers are connected or reconnected to the system, permittee shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints including the name, address and local telephone numbers of the agent or agents designated by permittee to whom such inquiries or complaints may be addressed and furnish information concerning the City office responsible for administration of the permit with the address and telephone number of the office.

(f) Where similar complaints are made or where there exists other evidence, which, in the judgment of the City, casts doubt on the reliability or quality of service, the City shall have the right and authority to require permittee to test, analyze and report on the performance of the system. Permittee shall fully cooperate with the City in performing such testing and shall prepare the results in a report, if requested, within thirty (30) days after notice. Such report shall include the following information:

- (1) The nature of the complaint or problem which precipitated the special test.
- (2) What system component was tested.
- (3) The equipment used and procedures employed in testing.
- (4) The method, if any, in which such complaint or problem was resolved.
- (5) Any other information pertinent to said test and analysis which may be required.

The City may require that the test be supervised at permittee's expense, by a professional engineer who is not on permittee's permanent staff. The engineer shall sign all records of special tests and forward to the City such records with a report interpreting the results of the test and recommending actions to be taken. The City's rights hereunder shall be limited to requiring tests, analyses and reports covering specific subjects and characteristics based on complaints and other evidence when and under such circumstances as the City has reasonable grounds to believe that the complaints or other evidence require that tests be performed to protect the public against substandard service. (Code 1971, § 25-26; Ord. No. 64-1983, § 1)

Sec. 27.08.070. Transfer of ownership or control.

In addition to all other requirements of this Title, any permit granted shall be conditioned upon full compliance with the following requirements pertaining to transfer of ownership or control:

(a) No permit shall be assigned or transferred, either in whole or in part, leased, sublet or mortgaged in any manner, nor shall title thereto, either legal or equitable or any right, interest or property therein, passed to or vest in any person without the prior written consent of the City Council. The proposed assignee must demonstrate satisfactory financial responsibility as determined by the City Council and must agree to comply with all provisions of this Title and other related ordinances. The City Council shall be deemed to have consented to a proposed transfer or assignment in the event its refusal to consent is not communicated in writing to permittee within sixty (60) days following receipt of a written notice of the proposed transfer or assignment.

(b) The City shall be promptly notified of any actual or proposed change in or transfer of or acquisition by any other party of control of the permit. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of the permit shall make the permittee subject to cancellation unless and until the City Council shall have consented thereto, which consent shall not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the City Council may inquire into the qualification of the prospective controlling party and the permittee shall assist the City Council in any such inquiry.

(c) Assignee must acknowledge that consent or approval of the City Council to any transfer of permittee shall not constitute a waiver or release of the rights of the City in and to the streets and any transfer shall by its terms, be expressly subordinate to the terms and conditions of this Title and any related ordinance.

(d) In the absence of extraordinary circumstances, the City Council will not approve any transfer or assignment of any permit prior to substantial completion of construction of the proposed system. (Code 1971, § 25-27; Ord. No. 64-1983, § 1)

Sec. 27.08.080. Availability of books and records.

As an additional condition to the grant of any permit, permittee shall fully cooperate in making available at reasonable times and the City shall have the right to inspect the complaint, maintenance and technical records, maps, plans and other like materials of the permittee applicable to the system at any time during normal business hours; provided where volume and convenience necessitate, permittee may require inspection to take place on permittee's premises. Additionally, copies of all petitions, applications, communications and reports submitted by the permittee to the Federal Communications Commission, 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 authorized pursuant to this Title and related ordinances shall be provided upon request. (Code 1971, § 25-28; Ord. No. 64-1983, § 1)

Sec. 27.08.090. State of the art.

As an additional condition to the grant of any permit, permittee shall upgrade its facilities, equipment and service so that its system is as advanced as the current state of technology as reasonably determined by evaluation of the permittee's system every two (2) years by the City in accordance with Section 27.12.030, Perform evaluation sessions. Such evaluation shall consist of reviewing the current system and comparing it with systems, excluding pilot or test services or systems, in other communities of comparable size and density and with comparable demographic and competitive factors. Nothing herein shall prevent the City from

requesting that the permittee appear at any time to discuss the state of art technology and make informal suggestions as may be appropriate. (Code 1971, § 25-29; Ord. No. 64-1983, § 1)

Sec. 27.08.100. System design and programming.

All cable television systems operating within the City shall comply, at a minimum, with the following design and programming requirements:

(a) The system shall be capable of bi-directional signals and have three hundred (300) MHZ design.

(b) The system shall be capable of operating independently with complete off-air, headend and satellite earth station facilities.

(c) The system shall be capable of providing thirty-five (35) video channels, with twenty (20) channels immediately operational upon activation of the system. The eighty-eight (88) to one hundred eight (108) MHZ spectrum region shall be devoted to the distribution of radio and monaural audio programming.

(d) Permittee shall provide facilities and/or support for the distribution through its distribution system, for community channel access, at such time and at such a level of financial support as shall be prescribed in its approved permit. Such equipment and/or financial support so specified shall be provided directly to the City for allocation, in its sole discretion, for use in providing community channel access.

(e) Two (2) channels or ten percent (10%) of the systems' channel capacity, shall be provided for community channel use. If the designated community channels are not used, permittee may provide programming on channel or channels not used and programming may continue until such time as community channel access is approved by the City. (Code 1971, § 25-30; Ord. No. 64-1983, § 1)

Sec. 27.08.110. Permittee's services.

As an additional condition to the grant of any permit, all cable television systems operating within the City shall provide, at a minimum, the following services in accordance with a schedule of reasonable rates prepared by permittee:

(a) Standard installation consisting of an aerial drop, not exceeding two hundred (200) feet from a distribution line attachment to the customer's residence.

(b) Concealed wiring and underground drops.

(c) Permittee shall provide service to pre-wired projects (subject to technical compatibility), shall review and approve methods and materials, supply specifications, technical assistance and material and shall pre-wire all projects upon request.

(d) Deposits for materials and services may be required and collected.

(e) Additional outlets shall be provided as customers may request.

(f) Service shall be transferred upon request.

(g) Service shall be restored to customers wishing restoration, provided such customer has satisfied any previous obligations owed.

- (h) Extensions or relocations of current customers' service shall be made upon request.
- (i) Permittee shall provide and maintain system repair service to customer's premises to test and repair service. (Code 1971, § 25-31; Ord. No. 64-1983, § 1)

Chapter 27.12

ADMINISTRATION AND REGULATIONS

Sec. 27.12.010. Supplemental rules and regulations.

In addition to the powers of the City to regulate and control cable television systems and those powers especially reserved by the City and provided for herein or in any permit issued pursuant to the authority of this Title, the right and power is hereby reserved by the City to promulgate such additional and supplemental regulations as it shall find necessary for the public health, safety and welfare, in the exercise of its lawful powers and in furtherance of the terms and conditions of any permit, whether such regulations are initiated by the City or upon request by a permittee. (Code 1971, § 25-40; Ord. No. 64-1983, § 1)

Sec. 27.12.020. Application procedure.

Except as provided in Section 27.08.010 regarding construction approvals, all applications, including applications for a cable television system permit, services, construction plans and 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 submitted to the City Manager in written form and shall contain sufficient facts and information for the City to act thereon, as may be deemed necessary by the City. In the event an application is deemed inadequate, rejection thereof shall be by written notice which shall state the perceived deficiencies. Such notice shall not be construed to limit further and different deficiencies on subsequent applications.

(b) The City Manager shall review all applications for adequacy and shall, within fourteen (14) days of its submission, determine whether the application, if adequate, is of such nature to require City Council rather than City Manager approval. If the City Manager determines that City Council approval is warranted under the circumstances of the application, he or she shall forward it to the City Council or the City Council's designee for further study and reporting as the City Council may deem reasonably appropriate. To the extent practicable, such study shall be completed within ten (10) days after the initial presentation to the City Council at a regularly scheduled meeting and such initial period may be extended an additional thirty (30) days upon the giving of written notice to the applicant or such longer period of time as may be consented to by applicant. During the study period, the applicant or the permittee, as the case may be, shall fully cooperate with City representatives in providing information and documents related to and reasonably necessary for the proper evaluation of the application. Failure to cooperate or unreasonable delay in providing information and documents shall be grounds for a determination by the City Council that the application is inadequate.

(c) The City Council shall review the application and all attendant studies, information and recommendations as soon as is practicable after the completion of the study. In the event a public hearing is deemed appropriate or is otherwise required, the City Council shall schedule and notice a public hearing within thirty (30) days after the completion of the study. If, in the course of the public hearing, the City Council determines that additional information or documents are necessary to adequately evaluate the application, it may continue the hearing from time to time pending augmentation of the record. To the extent practicable, continuances shall not exceed fifteen (15) days at

a time. As soon as practicable after the close of the public hearing, the City Council shall either approve, approve with modifications or deny the application. The City Council shall indicate the basis of its action for the record and shall notify the applicant of its decision. Reasonable conditions in furtherance of the purpose and intent of the permit or application may be attached by the City Council to an approval or modification.

(d) Any time limit hereinabove may be waived by consent of the City Council and applicant. (Code 1971, § 25-41; Ord. No. 64-1983, § 1)

Sec. 27.12.030. Performance evaluation sessions.

Performance evaluation sessions shall be held at a minimum of every two (2) years from the granting of any cable television system permit or anniversary date thereof and the City Council may direct that such evaluation sessions be conducted by a cable TV advisory committee. In addition, special evaluation sessions may be held at any time during the term of the permit upon reasonable request of the City or permittee. Evaluation sessions shall be open to the public and announced in a newspaper of general circulation within the City at least ten (10) days prior to the session and permittee shall notify its subscribers of all evaluation sessions 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 five (5) consecutive days preceding each session. Topics which may be discussed at any session or special evaluation session may include, but shall not be limited to, service rate structures, permit fee, penalties, free or discounted services, community channel performance, allocation or channels for community channel use, application of new technologies, system performance, services provided, programming offered, customer complaints, privacy, amendments to this Title, judicial and FCC rulings, line extension policies and permit or City rules. During a review and evaluation by the City, permittee shall fully cooperate with the City and shall provide such information and documents the City may need to reasonably perform its review. Any performance evaluation session may be waived by the written consent of the City Council and permittee. (Code 1971, § 25-42; Ord. No. 64-1983, § 1)

Sec. 27.12.040. Monetary penalties.

In addition to all other remedies under this Title or as may otherwise be provided by law or the conditions of any permit, the following penalties may be chargeable against the permittee for a violation of any of the following provisions of CATV permit:

(a) The sum of three hundred dollars (\$300.00) per day for failure to complete system construction in accordance with the submitted plan, unless the City Council specifically approves the delay, due to the occurrence of conditions beyond permittee's control, payable per day for each day or part thereof that the deficiency continues, as determined by the City Council.

(b) The sum of one hundred fifty dollars (\$150.00) for failure to provide information required pursuant to this Title or as may be required in a permit, per day for each day or part thereof, that the violation occurs or continues, as may be determined by the City Council.

(c) The sum of one hundred fifty dollars (\$150.00) for failure to test, analyze and report on the performance of the system within a reasonable time following a request by the City pursuant to any permit, payable for each day or part thereof, that such noncompliance continues as may be determined by the City Council.

(d) The sum of three hundred dollars (\$300.00) for failure of the permittee to comply with operational maintenance standards within forty-five (45) days following written notice from the City determining that the permittee has failed to comply with operational or maintenance standards, payable

for each day or part thereof, that such noncompliance continues, as may be determined by the City Council. (Code 1971, § 25-43; Ord. No. 64-1984, § 1)

Sec. 27.12.050. Forfeiture and termination.

In addition to all other remedies, rights and powers retained by the City pursuant to this Title, law, any permit or otherwise, the City shall, as a condition to the granting of a permit, reserve the right to forfeit and terminate any such permit and all rights and privileges thereunder in the event of a substantial breach of the terms and conditions of said permit or the requirements of this Title. A substantial breach by permittee shall include, but shall not be limited to, the following:

- (1) Violation of any material provision of this Title, the provisions of a permit or any material rule order, regulation or determination of the City made pursuant to this Title.
- (2) Any attempt at evading or attempting to evade any material provision of any permit or perpetrating or attempting to perpetrate any fraud, deceit or misrepresentation upon the City or actual or potential subscribers or customers of the cable television service.
- (3) Failure to begin or complete system construction.
- (4) Failure to provide the types of services required by any permit.
- (5) Failure to restore service after ninety-six (96) consecutive hours of interrupted service, except when approval of such interruption is obtained from the City Council prior to or subsequent to such interruption.
- (6) Material misrepresentation of fact in any application pursuant to this Title.

The foregoing shall not constitute a material breach if the violation occurs without fault of the permittee or its directors, officers or employees or occurs as a result of circumstances beyond permittee's control. However, permittee shall not be excused by mere economic hardship or by misfeasance or malfeasance of its directors, officers or employees. (Code 1971, § 25-44; Ord. No. 64-1983, § 1)

Sec. 27.12.060. Procedure for a forfeiture and termination.

In the event that permittee fails to comply with any provision, rule order or requirement or determination under or pursuant to this Title or its permit, the City Council may direct that a written demand for compliance be served upon the permittee by depositing a copy of the same in the United States mail by certified or registered mail addressed to permittee at its business office. If the violation is not remedied within a period of thirty (30) days following such written demand or without satisfactory proof that corrective action is being actively and expeditiously pursued by permittee, the City Council may schedule a hearing for the purpose of taking action on the forfeiture and termination of the permit. Written notice of the City Council's intent to request such forfeiture and termination and setting forth the time and place of the hearing shall be served upon permittee and shall have been published in a newspaper of general circulation in the City at least fifteen (15) days prior to the date of the hearing.

If based on the record adduced at the hearing, the City Council determines that there is substantial evidence that the alleged violation was the responsibility or fault of permittee and within permittee's control, the City Council may find and declare the permit terminated and forfeited or provide an additional reasonable period for compliance. No opportunity for compliance shall be granted by the City Council in the event of a finding of fraud or misrepresentation on the part of permittee. The City Council shall again immediately consider the issue of forfeiture and termination at the expiration of the time set by it for compliance, at which time the City Council may terminate the permit forthwith upon a finding that permittee has failed to achieve

compliance or, in its sole discretion, may further extend said period for compliance. (Code 1971, § 25-45; Ord. No. 64-1983, § 1)

Sec. 27.12.070. Compliance with state and federal laws.

Notwithstanding any of the provisions of this Title to the contrary, permittee shall at all times comply with all applicable laws and regulations of the state and federal governments or any administrative agencies thereof. Should any such state or federal law or regulation require permittee to perform any service or shall purport to permit the performance of any service or purport to prohibit the performance of any service, in conflict with the terms of this Title or any permit approved pursuant hereto or of any law or regulation of the City, permittee shall, as soon as possible following the knowledge thereof notify the City Attorney of the point of conflict believed to exist between such regulation or law and the laws or regulations of the City or this Title or approved system permit. The City Attorney shall, as soon as practicable, refer such conflict to the City Council and, if the City Council determines that a material provision of this Title is affected by any subsequent action of the State or federal governments, the City Council shall have the right to modify or amend any of the provisions of this Title or any permit to such reasonable extent as may be necessary to carry out the full intent and purpose of this Title. (Code 1971, § 25-46; Ord. No. 64-1983, § 1)

Chapter 27.16

CONDITIONS REGARDING TERMINATION, ASSIGNMENT OR PUBLIC PURCHASE OF CATV SYSTEM

Sec. 27.16.010. Post-termination period.

Any permit issued pursuant to this Title shall be conditioned upon and contain assurances that permittee shall comply with the following requirements with regard to termination of permit by expiration or lack of extension so that there will be no interruption of service:

(a) No later than fifteen (15) months prior to the expiration of any permit, the permittee shall serve upon the City a notice of its intention to renew in accordance with the procedures outlined in Section 27.16.040 or to abandon the system upon termination. Should the permittee indicate its intention to abandon the system the City shall have the option, exercisable within three (3) months prior to the expiration, to purchase the system at its fair market value. In the event of dispute in the matter, the question of fair market value may be submitted to an independent arbitrator for binding determination in conformance with the arbitration procedures of the American Arbitration Association and Rule 109 of the Colorado Rules of Civil Procedure. The City's right to purchase as hereinabove provided shall be assignable at the discretion of the City Council and upon notice of purchase, purchase or assignment of right to purchase, permittee shall upon consummation of any acquisition deliver the system to the City or its assignee in good operating condition.

(b) In the event that permit is not extended or renewed or the system is not purchased by the City as hereinabove provided, permittee shall, at its own expense, remove its system from the streets and public ways of the City and the private property of subscribers within one hundred eighty (180) days after the expiration of the permit as set forth in Section 27.16.030. (Code 1971, § 25-50; Ord. No. 64-1983, § 1)

Sec. 27.16.020. Termination due to permittee's breach of permit or because of revocation for breach.

Upon termination because of permittee's breach of any permit or because of revocation for breach, the permittee:

(a) Shall temporarily continue to operate the system for a period of up to six (6) months, as may be determined in the sole discretion of the City Council, so that there is no interruption of service and

(b) May sell its system; provided, that the sale is expressly conditioned upon the prospective purchaser applying for and obtaining a permit in conformance with the requirements of this Title; or

(c) Shall sell its system to the City, its assignee; provided, the City is willing to purchase the system for fair market value in accordance with Section 27.16.010; or

(d) Shall remove, at its own expense, its system from the streets and ways of the City and the private property of the subscribers within one hundred eighty (180) days after the effective date of the revocation or termination and shall forfeit the full value of its faithful performance bond, provided the City is willing to allow removal and accept forfeiture of the performance bond. (Code 1971, § 25-51; Ord. No. 64-1983, § 1)

Sec. 27.16.030. Removal of the system.

In addition to requirements for the removal of the system as provided in this Chapter, permittee shall promptly, within one hundred eighty (180) days, remove its system from public ways and subscriber private property if the permittee fails or ceases to operate its system for a continuous period of ninety (90) days. No notice or revocation proceedings shall be required for this provision to become effective.

If permittee fails to remove all its properties from public ways and subscriber private property within one hundred eighty (180) days' removal period, permittee shall forfeit its faithful performance bond and the City Council may declare all such property of permittee abandoned and all such property shall become the property of the City and the permittee shall further agree to execute and deliver an instrument in writing transferring its ownership interest in any such property to the City. (Code 1971, § 25-52; Ord. No. 64-1983, § 1)

Sec. 27.16.040. Procedures for renewal.

The following procedures shall be applied in the event of permit renewal:

(a) Permittee shall inform the City in writing of its intent to seek renewal at least fifteen (15) months prior to the expiration of any permit and shall include therewith its proposal for services in accordance with a renewed permit.

(b) In addition to all of the requirements of this Title pertaining to permit applications, in cases of renewal, the City Council shall also determine whether the permittee has satisfactorily performed its obligations under its permit. To determine satisfactory performance, the City Council shall consider technical developments and performance of the system, programming, other services offered, cost of services and any other particular requirement set forth in this Title or the permit and the City Council shall also consider permittee's proposal in its annual reports made to the City and the FCC.

(c) In the course of making the determination required in Subsection (a) above, the City Council shall provide the opportunity for public comment at least one (1) public hearing, notice of which shall be published in a newspaper of general circulation at least ten (10) days prior to the date of the hearing.

(d) The City shall make its determination with respect to the permittee's eligibility for renewal within a period of four (4) months from the date it receives notice of intent to renew from permittee.

(e) If, based on permittee's performance during its permit term, permittee's new proposal and the public hearing held thereon, the City finds that a renewal of the permit with permittee is in the public

interest, the City may enter into a renewal of the permit in accordance with the provisions of the title, as it may be amended from time to time.

(f) Notwithstanding the foregoing, no requests for renewal shall be unreasonably denied. (Code 1971, § 25-53; Ord. No. 64-1983, § 1)