

## Chapter 27 BROADBAND TELECOMMUNICATIONS NETWORK\*

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**\*Editor's note**--Section 1 of Ord. No. 518-86, adopted April 28, 1986, repealed former Ch. 27, §§ 27-1--27-10, relative to the telecommunications network. Section 2 of said Ord. No. 518-86 enacted a new Ch. 27A, §§ 27A-1--27A-11, which provisions have been redesignated and included herein at the discretion of the editor as a new Ch. 27, §§ 27-1--27-11. The provisions of former Ch. 27 derived from Code 1968, §§ 713.2--713.11; Ord. No. 388-74, enacted May 6, 1974; Ord. No. 188-79, adopted Aug. 20, 1979; Ord. No. 413-79, enacted Dec. 17, 1979; Ord. No. 71-82, adopted July 7, 1982; Ord. No. 367-83, adopted Jan. 17, 1983; and Ord. No. 173-83, enacted Sept. 6, 1983.

**Cross reference(s)**--Streets, sidewalks and other public places, Ch. 25.  
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### Sec. 27-1. Purpose; intent; goals.

The City of Portland finds that the development of broadband telecommunications has the potential of having great benefit and impact upon the people of Portland. Because of the complex and rapidly changing technology associated with broadband telecommunications, and because use of the public ways is required, the city further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which shall be vested in the city or such persons as the city shall designate. It is the intent of this chapter and subsequent amendments to encourage the growth and development of broadband communication networks and to assure that those networks are responsive to the needs and interests of subscribers.

Further, it is the intent of this chapter and subsequent amendments to provide the widest possible diversity of information sources and services to cable subscribers.

For these purposes, the following goals underlie the regulations contained herein:

- (a) Where economically reasonable, residential cable television services should be offered to the maximum number of city residents.
- (b) The network should be capable of accommodating both the present and reasonably foreseeable cable television needs of cable subscribers.

(c) The network should be improved and upgraded during the franchise term when deemed necessary to meet the needs of cable subscribers.

(d) The network authorized by this chapter shall be responsive to the needs and interests of cable television subscribers.

(Ord. No. 518-86, § 2, 4-28-86)

### **Sec. 27-2. Definitions.**

For the purpose of this chapter and any franchise hereunder, the following terms, phrases and words and their derivation shall have the meaning specified herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

*Access channels* shall mean channels dedicated for public, educational, and governmental use, but not to the exclusion of grantee.

*Additional services* shall mean programming or services for which an additional charge is made beyond the charge for basic subscriber services, including, but not limited to, movies, concerts, variety acts, sporting events, pay-per-view program, interactive services, and any other service utilizing any facility or equipment of a cable television system operating pursuant to a franchise granted under this chapter.

*Annual gross subscriber revenues* shall mean all revenues received by the grantee from and in connection with the provision of cable television service to subscribers over the broadband telecommunications network in the City of Portland, Maine. It shall include revenues received from advertising and per program charges, in addition to the subscriber's regular monthly payments for service. It shall not include revenue received from connection services and revenue received from activities offered by other nonmunicipally regulated businesses.

*Basic subscriber services* shall mean all subscriber services provided by the grantee in one (1) or more service tiers, including the delivery of broadcast signals, access channels and origination channels, covered by the regular monthly charge paid by all subscribers to a particular service tier including subscriber

terminal charges and related deposits. Basic service may be further defined in the franchise agreement to include broad categories of video programming or types of services to be provided by the grantee.

*Broadband telecommunications network*, also referred to as "cable television system," "CATV system," or "cable communications system," shall mean a system of antennas, cables, amplifiers, towers, microwave links, cablecasting studios, and any other conductors, converters, equipment or facilities, designed and constructed for the primary purpose of distributing video programming to home subscribers and the secondary purpose of producing, receiving, amplifying, storing, processing, or distributing audio, video, digital or other forms of electronic or electrical signals sold or distributed to subscribers. Such definition shall not include any similar facility that serves only the residents of one (1) or more apartment or multifamily dwellings or condominiums under common ownership, control or management, nor other closed circuit systems for industrial, commercial, or similar use to which the general public may not subscribe, so long as the public streets or rights-of-way are not utilized in the provision of such service or interconnection of such facilities.

*Channel* shall mean a six (6) Megahertz (MHZ) frequency band, which is capable of carrying either one (1) standard video signal, a number of audio, digital or other nonvideo signals or some combination of such signals.

*City* shall mean the City of Portland, its council, officials, boards, commissions, agents and employees unless otherwise specifically designated, the area within the territorial city limits of the City of Portland and such territory presently outside of the city limits over which the city may assume jurisdiction or control by virtue of annexation.

*Converter* shall mean an electronic device which converts signals to, a frequency not susceptible to interference within the television receiver of a subscriber, and any channel selector which permits a subscriber to view all signals delivered at designated converter dial locations at the set or by remote control.

*Council* shall mean the present governing body of the City of Portland or any legally appointed or elected successor or agency constituting the governing body of the city.

*Discrete channel* shall mean a channel which can only be

received by the person and/or institution intended to receive signals on such channel.

*Drop* shall mean a coaxial connection from feeder cable to the subscriber/user television set, radio or other terminal.

*Educational access* shall mean use of dedicated access channels by educational institutions.

*Fair market value* shall mean the price that a willing buyer would pay to a willing seller for a going concern based on the system valuation prevailing in the industry at the time.

*FCC* shall mean the Federal Communications Commission and any legally appointed or elected successor.

*Franchise* shall mean the nonexclusive revocable rights granted pursuant to this chapter to construct, operate, maintain, and reconstruct a broadband telecommunications network along the public ways within all or a specified area in the city. Any such authorization, in whatever form granted, shall not mean or include any license or permit required for the privilege of transacting and carrying on a business within the city as required by other ordinances and laws of the city.

*Franchise agreement* shall mean a franchise contract entered into voluntarily by the grantee, containing the specific provisions of the franchise granted, including referenced specifications, franchise proposals, applications and other related material.

*Franchise area* shall mean the entire city, or portions thereof, for which a franchise is granted under the authority of this chapter. If not otherwise stated in the franchise, the franchise area shall be the corporate limits of the city, including all territory thereafter annexed to the city.

*Franchise fee* shall mean the specified percentage of the grantee's annual gross subscriber revenues payable in exchange for the rights granted pursuant to this chapter and the franchise agreement.

*Franchise payment* shall include all charges imposed for a franchise whether the object be regulations, revenue, or one-time reimbursement of costs incurred by the city in the award of a franchise.

*Full cable service* shall mean all basic services and additional services to be offered by the grantee.

*Government access* shall mean use of dedicated access channels by official governmental entities.

*Grantee* shall mean the natural person(s), partnership(s), domestic and foreign corporation(s), association(s), joint venture(s), or organization(s) of any kind which has been legally granted a franchise by the city and its lawful successor, transferee or assignee.

*Head end* shall mean the land, electronic processing equipment, antenna, tower, building and other appurtenances normally associated with and located at the starting point of a broadband telecommunications network.

*Installation* shall mean the connection of the network from feeder cable to subscribers' terminals.

*Institutional network* shall mean a dedicated cable for the transmission of upstream and downstream signals, available for use by institutional users as provided in the franchise agreement.

*Leased access channels, or commercial access channel* shall mean any channel designated or dedicated for use by persons unaffiliated with the grantee.

*Monitoring* shall mean observing a communications signal, or the absence of a signal, where the observer is not a party to the communication, whether the signal is observed by visual or electronic means, for any purpose whatsoever.

*Network facilities* shall mean the broadband telecommunications network without limitation, the head end, antennas, cables, wires, lines, towers, amplifiers, converters, health and property security systems, equipment or facilities designed, constructed or wired for the purpose of producing, receiving, amplifying and distributing by coaxial cable, fiber optics, microwave or other means, audio and visual radio, television and electronic signals to and from subscribers in the city, any other equipment or facilities intended for the use of the network.

*Person* shall mean an individual, partnership, association, organization, corporation or any lawful successor transferee of said individual, partnership, association, organization or

corporation.

*Plant mile* shall mean linear mile of strand-bearing cable as measured on the street or easement from pole to pole or pedestal to pedestal.

*Public access* shall mean use of dedicated access channels by the general public or nonprofit or other organizations, but not to the exclusion of grantee. Nothing herein shall prohibit commercial programming or sponsorship of programming as approved by the board under section 27-10.

*Public property* shall mean any real property owned by the city other than a highway, sidewalk, easement or dedication.

*Public way* shall mean the surface, the air space above the surface, and the area below the surface of any public street, highway, Jane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkways, waterways, utility easements or other public right-of-way held or hereafter held by the city which shall entitle the city and the grantee to the use thereof for the purpose of installing and maintaining the broadband telecommunications network. No reference herein, or in any franchise, to the "public way" shall be deemed to be a representation or guarantee by the city that its title to any property is sufficient to permit its use for such purpose, and the grantee shall, by its use of such terms, be deemed to gain only such rights to use property in the city as the city may have the undisputed right and power to give.

*Reasonable notice* shall be written notice addressed to either party, which notice shall be certified and postmarked not less than ten (10) days prior to that day in which the party giving such notice shall commence any action which requires the giving of notice. In computing said ten (10) days, Saturdays, Sundays and holidays recognized by the city shall be excluded.

*Resident* shall mean any person residing in the city as otherwise defined by applicable law.

*Sale* shall include any sale, exchange, barter or offer for sale.

*School* shall mean any public primary and secondary schools.

*Service area* shall mean the entire geographic area within the franchise territory.

*State* shall mean the State of Maine.

*Street* shall include all streets, roadways, highways, avenues, lanes, alleys, courts, places, squares, curbs, sidewalks, easements, rights-of-way, bridges or other public ways and all extensions thereof and additions thereto established by or maintained under public authority in the city, which have been or may hereafter be dedicated to public use whether constructed or not, or such other public property so designated in any law of this state.

*Studio* shall mean the land, electronic processing equipment, towers, building, cameras, lights and other appurtenances normally associated with and located at the grantee's local origination and/or public access points of the broadband telecommunications network, excluding the head end.

*Subscriber* shall mean any person, firm, corporation or other entity who or which elects to subscribe to, for any purpose, a service provided by the grantee by means of or in connection with a broadband telecommunications network.

*Subscriber terminal* shall mean the broadband telecommunications network's cable terminal to which the subscriber's equipment is connected. Separate terminals may be provided for delivery of television signals, FM broadcast, or other signals of differing classifications.

*Transfer* shall mean the disposal by the grantee, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, of ten (10) percent or more at one time of the ownership or controlling interest in the system, or twenty (20) percent cumulatively over the term of the franchise of such interests to a corporation, partnership, limited partnership, trust or association, or person or group of persons acting in concert.

*Trunk line* shall mean the major distribution cable use in the broadband telecommunications network, which divides into feeder lines which are tapped for service to subscribers.

*Upstream channel* shall mean a channel over which signals travel from an authorized location back to the head end.

*User* shall mean a person or organization utilizing channel or equipment and facilities for purpose of production and/or

transmission of material, as contracted with receipt thereof in a subscriber capacity.

(Ord. No. 518-86, § 2, 4-28-86; Ord. No. 213-98, § 1, 2-18-98)

**Sec. 27-3. Application for franchise; contents.**

Applications for a franchise under this chapter shall be filed with the city in accordance with the filing instructions promulgated by the city and shall contain the following written information and provisions:

- (a) *Proposal bond and filing fee.* Provision of the proposal bond as required in section 27-6 and payment of a nonrefundable filing fee to the city of twenty-five dollars (\$25.00) as required in section 27-5, which sum shall be due and payable concurrently with the request for application information.
- (b) *Name and address of applicant.* The name and business address of the applicant, date of application and signature of applicant or appropriate corporate officers.
- (c) *Description of proposed operation.* A general description of the applicant's proposed operation including but not limited to business hours; operating staff; maintenance procedures beyond those required in the chapter; management and marketing staff complement and procedures; and, its proposed rules of operation for public access.
- (d) *Programming and services.* A statement of all programming and services to be provided, including satellite-delivered and other imported signals, off-air signals, locally originated signals, and audio signals, as well as an indication of whether such signals will be provided as basic service, premium service or some other basis.
- (e) *Additional and special services.* A statement setting forth a description of additional and special services including transactional services, data services, etc.
- (f) *Access channels, production facilities, and programming assistance.* A statement setting forth the channels to be allocated for public, municipal, educational, and leased access; a description of the production facilities and equipment to be made available by the grantee for access;

and a statement establishing any additional revenues beyond those required in section 27-5 to be designated for programming or programming assistance for the access channels.

- (g) *Corporate organization.* statement detailing the corporate organization of the applicant, if any, including the names and addresses of its officers and directors and the number of shares held by each officer and director.
- (h) *Stockholders.* A statement identifying the number of authorized and outstanding shares of applicant's stock including a current list of the names and current addresses of its shareholders holding ten (10) percent or more of the applicant's outstanding stock.
- (i) *Intra-company relationships.* A statement describing all intra-company relationships of the applicant, including parent, subsidiary or affiliated companies.
- (j) *Agreements and understandings.* A statement setting forth all agreements and understandings, whether written or oral, existing between the applicant and any other person with respect to any franchise awarded and the conduct of the operation thereof existing at the time of proposal submittal.
- (k) *Financial statements.* If applicant is a corporation, audited financial statements for the two (2) previous fiscal years. If applicant is a partnership, copies of the "U.S. Partnership Return of Income" (IRS Form 1065) for the two (2) previous fiscal years. If applicant is a sole proprietorship, copies of personal financial statements for the two (2) previous fiscal years.
- (l) *Financial projection.* An estimated ten (10) year operations proforma which shall include the initial and continuing plant investment, annual profit and loss statements detailing income and expenses, annual balance sheets, and annual levels of subscriber penetration. The proforma shall also state the average return on investment anticipated by the applicant for the ten (10) year operations period and shall state the method of computation thereof. Costs anticipated for voluntary services or contributions shall, if presented, be incorporated in the proforma as required in this chapter,

but shall be separately identified in the proforma.

- (m) *Financial support.* A corporate board resolution or statement from a qualified officer of the applicant shall be supplied authorizing the obtainment and expenditure of such funds as are required to construct and operate the broadband telecommunications network proposed herein. The applicant shall identify any external financing sources anticipated and shall explain the nature and extent of participation by such external financing source. If external financing shall be accomplished through lines of credit with a lending institution, the applicant shall identify the available, uncommitted balance of such line of credit.
- (n) *Technical description.* A technical description of the type of network proposed by the applicant including but not limited to network configuration (i-e., hub, dual cable), network capacity, two-way capability and the proposed dates of commencement of construction and operation of the network.
- (o) *Engineering statement.* A statement from a registered professional engineer advising that he or she has reviewed the technical description provided above and that the planned network and operation thereof meet all the technical standards established by the Federal Communications Commission, the State of Maine, the City of Portland, and any other applicable standards.
- (p) *Existing franchises.* A disclosure of existing franchises held by the applicant indicating when the franchises were issued and when the networks were constructed in each respective governmental unit, together with the name and address and phone number of a responsible governmental official knowledgeable of the applicant.
- (q) *Convictions.* A statement as to whether the applicant or any of its officers or directors or holders often (10) percent or more of its voting stock has in the past ten (10) years been convicted of any crime other than a routine traffic offense and the disposition of each such case.
- (r) *Operating experience.* A statement detailing the prior operational experience of the applicant including that of

the applicant's officers, management and staff to be associated with the proposed operation.

(s) *Franchise renewal information.* If an application is for renewal of a franchise, the proposal must include, in addition to the information required in subsections (1) through (18) above:

1. A summary of the technical, financial and programming history of the network since the granting of the original franchise;
2. A statement and timetable that outlines all proposed changes, expansion or improvements in the network as to services, programming or technical specifications during the renewal period.

(t) *Additional requirements.* The application for franchise shall respond specifically, and in sequence, to subsections (1) through (18) of this section and shall be bound separately from any additional information proffered by the applicant. Fifteen (15) copies of the application shall be supplied to the city. Supplementary, additional or other information that the applicant deems reasonable for consideration may be submitted at the same time as its application, but must be separately bound and submitted in the above number of copies. The city may, at its discretion, consider such additional information as part of the application.

(u) *Supplementation to applications.* The city reserves the right to require such supplementary, additional or other information that the city deems reasonably necessary for its determinations. Such modifications, deletions, additions or amendments to applications shall be considered only if specifically requested by the city.

(Ord. No. 518-86, § 2, 4-28-86)

**Sec. 27-4. Reports and records of the grantee.**

(a) *Annual financial reports required.* The grantee shall file annually with the city not later than three (3) months after the end of its fiscal year during which a franchise was accepted and within three (3) months after the end of each subsequent fiscal year, two (2) copies of:

- (1) The report to its stockholders;
- (2) An income statement identifying expenses and income applicable to its operations under the franchise during the fiscal year or fraction thereof including gross revenue from all sources, gross subscriber revenues from each of each category of service, net income and end-of-year balance sheet; and
- (3) A listing of its properties devoted to network operations under the franchise, certified by a certified public accountant, together with an itemization of its investment in each of such properties.

(b) *Annual facilities report required.* The grantee shall file annually, with the city not later than three (3) months after the end of its fiscal year during which a franchise was accepted and within three (3) months after the end of each subsequent fiscal year, two (2) copies of a total facilities report setting forth the total physical miles of plant installed or in operation during the fiscal year. Such report shall also contain any revisions to the network "as built" maps filed with the city under the provisions of subsection (d) herein.

(c) *Annual service record report required.* The grantee, if requested by the city, shall file annually with the city not later than three (3) months after the end of its fiscal year during which a franchise was accepted and within three (3) months after the end of each subsequent fiscal year, a list of all system outages causing network "downtime" received or experienced during the fiscal year. All such submitted data shall also include complaint disposition and response time. For the purpose of this provision, a certified copy of an outage logbook reflecting all such incidents will suffice. Also, if requested by the city, uncertified additions to the annual log shall be supplied to the city at intervals to be established by the city.

(d) *Network maps required.* The grantee shall file with the city not later than three (3) months after the network is substantially completed, a set of network "as built" maps, drawn to scale, showing all of the broadband telecommunications network facilities installed in the city. Subscriber service drop facilities need not be shown.

(e) *Ownership reports required.* The grantee shall file with the city not later than three (3) months after the network is

substantially completed and within three (3) months after the end of each subsequent fiscal year during which a franchise was accepted and within three (3) months after the end of each subsequent fiscal year two (2) copies of the following supplemental information:

- (1) If a nonprofit corporation, a list of all current bondholders both of record or beneficial. If a public corporation, a list of all shareholders who individually or as a concerted group hold ten (10) percent or more of the voting stock of the corporation;
  - (2) A current list of all grantee's officers and directors including addresses and telephone numbers;
  - (3) Copies of all pertinent agreement or contracts, including pole-use agreements, entered into by the grantee during the fiscal year in the conduct of its business under a franchise granted;
  - (4) The names and both business and residential addresses and phone number of the broadband telecommunications network resident manager and engineer;
  - (5) If the grantee is a subsidiary, a copy of the annual report of the parent firm.
- (f) *Public availability of reports.* Such reports as required under this chapter must be available to the public in the office of the city clerk, during normal business hours.
- (g) *Correspondence.* The grantee shall simultaneously file with the city a copy of each petition, application, report and communication transmitted by the grantee to, or received by the grantee from, any federal, state or other regulatory commissions, agencies or courts having competent jurisdiction to regulate and pertaining to the operations, of any broadband telecommunications network authorized hereafter.
- (h) *City's access to records.* The city shall have access during all normal business hours, and upon the giving of reasonable notice to all records required to be maintained according to the franchise. Records of subscriber lists and statistical data shall be made available to the city, if not prohibited by federal law, but only upon a showing to the grantee by the city that such records are material to the city's regulatory program.

(Ord. No. 518-86, § 2, 4-28-86)

**Sec. 27-5. Franchise payment.**

(a) *Filing fee.* Applicants for a franchise under this chapter shall pay a nonrefundable filing fee to the city of twenty-five dollars (\$25.00) which shall be due and payable concurrently with the request for the proposal information.

(b) *Annual franchise payment.* Because the city finds that:

- (1) Use of the streets and public ways of the city is required in the construction and operation of the system within the boundaries of the franchise area; and
- (2) The administration of this franchise imposes upon the city additional regulatory responsibility and expense;

the grantee shall pay to the city an annual fee in an amount of five (5) percent of its annual gross subscriber revenues. This payment shall be in addition to any other payment owed to the city by the grantee and shall not be construed as payment in lieu of municipal property taxes or other state, county or local taxes.

(c) *Method of computation; interest.*

- (1) Payments due the city under the provisions of subsection (b) above shall be computed annually for the preceding fiscal year and shall be paid simultaneously with the filing of annual reports required in section 27-4 at the office of the city clerk during its regular business hours. The first payment period shall commence as of the effective date of the franchise. The city shall be furnished a statement with each payment, by a certified public accountant, reflecting the total amounts of annual gross subscriber revenues, and the above charges, deductions and computations, for the annual payment period covered by the payment.
- (2) If any statement or payment is not furnished as required, interest on the amount due, as determined from the annual gross subscriber revenues as computed by a certified public accountant selected by the city, shall accrue from the date of the required submittal at an annual rate of twelve (12) percent.

(d) *Percentage amendments.* The percentages designated in this section may be amended no more than once each year by the council.

(e) *Acceptance by city; no release.* No acceptance of any payment by the city shall be construed as a release or as an accord and satisfaction of any claim the city may have for further or additional sums payable as a franchise fee under this chapter or for the performance of any other obligation of the grantee.

(f) *Right of recomputation.* The city shall have the right to inspect the grantee's income records and the right to audit and to recompute any amounts determined to be payable under this franchise. Additional audits shall be at the expense of the city. Any additional amount due to the city as a result of the audit shall be paid within thirty (30) days following written notice of the grantee by the city which notice shall include a copy of the audit report.

(Ord. No. 518-86, § 2, 4-28-86)

#### **Sec. 27-6. Bonds.**

(a) *Proposal bond.* Each applicant for a franchise shall submit a proposal bond in a form acceptable to the city or a certified check on a bank that is a member of the federal deposit insurance corporation, payable to the order of the city in an amount of fifteen thousand dollars (\$15,000.00). The grantee's proposal bond shall be returned upon provision of the performance bond as required in subsection (b) below.

(b) *Performance bond.* The grantee shall maintain and by its acceptance of any franchise agrees that it will maintain through the term of the franchise, any renewal or extension thereof, or during the restoration of property following franchise termination or revocation, a faithful performance bond running to the city, with a corporate surety licensed to do business in the state approved by the city in the penal sum total of two hundred fifty thousand dollars (\$250,000.00), conditioned upon the faithful performance of the grantee and upon further condition that if the grantee shall fail to comply with any law, ordinance or regulation governing the franchise, there shall be recoverable jointly and severally from the principal and surety of the bond, any damages or loss suffered by the city as a result, including the full amount of any compensation, indemnification or cost of removal of abandonment of any property of the grantee, plus a reasonable allowance for attorney's fees and costs, up to the full amount of the bond. The bond shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be cancelled nor the intention not to renew be stated until thirty (30) days after receipt by the City of Portland, Maine by registered mail of one (1) copy of a written notice of such intent to cancel or not renew. It is further understood and agreed that this bond may not be cancelled during the period required for the removal of the broadband telecommunications network as may be required by the city in the event of franchise revocation or expiration."

(c) *Return of proposal bond.* Proposal bonds or certified checks received in lieu thereof from applicants whose proposals are not accepted by the city shall be returned to the applicant as soon as the proposal is rejected.

(d) *Bond evidence to be filed with city.* The performance bond and written evidence of payment of required premium, shall be filed and maintained with the city during the term of any franchise granted hereafter, or any renewal thereof.  
(Ord. No. 518-86, § 2, 4-28-86)

#### **Sec. 27-7. Liability and indemnification.**

(a) *Indemnification of city in franchise operation.* It shall be expressly understood and agreed by and between the city and any grantee hereafter that the grantee shall save the city and its agents and employees harmless from and against all claims, damages, losses, and expenses, including attorney's fees sustained by the city on account of any suit, judgment, execution, claim or demand whatsoever arising out of but not limited to copyright infringements and all other damages arising out of the installation, operation, maintenance, or reconstruction of the broadband telecommunications network authorized herein.

(b) *Reimbursement of costs.* The grantee shall pay and by its acceptance of any franchise agrees that it will pay all expenses incurred by the city in defending itself with regard to all damages and penalties mentioned in paragraph (a) above.

(c) *Public liability insurance.* The grantee shall maintain and by its acceptance of any franchise agrees that it will maintain throughout the term of the franchise or any renewal or extension thereof, a general comprehensive liability insurance policy naming as the additional insured the city, its officers, boards, commissions, agents and employees, in a form satisfactory to the

city, protecting the city and all persons against liability for loss or damage for personal injury, death or property damage, occasioned by the operations of grantee under any franchise granted hereafter, in the amounts of (a) five hundred thousand dollars (\$500,000.00) for bodily injury or death to any one (1) person, within the limit, however, of one million dollars (\$1,000,000.00) for bodily injury or death resulting from any one (1) accident, (b) two hundred fifty thousand dollars (\$250,000.00) for property damage resulting from any one (1) accident, and (c) workers' compensation insurance in compliance with all workers' compensation insurance and safety laws of the State of Maine, and amendments thereto. Nothing herein shall prohibit the grantee from being self-insured.

(d) *Notice of cancellation or reduction of coverage.* The insurance policies mentioned above shall state that the policies are extended to cover the liability assumed by the grantee under the terms of this franchise and shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be cancelled nor the amount of coverage thereof reduced until thirty (30) days after receipt by the city by registered mail of written notice of such intent to cancel or reduce the coverage."

(e) *Evidence of insurance filed with the city.* All policies of insurance or certified copies thereof and written evidence of payment of required premiums, shall be filed and maintained with the city during the term of this franchise or any renewal thereof.

(f) *No waiver of performance bond.* Neither the provisions of this chapter nor any insurance accepted by the city pursuant hereto, nor any damages recovered by the city thereafter, shall be construed to excuse faithful performance by the grantee or limit the liability of the grantee under this chapter or any franchise granted pursuant hereto, or for damages, either to the full amount of the bond or otherwise.

(Ord. No. 518-86, § 2, 4-28-86)

#### **Sec. 27-8. Rate regulation to the extent authorized.**

(a) To the extent that federal or state law or regulation may now, or as the same may hereafter be amended to, authorize the city to regulate the rates for any particular service tiers, service packages, equipment or any other services provided by grantee, the

city shall have the right to exercise rate regulation to the full extent authorized by law.

(b) Pursuant to the foregoing, the city hereby exercises its rate regulation authority to the full extent authorized by the 1992 Cable Television Consumer Protection and Competition Act (47 U.S.C. Section 521 et seq.) and the implementing regulations adopted by the Federal Communications Commission pursuant to such act (47 C.F.R. Part 76, Subpart N). Such rate regulation provisions of the act and of the Federal Communications Commission regulations are hereby adopted by the city and incorporated herein by reference. The broadband telecommunications regulatory board is hereby authorized to enforce such rate regulation in conformity with the act and regulations in effect, and as they may be amended from time to time. Any rate determination proceeding of the board shall be a public proceeding as defined in the Freedom of Access Act (1 M.R.S.A. § 401 et seq.) and shall be subject to the requirements of such act, including without limitation, the public notice provisions.

(c) In accordance with the foregoing, prior to any rate determination of the board including, without limitation, approval of an unopposed existing or proposed rate, the board shall provide an opportunity for a public hearing at which public comment from interested parties will be taken in person and in writing. The conduct of such hearing shall be in accordance with the procedural rules for public comment applicable to the city council. At least one (1) public hearing shall be held within thirty (30) days of submission of the cable operator's existing or proposed rates or, in the event of any extension of the thirty-day time period for the board's rate determination, at least one (1) opportunity for public hearing and comment shall be provided by the board prior to the board's rate determination.

(Ord. No. 518-86, § 2, 4-28-86; Ord. No. 99-93, 10-4-93; Ord. No. 180-93, 12-20-93)

#### **Sec. 27-8.5. Consumer protection.**

(a) In accordance with 47 U.S.C. Section 521 et seq., and implementing regulations in Title 47 C.F.R. Part 76, Subpart H, the city hereby adopts and incorporates by reference the customer service regulations enacted at 47 C.F.R. Section 76.309 as the minimum customer service standards. Nothing herein shall prevent or prohibit the enforcement of any standard in excess of the minimum which is contained in a franchise agreement, nor from establishing or enforcing any consumer protection law which is not specifically

preempted by state or federal law, nor from establishing or enforcing any customer service requirements that exceed or address matters not addressed by these minimum standards.

(b) Violation of the consumer protection requirements may be enforced as provided in section 27-9 below and as provided in grantee's franchise agreement. Such remedies shall not be exclusive, and nothing herein is intended, nor shall it be deemed, to waive or modify any other right or remedy which any person or the city may have in law or equity.

(Ord. No. 98-93, 10-4-93)

**Sec. 27-9. Complaint procedure.**

(a) *Complaints.* Complaints, disputes and disagreements which-are not resolved by grantee to the subscribers' satisfaction, may be filed with the city manager, provided such filing complies with the time limits prescribed below.

(b) *[Time limits.]* Any complaint, dispute or disagreement may be filed with the city manager provided it falls within the time limits set forth below:

- (1) Within thirty (30) days after final action on the complaint, dispute or disagreement by the grantee; or
- (2) Within thirty (30) days after notice of the complaint, dispute or disagreement has been given to the grantee and the grantee has not resolved such complaint, dispute or disagreement.

(c) *Investigation and report.* Within fourteen (14) days after receiving notice of such complaint, dispute or disagreement, the city manager shall cause an investigation of the same to be made. After completion of the investigation, the city manager shall issue a report either dismissing the complaint or directing the grantee to take appropriate action to remedy the complaint, dispute or disagreement, and shall cause a copy of such report to be forwarded to each party. The report of the city manager shall be final unless either party appeals from it within fourteen (14) days after the hearing.

(d) *Appeal to regulatory board.* If either party is aggrieved by the decision of the city manager, he or she may appeal to the regulatory board described in section 27-10. The regulatory board will hold a hearing on the appeal from the decision of the city

manager within fourteen (14) days after receiving the appeal and its decision will be rendered within fourteen (14) days after the hearing.

(e) *Notice of hearing.* The board shall provide reasonable advance notice of the time and place of the hearings.  
(Ord. No. 518-86, § 2, 4-28-86)

**Sec. 27-10. Cable television committee.**

(a) *Established.* There is hereby established a broadband telecommunications regulatory board hereinafter referred to as the "CATV committee" or "committee."

(b) *Composition.* The committee shall be composed of one (1) member of the city council, appointed by the mayor for a one-year term, who shall be chair; one (1) member of the school committee to be appointed by the chair of the school committee for a one-year term; and three (3) members from the public at large to be appointed for three-year terms by the city council. Such members shall serve until a successor is appointed, but for no longer than the terms provided in this code at chapter 2, article III, sec. 2-32 et. Seq. The committee shall meet as needed, upon call of the chair.

(c) *Duties.* The duties of the committee shall be:

- (1) Reviewing appeals taken pursuant to section 27-9. Its decisions and findings shall be binding on all parties; however, nothing herein shall prohibit any party from appealing such findings or decisions to the appropriate court or agency.
- (2) Reviewing and auditing reports submitted to the city as required in section 27-4, and such other correspondence as may be submitted to the city concerning the operation of the broadband telecommunications regulatory network so as to insure that the necessary reports are completed and fulfilled pursuant to the terms of the ordinance;
- (3) Work with the public and the media to assure that all records, rules and charges pertinent to the broadband telecommunications network in the city are made available for inspection at reasonable hours upon reasonable notice;

- (4) Confer with the grantee and advise on the interconnection of the city's network with networks serving other governmental entities;
- (5) Solicit, review and provide recommendations to the council for selection of applicants for franchise;
- (6) Initiate inquiry on requests for review of rates charged by the grantee to the extent permitted by law;
- (7) Undertake such other duties as the council may assign from time to time;
- (8) Make recommendations to the grantee concerning educational and local interest programming;
- (9) Coordinate and advise the educational, governmental and public users of the broadband telecommunications network access channels in their programming efforts;
- (10) Monitor the procedural aspects and operation of the public access channel;
- (11) Review all rules and guidelines for the operation of the public access channels, which rules or guidelines may provide for limited local commercial programming and/or commercial sponsorship of local programming and shall be subject to the board's approval;
- (12) Perform such duties and functions relative to coordination with boards of similar networks to assure the mutually satisfactory interchange of programs between networks;
- (13) If requested by council, prepare and present an annual budget to the council for the administration and operation of the committee;
- (14) The committee shall have the authority to conduct public hearings in the performance of its duties.

(Ord. No. 518-86, § 2, 4-28-86; Ord. No. 97-93, 9-20-93; Ord. No. 213-98, § 2, 2-18-98; Ord. No. 116-08/09, 12-1-08)

**Sec. 27-11. Compliance with all laws.**

The grantee shall at all times comply with all applicable federal, state and city laws, ordinances and regulations.  
(Ord. No. 518-86, § 2, 4-28-86)